



EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2025] CSIH 10  
P833/23

Lord Malcolm  
Lady Wise  
Lord Clark

OPINION OF THE COURT (No 2)

delivered by LORD MALCOLM

in the Petition

by

WILDCAT HAVEN COMMUNITY INTEREST COMPANY

Petitioners and Reclaimers

against

THE SCOTTISH MINISTERS

Respondents

VATTENFALL WIND POWER LTD

Interested Party

**Petitioners and Reclaimers: Colquhoun; Drummond Miller LLP**  
**Respondents: Crawford KC, D Welsh; Scottish Government Legal Directorate**  
**Interested Party: Mure KC; Eversheds Sutherland (International) LLP**

15 April 2025

[1] The issue arising is whether a protective expenses order (PEO) which was granted to cover a motion for review in the Inner House impliedly extends to an application made under chapter 41A of the Rules of Court for permission to appeal the refusal of that motion to the UK Supreme Court. The background is that the petitioners unsuccessfully reclaimed

(appealed) a Lord Ordinary's dismissal of its challenge to a decision granting permission for a windfarm development, see [2024] CSIH 39 for the full circumstances. In brief, the concern is that the development will cause disturbance to a population of wildcat.

[2] The application for permission to appeal was refused. Both the Scottish Ministers and the interested party (the developer) seek an award of the expenses caused by the application against the petitioners. This is not opposed in principle, but in respect of these costs the petitioners claim entitlement to the protection of the PEO. The contrary proposition is that the PEO has no application beyond the four corners of the reclaiming motion itself which ended when it was refused.

[3] The Lord Ordinary granted a PEO to cover the proceedings in the Outer House, limiting the petitioners' liability in expenses to the Ministers and the interested party to a cumulative total of £10,000. Subsequently an interlocutor of this court stated that in terms of rules 58A.3(4) and 8(4) the PEO was extended "to cover both the petition and proceedings in the Outer House and the motion for review in the Inner House."

[4] The submission for the Ministers, adopted by the interested party, is that the chapter 41A application is separate and distinct from the reclaiming motion, and therefore expenses relating to it are at large and unencumbered by the cap set by the PEO. The petitioners note that the application for permission was made by a single bill in the Inner House process initiated by the reclaiming motion. The contention is that it is impliedly covered by the PEO as extended by the Inner House. PEO's are an important protection for litigants and to exclude such here would contradict the general thrust of chapter 58A and of the Aarhus Convention.

[5] Clearly PEOs are an important aspect of public participation in respect of decisions on specific environmental activities, and this one has allowed the petitioners to challenge the

windfarm permission in the Outer House and then again in the Inner House of the Court of Session. The difficulty for the petitioners' submission is that the proposed implication that the PEO applies to applications for permission to appeal the outcome of the reclaiming motion to the UK Supreme Court is contrary to the express terms of the interlocutor itself. It extended the PEO granted for the Outer House to "the motion for review in the Inner House". The proceedings relative to that motion ended when it was refused. No attempt was made at the time the extension was sought to provide for the cap to cover applications of this nature, nor has there been any subsequent bid, which, if competent at all, and given the absence of any provision in the rules, could only be brought at common law.

[6] The result is that the Ministers and the interested party are entitled to an award of the expenses occasioned by the application which is not subject to the terms of the PEO.