promoting access to justice

FLAC Response to the EU Commission’s Request for Information to inform its 2026 Rule of Law Report

March 2026

The EU Commission has sought FLAC’s views/input on three matters to assist in the preparation of its 2026 Rule of Law Report:

1. FLAC’s description of the current situation of access to justice in Ireland.
2. FLAC’s views on the most important developments and challenges on the independence, efficiency and quality of the Irish justice system since the adoption of the 2025 Rule of Law Report in last July.
3. FLAC’s views on the ongoing work carried out in relation to the civil legal aid system in Ireland.

These issues are addressed under a number of thematic headings below.

We are grateful for the opportunity to participate in this consultation and would be pleased to provide any further information which would be helpful. We would also be very happy to meet to discuss the matters raised in this document.

Civil Legal Aid

FLAC has been campaigning for improved access to justice services in Ireland for over 50 years. In 2021, we successfully campaigned for the first ever comprehensive review of Ireland’s scheme of civil legal aid. Eilis Barry (FLAC Chief Executive) was FLAC’s nominee to the review group and the author of the minority report, which was endorsed by review group member Professor Tom O’Malley SC and submitted to the Minister for Justice last April.[1] FLAC has called for, and is campaigning for, the implementation of the minority report.

At the FLAC and Trinity College Dublin Law School Conference on Civil Legal Aid Reform in January 2026, European Union Commissioner Michael McGrath stated that he “*[applauds] the courage and clarity with which [the Minority Report] articulates the issues to be addressed.*” He called for Ireland to “*seize this landmark opportunity to close the justice gap.*”[2]

[1] Department of Justice, Home Affairs & Migration (2025), *Civil Legal Aid Review - Minority Report*.

[2] Commissioner McGrath holds the Justice Portfolio (which includes responsibility for democracy, the rule of law, equality, civil society, fundamental rights and consumer protection). See: European Commission (2026),

Commissioner Michael McGrath emphasised the importance of access to justice from an EU perspective:

> *"…access to justice is not merely a legal principle; it is a cornerstone of democracy, a pillar of the rule of law, and a foundation for social cohesion. Without it, the promises of equality and fairness enshrined in our laws are hollow. Our commitment must be that justice is not only theoretical, but practical and effective. Legal aid serves as the crucial bridge that transforms rights from existing on paper to becoming realities in the lives of people… Ireland's reforms can align with [European] advances, ensuring that legal aid and support begin from the first contact, not just in court…. The Commission stands ready to support Ireland to transform its civil legal aid system into a model of responsiveness and inclusivity, setting a standard for the rest of Europe."*[3]

The minority report made stark findings regarding the civil legal aid crisis in Ireland. These include:

- The Legal Aid Board is chronically underfunded and under-resourced. In 2025, it had a budget of €64.122m. To put this in context, the horse and grey hound industries received €100 million in this and last year's budgets. Private education is also subsidised in the amount of approximately €100 million each year. The State has spent €58 million in respect of the Ryder Cup which is €1 million less than the Legal Aid Board's 2024 Budget.
- Under-resourcing leads to huge delays for a first consultation with a solicitor, with waiting times of up to 69 weeks in parts of the country.[4]
- The outdated legal aid means test has not been updated since 2006 and means that people with a disposable income of more than €18,000 cannot access to civil legal aid.[5]

Speech by Commissioner McGrath on the Access to Justice at the FLAC and Trinity College Conference on "Civil Legal Aid: From Review to Reform".

[3] European Commission (2026), Speech by Commissioner McGrath on the Access to Justice at the FLAC and Trinity College Conference on "Civil Legal Aid: From Review to Reform".

[4] Legal Aid Board (2026), Management Information as at 28th February 2026.

[5] The limited range of deductible allowances do not reflect the actual costs of childcare and accommodation. The maximum allowance for the annual cost of childcare is €6,000 per child and the maximum allowance for accommodation costs is €8,000. The allowances do not cover areas like the cost of disability, insurance payments and transport to and from work. The means test does not link to, or assess in any way, the capacity of the person to pay versus the potential cost of legal proceedings. Huge swathes of people who simply cannot afford a solicitor are ineligible for legal aid. Many of these people end up contacting FLAC for assistance.

