cornerstone barristers

Climate Litigation in the UK

A deep dive into the latest developments in UK climate litigation, covering the major cases shaping future regulatory and judicial dynamics

Rowan Clapp - Dr Lois Lane - Max Millington

3 September 2025

What will we be covering?

1. An overview of the legislative and policy context

2. UK climate litigation – a focus on the planning system

3. Looking ahead – new frontiers or more of the same?

1

The legislative and policy context

In adopting the Paris Agreement on 12 December 2015, most of the nations of the world have acknowledged that ***climate change represents "an urgent and potentially irreversible threat to human societies and the planet"****…and have agreed on the goal of "holding the increase in the global average temperature to well below 2°C above pre-industrial levels pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels"*

R (Finch) v Surrey County Council [2024] UKSC 20 at §141

The Climate Change Act 2008

- **Government's statutory duty** to ensure that the UK's net carbon account for 2050 is at least 100% lower than the 1990 baseline – '**Net Zero**' (s.1(1)).
- Must set '**carbon budgets**' for each succeeding five-year period, taking into account advice from the Climate Change Committee (ss.4, 9).
- Legally binding cap on the maximum level of emissions for the five-year period – effectively, the amount of carbon the UK can 'spend' in that time frame.
- Aim of gradually reducing the budgets over time and working towards 'Net Zero' in 2050. There have been six carbon budgets so far (covering 2008-2037) with the seventh due to be set in 2026.

The Climate Change Act 2008 cont…

- CCC's advice for 7th budget published Feb 25 recommends 87% reduction of GHG emissions by 2040.
- UK committed under Paris Agreement reducing emissions 81% by 2035.
- Government must prepare '**proposals and policies**' to enable the carbon budgets to be met and **report on these to Parliament** (ss.13,14).
- At present there is **no lawful plan** under the CCA 2008 setting out the Government's policies and proposals **for meeting the carbon budgets**.
- Why? …

(1) *R (Friends of the Earth Ltd) v Secretary of State for Business, Energy, and Industrial Strategy)* [2022] EWHC 1841 (Admin) – Holgate J

- Policies only provided for 95% of target. Secretary of State had not been briefed with sufficient information to enable him o be satisfied 6th carbon budget could be met.

- The '**Net Zero Strategy**' was required to be re-drafted by 31 March 2023.

(2) *R (Friends of the Earth) v Secretary of State for Energy Security and Net Zero* [2024] EWHC 995 (Admin) – Sheldon J

- Revised '**Carbon Budget Delivery Plan**' published on 30 March 2023 was unlawful. The Secretary of State had irrationally not taken into account the risk that not all of the policies and proposals would be delivered in full.

- Court ordered the Government to produce an updated climate plan by 3 May 2025, the deadline for which has since been extended to 29 October 2025. **Watch this space…**

The planning system

- In dealing with any planning application, authority must have regard to the development plan and any other '**material considerations**' (s.70(2) Town and Country Planning Act 1990).
- Government's National Planning Policy Framework – material consideration for decisions.
- NPPF (Dec 2024): '*The **planning system should support the transition to net zero by 2050 and take full account of all climate impacts** ... It should help to: shape places in ways that contribute to **radical reductions in greenhouse gas emissions…**'* (para. 161)
- *R (Frack Free Balcombe Residents Association) v SSLUHC* [2023] EWHC 2548 (Admin) – Lieven J held that **climate change '*is likely to be a material consideration in every planning decision** given the policy context as well as the much wider issues*'** (§65).
- Looks positive – but hook for challenges? Weight of mat. cons. for decision-makers.

Regulation of significant infrastructure projects

- **The Town and Country Planning (Environmental Impact Assessment) Regulations 2017** – projects likely to give rise to significant effects on the environment (most obviously, fossil fuel extraction, oil refineries, power stations etc. but potentially very broad – see Sch. 2 and Sch. 3).

- **Planning Act 2008** – for Nationally Significant Infrastructure Projects (defined by reference to provisions in Part 3 - Energy, Transport, Water, Waste etc).

- **The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017** – impose EIA requirements for proposed NSIPs.

EIA Regulations 2017

- No planning permission for qualifying 'EIA' development without an EIA (Regs 3, 26).
- EIA process consisting of preparation of an Environmental Statement ('ES'); consulting with public and stat. consultees (e.g. Natural England, Environment Agency); examination of that information (Reg 4(1)).
- EIA must **identify, describe, assess, direct and indirect significant effects** of proposed development on environment **including climate** (Reg. 4(2)(c)).
- ES must include sufficient information – should describe and quantify effects (Reg 18).
- Planning decision-makers must determine whether a proposed project falls within EIA regime (*'screening'* – Part 2) and the extent of issues to be considered by the EIA (*'scoping'* – Part 4).

