

**Jim Martin**  
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**ENVIRONMENTAL**  
**Standards Scotland**  
**Ìrean Àrainneachdail na h-Alba**

Edward Mountain MSP  
Convener  
Net Zero, Energy and Transport Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP

By email

23 January 2024

Dear Convener,

I note the Committee's evidence session on environmental governance at its meeting on 16 January 2024. During the evidence session, Dr Fifield of the Environmental Rights Centre for Scotland suggested that ESS might be reluctant to use its enforcement powers and that one of the reasons for that is the prohibitive cost of going to judicial review (column 41, Official Report, Net Zero, Energy and Transport Committee, 16 January 2024).

I did make a speech last year where I discussed the prohibitive cost of going to judicial review for individual members of the public. I did not however suggest that Environmental Standards Scotland would not pursue a judicial review for reasons of cost. Environmental Standards Scotland can petition for judicial review under the terms of the Withdrawal from the European Union (Continuity) (Scotland) Act 2021. It retains a contingency within its budget for judicial review so that it can act swiftly if it decides that was a necessary course of action. Environmental Standards Scotland has previously explained this situation to the Environmental Rights Centre for Scotland.

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I hope this clarification is helpful to the Committee. I am copying this letter to Dr Shivali Fifield at the Environmental Rights Centre for Scotland.

Yours faithfully,

Jim Martin  
Chair, Environmental Standards Scotland