In most cases, people receiving legal advice and representation from the LAB have to pay a financial contribution. This requirement can apply to people who may be below the poverty line and people reliant on the lowest social welfare payments as their only source of income. In their submission to the civil legal aid review, St Vincent de Paul stated that it regularly has to support people to pay the financial contribution and that people are sacrificing food and heating to pay the financial contribution of the LAB.

- There is a very strict merits test applied to applications for legal aid which does not have sufficient regard to the importance of the issue to the individual and whether legal aid could improve or mitigate the outcome, even if the applicant is unlikely to win the case.
- Exemptions to the scheme of civil legal aid mean that people with cases before tribunals in important areas such as social welfare, employment, discrimination and landlord/tenant law have no access to legal representation from the Legal Aid Board. The scheme of civil legal aid simply does not cover those areas regardless of the complexity of the cases or the vulnerability of the applicants.
- The scheme of civil legal aid is likely to be in breach of European and EU law in respect of the highly restrictive means test and strict merits test, the blankets exemptions, especially in relation to representation before quasi-judicial bodies (including cases under the EU Equality Directives heard by the Workplace Relations Commission), and the prohibition on NGOs accessing legal aid for environmental cases.
- The Legal Aid Board does not have the necessary preventative functions which would assist people to resolve their legal issues at an early stage, prevent them from escalating, and reduce or eliminate the need for litigation. For example, it has no legal information or community education functions and cannot provide such services in either a general or targeted way.
- The Legal Aid uses the traditional model of delivering legal services which relies on a person knowing they have a legal issue and knowing where to go to get it resolved. This model is not suited to meet the need of the disadvantaged people and group who experience multiple inter-related legal issues.[6]

Since it was submitted in April 2025 (and published in July 2025), its findings have been confirmed by new reports and data concerning the Legal Aid Board, legal aid waiting times and the huge levels of unmet legal need in Ireland. The Legal Aid Board itself has now acknowledged that the Ireland's system of civil legal aid may well collapse altogether during 2026 if urgent action is not taken.[7] These matters are addressed in detail in FLAC's recent submission to the Oireachtas Justice Committee regarding civil legal aid.[8]

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[6] People and communities who experience poverty and disadvantage and discrimination such as lone parents, people experiencing domestic violence, and parents of children with disabilities, tend to disproportionately experience multiple legal issue (all at the same or consecutively) in areas like housing, social welfare discrimination and debt. This is referred to as 'clustered injustice'.

[7] Comments of the Chair of the LAB, Nuala Egan SC, at the FLAC and Trinity College Dublin Law School Conference on Civil Legal Aid Reform on 12 January 2026.

[8] FLAC (2026), *Preventing Catastrophes & Avoiding Collapse: The Urgent Need to end the Civil Legal Aid Crisis - Submission to the Joint Committee on Justice, Home Affairs and Migration (and Executive Summary)*.

The Minority Report contains clear, practical and cost-effective recommendations for resolving the present crisis and creating a legal aid system which prevents and resolves the legal problems individual and communities experience as early (and efficiently) as possible. The infrastructure needed to resolve the legal aid crisis is already in place. The Legal Aid Board and the Citizens Information Board have networks of centres all around the country, and the small cohort of independent law centres provide models of community and targeted services for disadvantaged individuals and groups. What is envisioned is a tiered-approach where a range of different services and services delivery models respond to different kinds and different levels of legal need. Targeted, early and preventative services need to be fully mainstreamed into the Legal Aid Board and Citizens Information Board services.[9] There should be a no wrong door approach or as few doors as possible.

Access to justice is, and has to be regarded as, an investment. For every euro spent on access to justice there will be savings and benefits for the individual, communities, the courts and society. It needs to be regarded as a vital and essential social service akin to healthcare and education. Civil Legal Aid has been starved of investment and resources for decades. Significant investment is needed to transition to a new system and proper resourcing will be needed to sustain it.[10]

Given the deepening civil legal aid crisis and the imminent risk of collapse of legal aid services, FLAC is alarmed at the fact that the Minister and his Department have not yet provided a

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[9] What is required is a simple amendment to the LAB's statutory functions to require it to:

1. Provide legal information and education to the public on their rights.
2. Ensure the provision of targeted and preventative services for particular disadvantaged groups and communities.
3. Provide training to CIB, NGO and Trade Union advocates.
4. Provide advice and legal representation in cases before tribunals.

