

# PE1864/AAAAAA: Increase the ability of communities to influence planning decisions for onshore windfarms

## Petitioner written submission, 6 April 2024

Scotland Against Spin (SAS) is grateful to the Minister for his response. We are aware of the Investing in Planning Consultation. We will make a submission in due course, lobbying that local support is a key material consideration in the decision-making process before an application can be consented. This must be introduced at the same time as raising the 50MW threshold to allow determination by local authorities. This is what the Petition requests and it is what [the Petitions Committee recommended in their letter to the Minister dated 17 March 2023](#).

This Petition has now been live for three years. We understand the need to consult stakeholders, but it appears to SAS and their supporters that it is being actively stalled, particularly in relation to our request for public funding. As previously explained, this would ensure all individuals and communities wishing to take part in a Public Inquiry receive professional support to help them participate equally with the appellant's team of lawyers and expert witnesses. The Minister has not responded to this issue which, we are informed by the clerks, was included in the Committee's letter to him, as [agreed at the meeting on 21 February 2024](#). This omission will result in yet further delay.

It appears from the [Minister's submission of 27 June 2023](#) that he is relying on the good will of the Faculty of Advocates Free Legal Services Unit to provide pro bono support for third parties in order to avoid the use of public funds. Although the offer from Planning Aid Scotland to refer individuals and community groups to the Faculty is appreciated, [as already explained in our submission of 9 July 2023 under the heading Advice and Representation](#), pro bono advice has limitations and many worthy cases are likely to be filtered out. A much better solution would be to fund a panel of contributing lawyers from whom a selection could be made if the person or community meets certain criteria. Four cost effective solutions were suggested in that submission.

A recent survey of our members suggests they would be happy to take part in an Inquiry if they had professional help to do so. Having the support of an Advocate is of utmost importance, not just to shield them from aggressive cross examination, but to guide them through what is an alien frightening procedure and provide help with cross examination and closing submissions. Having to face an entire team of the appellant's experts is a daunting prospect for anyone and more so for members of the public with disabilities and communication problems. ('Scotland Against Spin' has drawn the DPEA's attention to a video of a recent Inquiry which demonstrates this particular situation). Most members of the public have no experience of public speaking or cross examination. Even without a disability, third parties find it difficult to express themselves and struggle under pressure to deliver valid points and concerns. An advocate's role is to facilitate the process such that a Reporter can make sound decisions based on all relevant information, including that from third parties. It is an unlevel playing field if one side has that privilege and the other side does not.

The Scottish Government is meant to be committed to equality in all areas; their vision being that individuals are respected, accepted, and valued by their communities, and have confidence in services to treat them fairly. At public examinations, well-funded applicants' teams may attempt to intimidate the unrepresented public. The odds can appear one sided and intimidating. The principle of 'Equality of Arms' is well understood in law. A key component of Article 6 of the European Convention on Human Rights means that tribunals or decision-makers must ensure that there is 'equality of arms' on both sides – meaning that a visibly fair balance must be struck between the opportunities given to both parties. The DPEA has suggested that if a member of the public appears to the Reporter to be an unqualified, but informed expert, then free rein should be given for aggressive cross examination. As assessment of what constitutes an unqualified informed expert member of the public appears subjective, that is wholly unacceptable and unfair.

We can never compete on equal terms with the teams of lawyers and experts produced by the applicant to provide interpretation of their environmental assessments which present their applications in the most favourable light, but providing support and ensuring some degree of equality in a supposed fact-finding public inquiry, would be a small step in the right direction. The Scottish Government cannot proclaim to be committed to equality until that becomes a reality.

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On behalf of SAS