

## Example 2.

A Scottish case involving Mr. Mark Gibson demonstrates difficulties and costs incurred to date before a Protective Expenses Order (PEO) was finally granted:

<https://www.scotcourts.gov.uk/search-judgments/judgment?id=4f8106a7-8980-69d2-b500-ff0000d74aa7> 10 Feb 2016 - for **judicial review** of a decision of the Scottish Ministers, Energy and Climate ... operation of **Dersalloch Wind Farm** (“the wind farm development”). The wind farm development is approximately 4.2km from Mr. Gibson’s home. (*I have redacted the address*).

‘The [Inner House](#) confirmed that when determining whether court proceedings are prohibitively expensive for an applicant both a subjective and an objective test must be applied.

In Mr Gibson’s case, the subjective test had been misapplied. It is not a question of whether the petitioner is able to pay the legal expenses in question; it is whether it is reasonable in all the circumstances for him to do so.’

It would be impossible for most to sustain his own high costs involved (believed to be in the region of £120,000) in getting this far, so in Scotland the current arrangements clearly remain a strong disincentive for access to justice.

It remains to be seen whether the new consultation just announced will result in any meaningful changes to failures of the current system.

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