A small amendment could enhance the Citizens Information Board's statutory mandate to ensure that:

1. It can provide information and advocacy on rights to the public (and not just information on public services).
2. It is explicitly allowed to provide advocacy in non-complex cases before bodies like the WRC, RTB and in social welfare appeals.

[10] Additional resources are required to:

- Pay LAB Solicitors at the same rates as civil service lawyers in bodies such as the Chief States Solicitors Office.
- Allow the LAB to provide the reports necessary for the fair disposable of any case in which it is providing legal representation including the full cost of 'section 32'/voice of the child reports and other essential reports in family law and other cases.
- Increase the rates paid to the lawyers on private practitioner panels in line with the rates received by those on panels for the mental health tribunals. These should be reviewed on a periodic basis.
- Allow the LAB and Citizens Information Board to carry out additional functions and to provide services to a larger cohort.
- Fund a network of community law centres and dedicated/specialised law centres.
- Address the outstanding resourcing issues identified in the recent report on the operations of the LAB undertaken by the consultancy firm BakerTilly.

timeline for when they will respond fully to the Civil Legal Aid Review reports or introduce reforms in this area.[11] The Chief Justice, the Hon. Mr Justice Donal O'Donnell described the pace of reform in the area of civil legal aid as "*frustratingly slow*" at the FLAC and TCD Law School conference:

> "*…it is hard to believe that as a society we would tolerate this level of unmet need in the fields of health or social welfare. It is worth asking why this has been allowed to occur in the field of legal aid. One reason of course is the lack of voice of those affected…*
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> *…the attitude that we can simply continue as usual within existing constraints is wrong…*"[12]

Judicial Review

The Government is currently pursuing a range of extremely concerning changes to the judicial review process.[13] The proposed changes to judicial review were set out in the *Accelerating Infrastructure* plan published last December (even though the proposed changes will impact all judicial review cases – not just those concerning planning and infrastructure). The

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[11] Statements by the Minister and the Department in relation civil legal aid reform since the publication of the reports have only been quite general. On 20 November 2025, the Department of Justice published its Strategy Statement for 2025 to 2028. It contained commitments to achieving: a "*reformed [system] of… civil legal aid that support access to justice*"; "*an efficient justice system that is fair, effective and responsive to the needs of those seeking justice*", and; ensuring "*vulnerable users can access services with the support and knowledge they need*." See: Department of Justice, Home Affairs and Migration (2026), *Statement of Strategy 2025–2028*.
Further, in December 2025, the Minister stated as follows in response to parliamentary questions regarding the CLA means test: "*While the review highlights the need for comprehensive legal aid reform it also recognises that the current legal aid system must function effectively in the meantime. A critical aspect of any implementation will, therefore, be careful sequencing of reforms… [I]n my Department, officials are considering the reports and are putting together proposals that will come to me for the purpose of implementing the recommendations.*" See: Houses of the Oireachtas (2025), *Dáil Éireann Debate, Thursday - 4 December 2025 re Legal Aid*.

[12] The Courts Service (2026), *Speech delivered by Mr. Justice Donal O'Donnell, Chief Justice, at the FLAC Civil Legal Aid: From Review to Reform Conference in Trinity College Dublin on 12 January 2026*.

[13] Judicial Review is how ordinary people can ensure that the State is obeying the law and respecting their legal and constitutional rights. It is often the only way to challenge unlawful decisions which deny people access to basic and essential public services. Unfortunately, there are huge issues with the quality of decision-making by public bodies and, often, there is no accessible way to appeal or challenge bad decisions.
FLAC has acted in many judicial review cases which have resulted in homeless families being able to access social housing and emergency accommodation, children with disabilities being able to access additional educational supports, and people living in poverty being able to access basic social welfare payments. We acted for John O'Meara and his children in the judicial review case which they took after Mr O'Meara was refused a Widower's Pension following the death of his long-term cohabiting partner. This led to the laws which limited access to the payment to people who were married or in a civil partnership being declared unconstitutional. The family were then able to access the pension and there are up to 150,000 cohabiting couples/families who could potentially benefit from the decision in the *O'Meara* judicial review case.
Judicial review is essential to upholding the rule of law and democracy. It ensures that that the State must obey the law in the same way that citizens are expected to and that it is held to account if it does not. It means the Government cannot ignore the laws which have been passed by the democratically elected members of the Oireachtas or people's rights under the Constitution, and it gives effect to the rights of access to justice and access to the courts which are protected by the Constitution and European and international human rights law.