Planning Act 2008 + Infrastructure EIA Regulations 2017

- **NSIP require Development Consent Order** from Secretary of State (ss.31 and 33).
- To obtain consent developers must submit an application (s.37) having first completed **pre-application procedure** set out in Ch. 2 of Part 5 of the Act and statutory guidance.
- Imposes **duties to consult** stakeholders such as local authorities (s.42); members of the public (s.47); to publicise the proposed application (s.48); and **to take account of responses** to consultation and publicity (s.49).
- Applications for NSIP can only be accepted for examination if this statutory pre-application procedure has been complied with (s.55(3)(e)).
- If the NSIP is EIA development –EIA requirements also apply and consultees must be presented with the relevant environmental information during the pre-application procedure (Reg 12), and again in further detail during the examination of the proposals (Reg 21).

2

Climate in the courts

R (Finch & Weald Action Group) v Surrey County Council & Horse Hill Developments Ltd [2024] UKSC 20

Decision challenged: the 2019 grant of planning permission by Surrey County Council for the extraction of 3.3 million tonnes of oil over a 20-year period from a site at Horse Hill.

Key issue: whether the inevitable greenhouse gas emissions which would occur when the oil extracted from the site was eventually burned somewhere else in the world ('*downstream emissions*') were a '*likely significant effect*' of the development within the meaning of the EIA Regulations.

Outcome: High Court - never an effect, then Court of appeal - matter of planning judgement and no in this case… Supreme Court by a majority of 3-2 - **always an effect** which fell to be assessed in the EIA. The **planning permission was quashed**.

Lord Leggatt…

- Object of EIA is to ensure the environmental impact of a project is exposed to public debate (§3). Rationale of Regulations – the process is necessary to increase the democratic legitimacy of decisions and to fulfil an important educational function – '***you can only care about what you know about***' (§21).

- **EIA concerned with procedure not outcome** – no answer to say that complying 'wouldn't have made a difference' (§§62-63, 153**).**

- **Whether something is an '*effect*' on the environment is a matter of law and causation** – therefore within the jurisdiction of the court (§§65, 79-80). Whether it is '*likely significant*' then question of evaluative judgment for decision-maker (§58, 78).

- An impact must be capable of meaningful assessment. GHG emissions from burning oil easily quantified (§§7, 81) and impact on climate can be considered by reference to CCA 2008 Carbon Budgets (§§82, 143).

- '*Leaving oil in the ground in one place does not result in a corresponding increase in production elsewhere*' (§2)…and… '*Wherever GHG emissions occur, they contribute to global warming* (§97)',

R (Friends of the Earth Limited) v SSLUHC [2024] EWHC 2349 (Admin) ('*Whitehaven*')

Decision challenged: the 2022 grant of planning permission by the Secretary of State for a new underground coal mine in Whitehaven, Cumbria.

Key issues:
(i) Does *Finch* apply outside of oil extraction cases?
(ii) Will there be no significant effects if the coal only replaces imported coal? ('*substitution*')

Outcome: the ES the developer had produced was so deficient that it failed to comply with the EIA Regulations (§118-124). The Inspector/Secretary of State's decisions were internally inconsistent and failed to grapple with the important issues re- climate impacts (§§140, 168*ff)*. The **permission was quashed**.

Holgate J (as he then was)…

- The consequences of the **substitution argument** '***would be absurd***' (§103). Substitution of US coal not relevant to whether combustion of Whitehaven coal was a likely significant effect – it is not the same chain of causation (§§106-107).

- ***Finch* applied**. Inevitable GHG emissions from combustion of Whitehaven coal were a '*likely significant effect*' – required to be assessed in ES and EIA. (§101). Given the scale and significance of those emissions on the evidence that assessment was a mandatory material consideration for the Secretary of State (§102).

- EIA Regulations impose **evidential burden on developer** to demonstrate in ES any claimed substitution effect, or that there would be no net emissions increase '*including legal causation in relation to substitution*' (§§112, 115-116).

- Therefore, developer needed to produce information in ES/EIA of BOTH emissions from combustion of Whitehaven coal AND supposed substitution for US coal relied upon (§103). '*The public was entitled to participate in a[n] EIA process in which they could respond to such material. It was not for the public to have to produce key components of that information*' (§116).

- Where public error is established – court retains discretion to quash or not. *Simplex* test applies (§85).

Greenpeace Ltd v Advocate General for Scotland [2025] CSOH 10 (*'Jackdaw' and 'Rosebank'*)

Decisions challenged: grant of consent for development of Jackdaw (2022) and Rosebank (2023) North Sea oil and gas fields.

Rosebank estimated to be largest undeveloped oil and gas field in UK. Estimated by developer to produce 7% of UK's crude oil output and 4.5% of gas by 2032-35. Jackdaw predicted to produce around 6.5% of UK's gas production.