Department of Justice have since published the General Scheme of the Civil Reform Bill which would give effect to most of the changes. FLAC recently made a detailed submission to the Oireachtas Justice Committee concerning the General Scheme which provides more detail on the matters raised in this document.[14]

The changes would make it much harder, if not impossible, for the average person to take a judicial review case. There are already significant barriers to taking a judicial review case, including the financial risk, the lack of legal aid, restrictive lime limits, the requirement to find a legal team to take the case with guarantee of getting paid, and the legal and financial resources available to the State to contest such cases.

The draft Civil Reform Bill would:

- Further reduce the time limit for taking a case to eight-weeks (from three months) in most instances. It would also limit the courts discretion to extend the time limit.
- Introduce strict new rules about who can take a case requiring the person taking the case to be *"directly affected by the act which is the subject of the application [for judicial review]."* This would make some decisions taken by the State effectively immune from challenge. David Norris would not have been able to meet this condition if it had been applied in his landmark constitutional challenge to the laws criminalising homosexual acts.
- Introduce several strict new conditions which must be satisfied before someone can get permission to take a case. This includes a requirement to show that the case "*has a reasonable prospect of success*" just to get permission for the case to be heard (at present the applicant needs to show they have an 'arguable case'). The new standard would make it almost impossible to take public interest cases like *O'Meara* where legal issues which have not been considered before by the courts are being raised.
- Block most people from appealing a negative decision in a judicial review case.
- Limit the circumstances in which the State must the pay the legal costs of people who have taken a successful judicial review case. This would hugely raise the financial risks associated with taking a case, even for people who have proven the State acted unlawfully.
- Move some judicial review cases to the Circuit Court where constitutional issues cannot be argued. At present, all judicial review cases begin in the High Court.

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[14] FLAC (2026), *Don't Shoot J.R.! An Access to Justice Analysis of the General Scheme of the Civil Reform Bill 2025: Submission to the Joint Committee on Justice, Home Affairs and Migration (and Executive Summary)*.

- Create massive confusion about how and when people can take a constitutional challenge against the State.
- Perpetuate a tiered system of justice where it is harder to take a judicial review case if it involves a particular area of law such as immigration or international protection.

There are also further changes to Judicial Review under consideration:

- Introducing changes which will require people who take successful cases in the area of planning and environmental law to pay for some of their own legal costs. This would act as massive deterrent to challenging unlawful decisions.
- Banning 'no foal, no fee' arrangements in judicial review cases which would block the vast majority of judicial review cases.

The proposed changes would reduce accountability and could give the State and public bodies licence to ignore the law. International experience tells us that Governments ignoring the law is the first step to authoritarianism. The changes would severely undermine Ireland's credibility regarding the rule of law on the international stage at a time when we should be showing real leadership in this area (including in the context of the upcoming EU Presidency).

The proposed changes set out in the General Scheme and *Accelerating Infrastructure* plan go far beyond anything which has been recommended or considered by previous reviews of the judicial review process. The process which has been followed by the Government in coming up with these proposals has been completely flawed.[15]

A clear narrative has emerged which blames judicial review for delays in the 'delivery' of housing and essential infrastructure. This narrative overlooks the two main reasons that most judicial cases are taken (and why so many of those cases are successful): poor-quality decision-making by public bodies, and the lack of accessible and independent appeals processes which allow people to challenge bad decisions outside of the judicial review process. Making it harder to take a judicial review case only lowers scrutiny and accountability. This makes decision-making worse and not better.

FLAC believes that the Government should scrap the current slate of proposals and go back to the drawing board. Instead of looking at the process for challenging bad decisions by public bodies, we need to ask why so many bad decisions are being made in the first place. We need take urgent action to improve decision-making and to ensure that people's rights and

[15] Remarkably, the Government has not provided individual explanations (or evidence) for the changes to judicial review proposed in the General Scheme. Key perspectives and experts have been ignored and the rights of those who will be worst affected do not seem to have been considered. It is not clear that the human rights, equality and access to justice impacts of the changes (individually and cumulatively) have been assessed despite the strong protection of access to the courts provided for the Constitution and European law.

entitlements are respected in the first instance without the need for lengthy and costly application, appeal and litigation processes. Where bad decisions are made, there should be accessible and independent tribunals where people can access justice without having to risk it all in a High Court case. The Law Reform Commission is only at the very early stages of a project which is examining these issues.

Where litigation is necessary, we need to ensure that the courts are accessible and efficient. This requires resourcing, as well as reform of our outdated and unnecessarily complex court, rules, forms and procedures. This process should be led by newly diversified court rules committees which include representatives of court uses, Disabled People's Organisations and domestic violence organisations.

Access to & Accessibility of the Courts

In 2024 FLAC made a submission to the Courts Service on their new strategic plan. It highlighted "*the need for a robust, inclusive and transparent process for reforming and simplifying court, rules, forms and procedures*."[16] It also emphasised the need to diversify the court rules committees:

> *"Beyond stakeholder participation in the current reform and implementation process, there is a need to diversify the Court Rules Committees beyond members of the judiciary, legal practitioners and civil servants. This is a matter which FLAC highlighted in our initial submission to the Kelly Review and in our recent submission to the Department of Justice on the development of their new Strategy Statement. In the UK, for example, the Civil Procedure Rule Committee includes several 'Lay Advice/Consumer Affairs' members. Legislative reform would be needed to bring this about (as the membership of the Rules Committees are currently strictly prescribed by legislation)."*[17]

That submission also called for the introduction of on Equal Treatment Bench Book:

> *"In the UK, the Equal Treatment Bench Book provides detailed guidance on equal treatment in the courts. It covers a wide range of topics including equal treatment for litigants in person (i.e. lay litigants) and those facing social exclusion and poverty. It also discusses litigants who fall within the scope of protected grounds under equality legislation such as, for example, persons with a physical or mental disability and those covered by the race and religion grounds (including specific sections on anti-Semitism, Islamophobia and multicultural communication). The Bench Book is intended for use by*

[16] FLAC (2024), *Submission to the Courts Service on their Strategic Plan 2024-2027*, p.4.
[17] ibid.

the judiciary but it is also an important reference point for the legal profession and members of the public alike.”[18]

The European Convention on Human Rights

A Council of Europe process has been working toward a political declaration (a non-binding text signalling how ministers want existing Convention rules applied) on the European Convention on Human Rights and migration. It is scheduled for final consideration/adoption at the 135th Session in Chișinău, Moldova on 14 and 15 May 2026.

The process began following a joint statement by 27 Council of Europe member states on 10 December 2025. The statement reaffirmed their commitment to the Convention but called for a better balance in the control of migration. The Committee of Ministers tasked the Steering Committee for Human Rights, the CDDH, to prepare a draft text for the declaration. The CDDH produced a preliminary draft text that is still being discussed and edited.

The political initiatives advanced by a number of Member States appear to contemplate significant changes to how the absolute prohibition on torture, inhuman or degrading treatment is understood in the context of expulsion, removal, and extradition. We are deeply concerned that these developments carry profound implications for the universality of human rights, the integrity of the Convention system and the access to Convention rights guaranteed under the Belfast/Good Friday Agreement.

We are taken aback by the Irish Government’s recent position in this process, which we cannot reconcile with Ireland’s previous statements and actions in defence of the universality of rights and the Convention system. Given the profound implications this process may have for rights protections central to the Belfast/Good Friday Agreement and the island of Ireland, it is crucial that we fully understand the Government’s approach and the principles guiding its participation. We have written to the Minister for Foreign Affairs (along with our Northern Irish colleagues in the Human Rights Consortium) seeking a clear explanation of how and why this position has been adopted, and how it can be squared with Ireland’s longstanding commitments. No response or adequate explanation from the Government has been forthcoming to date.

ENDS.

[18] ibid at p.5.