Key issues: Parties agreed that decisions to grant consent unlawful following *Finch*. Question – what should happen next? Developers (Equinor, Shell) sought declaration decisions unlawful, but given work already undertaken and public + private interests for development to proceed. Greenpeace/Uplift sough for decisions to be quashed ('reduced') and remade by UK Gov.

Outcome: Consents granted unlawfully and error material – decisions reduced.

Lord Ericht…

- *'the balance lies in favour of granting reduction. The* ***public interest in authorities acting lawfully and the private interest of members of the public in climate change outweigh the private interest of the developers****. The factors advanced by Shell, Equinor and Ithaca in respect of their private interest do not justify the departure on equitable grounds from the normal remedy of reduction of an unlawful decision" (*§151).

- The reduction would be suspended until a fresh decision is reached. It would be disproportionate to require work on the projects to cease completely with immediate effect, as they are complex engineering projects dependant on the co-ordination of many time-limited factors, and ceasing work would cause significant disruption (§157)…

- … but the Court made it clear that no oil or gas can be extracted from the sites during the suspension period and that any continuation of preparatory works would be at the developers' risk (§158-160).

- *…while it is equitable to suspend the reduction in order to provide practical options as to how to deal with the practical issues of construction and engineering prior to re-consideration, it is not equitable to allow the production of oil and gas prior to then. The re-consideration will take into account what the emissions will be if oil and gas is extracted. A* ***fundamental purpose of the Directive and 2020 Regulations is that activities giving rise to emissions must not begin until the emissions are assessed…To allow extraction to take place prior to re-consideration would frustrate that purpose…*** (§160)

R (Boswell) v Secretary of State for Transport [2024] EWCA Civ 145

Decisions challenged: the grant of consent by the Secretary of State for Transport in 2022 to National Highways for three separate road improvement schemes to the A47 trunk road around Norwich.

Key issue: whether the Secretary of State had lawfully discharged the obligation under the Infrastructure EIA Regulations 2017 to **assess and examine the cumulative future GHG emissions** which would be generated by vehicles using the roads once they were operational.

Outcome: High Court - dismissed claim… '*case is, on analysis, a challenge to the acceptability of the carbon impacts from the three road schemes. Acceptability of impact is not a matter for the courts…'* Court of Appeal - **dismissed the appeal**… no legal error in Secretary of State's approach which was to consider impact of each scheme within wider local context against national carbon budgets.

Sir Launcelot Henderson…

- Noted 2014 National Policy Statement for National Networks 2014: '*any increase in carbon emissions is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the proposed scheme are so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets'* (§§6-7).

- Whether effects from schemes were likely significant when compared with carbon budgets, and whether there was any other meaningful basis upon which a separate and wider assessment of cumulative impacts from each scheme could have been undertaken – were issues of fact and evaluation for the Secretary of State, subject only to the supervisory oversight of the court (§53).

- No logical basis upon which any wider cumulative assessment of carbon emissions could have been undertaken by arbitrarily combining emissions from particular projects (§51) because…

- It is a '*crucial scientific fact, reflected in the IEMA Guidance, that carbon emissions have no geographical boundary, with the consequence that their impact is not confined to their local area, but is felt uniformly across the globe. In this respect they differ from other impacts (such as noise, pollution, dust or risk of flood etc) which must be considered in an EIA*' (§50).

3

Looking ahead – new frontiers or more or the same?

What kinds of climate cases can we expect to see in the coming years?

01

Continuation of planning reviews – especially aviation expansion challenges

02

More private law claims – e.g. shareholder actions and tortious claims

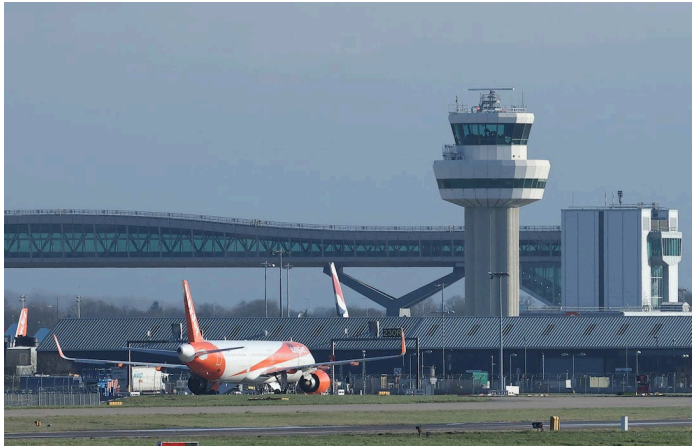
03

Human rights-based challenges and the impact of key Advisory Opinions

Traditional judicial and statutory reviews

Aviation expansion is one big story here

- Challenge to Luton Airport DCO by LADACAN granted permission on five grounds in July 2025.
- Outstanding Jet Zero Strategy appeal.
- Gatwick challenge likely given Secretary of State comments vs panel recommendation.
- Heathrow third runway?



Private law claims: shareholder litigation

ClientEarth v Shell

[2023] EWHC 1897 (Ch)

Background…

- Built on 2021 case of *Milieudefensie v Royal Dutch Shell* (C/09/571932/ HA ZA 19-379), where Dutch Court ordered Shell to reduce its global emissions by 45% by 2030. Based on standard of care in Art 6.162 of Dutch Civil Code.
- Judgment has since been successfully appealed in part but inspired…

ClientEarth v Shell litigation – the end or the beginning?

- Derivative action brought in 2023 by ClientEarth against board of directors.

- Argued failure to plan for energy transition put long-term financial future of company at risk and breached duties under ss. 172, 174, 176 of the Companies Act 2006. Also alleged breaches of the *Milieudefensie* order.

- Case dismissed after oral renewal hearing:
  - Insufficient evidence of directors' failure to manage climate risk and not in proper form (§§59-68).
  - No duty on directors under English law to comply with foreign order (§§34-35).
  - Inference that claim not brought in good faith (§§85-93).

cornerstone barristers

Private law claims: corporate liability for climate damages

Lliuya v RWE [2025]

- Case brought by Peruvian farmer against German energy company.
- Claim dismissed on the facts but confirmed principle that companies can be liable for climate harms.
- Court considered climate attribution science and took *Finch*-like approach to causation.

Lliuya v RWE [2025]

- Court acknowledged that climate attribution science can provide basis for claim in tort for environmental damage.
- Causation = causal link/foreseeability + materiality/significance in multi-causal scenarios + attribution.
- On the facts, Defendant was the direct tortfeasor even though plants operated by subsidiaries.
- Reflects broader uptick in environmental claims brought against parent companies in the jurisdiction where they are domiciled - e.g. *Mariana v BHP, Vedanta, Okpabi v Shell*.

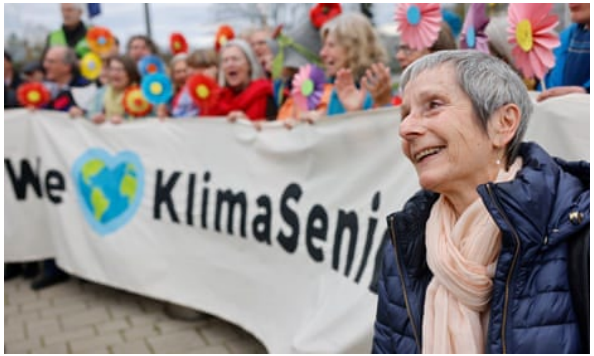
Rights-based challenges and the Advisory Opinions

ECtHR cases

- *Duarte Agostinho v Portugal* (App. No. 39371/20) and *Carême v France* (App. No. 7189/21) – ruled inadmissible for lack of standing, jurisdictional issues, failure to exhaust domestic remedies.

- *Verein Klimaseniorinnen v Switzerland* (App. No. 53600/20) – successful in part.

- States have common responsibility for addressing climate change, whether or not emissions generated within their jurisdiction.



Advisory opinions on climate change

1. **ITLOS (21 May 2024)** – traditional principles of customary international law apply to transnational climate harms. Climate pollution = pollution of marine environment under UNCLOS.

2. **IACtHR (3 July 2025)** – affirmed overarching human right to a stable climate (§§298–299). Obligations on states to meet UNFCCC/Paris Agreement goals set out at §§323–332.

3. **ICJ (23 July 2025)** – obligation on States to adopt concrete measures to achieve goals under UNFCCC and Paris Agreement. Failure to do so may constitute an internationally wrongful act attributable to that State (§221).

Key takeaways

- Traditional planning and policy JRs not going away any time soon (though watch this space on restrictions to JR for major infrastructure projects).
- Very likely to see more claims in tort, building on *Lliuya* and other environmental class actions.
- Jury is still out on whether shareholder actions have a meaningful part to play in climate litigation – perhaps with the right Claimant?
- Rights-based claims will continue. Not yet clear how they or findings of Advisory Opinions may filter through into domestic climate litigation.

Learn more in our other webinars this climate month

- **UK Progress Towards Net Zero – 10 Sep 2025, 12:30pm** with Cornerstone Barristers' Estelle Dehon KC, Josef Cannon KC, and Hannah Taylor.

- **Opportunity Green x Cornerstone Climate: ICJAO Outcomes and Implications – 15 Sep 2025, 12:00 pm** with Estelle Dehon KC, Joie Chowdhury, senior attorney at the Center for International Environmental Law (CIEL), and Dominika Leitane, legal officer at Opportunity Green.

cornerstone barristers

Any questions?

Ask us more questions:

events@cornerstonebarristers.com

For instructions or inquiries:

clerks@cornerstonebarristers.com