



FLAC Submission to the Department of Climate, Energy and the Environment's Consultation on the Introduction of a Scale of Fees for Environmental Judicial Reviews

January 2026

Introduction

FLAC (Free Legal Advice Centres) is making this submission in our capacity as one of Ireland's oldest access to justice and human rights NGOs.¹ We have considerable expertise and experience in the area of judicial review (which is outlined in further detail below).

The present consultation concerns the regulation of legal costs in certain types of environmental litigation which comes within the scope of Chapter 2 of Part 9 of the Planning and Development Act 2024. In effect, it is proposed to limit the extent to which people who take successful judicial review cases against the State can recover the legal costs which they have incurred by challenging an unlawful decision in court.

This submission contains six sections:

- 1. The Fundamental Importance of Judicial Review**
- 2. FLAC's Experience & Expertise concerning Judicial Review**
- 3. The Present Consultation Process in Context**
- 4. Analysis of the Present Consultation Process**
- 5. Analysis of the Proposed Scale of Fees for Environmental Judicial Reviews**
- 6. Next Steps**

¹ **FLAC (Free Legal Advice Centres)** is an independent legal, human rights and equality organisation, which works in a number of different ways to promote equal access to justice:

- ▶ In 2024, our Telephone Information and Referral Line received over 53,000 calls. FLAC also provides Phone Legal Advice Clinics.
- ▶ Our independent law centre provides targeted legal services for the Traveller and Roma communities, and also undertakes public interest litigation (i.e. cases which may have an impact beyond the individual). It mainly provides representation in areas which are not covered by the current scheme of civil legal aid, namely housing, social welfare and discrimination.
- ▶ FLAC also operates PILA (the Public Interest Law Alliance) which facilitates NGOs in obtaining legal assistance from private lawyers via its pro bono referral scheme.
- ▶ FLAC makes policy recommendations in relation to areas of law that most impact on people living poverty and disadvantage, including equality and anti-discrimination law, social welfare law, credit and debt law, housing law, human rights law, and access to justice. This includes policy reports and submissions to national and international bodies, including Oireachtas Committees and human rights monitoring bodies.

Recommendations

Changes to the judicial review process should only be advanced where they have emerged from a transparent and evidence-based policy development process, including an inclusive and accessible consultation process.

The current slate of proposed changes to the judicial review process (included in the Accelerating Infrastructure Report and Action Plan and the General Scheme of the Civil Reform Bill) have not emerged from such a process and should be abandoned by Government. Likewise, the present proposal and consultation concerning the introduction of a scale of fees for environmental judicial reviews should be abandoned by the Department of Climate, Energy and the Environment.

Any transparent and evidence-based policy development process concerning judicial review should:

- ▶ Involve preparation and publication of clear statements of the relevant national, international and European legal obligations (including access to justice obligations) which apply to the State and how they will be met on foot of any proposed changes to the judicial review process.
- ▶ Involve the publication of a specific policy rationale and evidence basis for any and each proposed change.
- ▶ Include a comprehensive and inclusive consultation process on all aspects of any proposed changes to the judicial review process (and not just the proposal to introduce a scale of fees). Views should be sought from a wide range of stakeholders who will be affected by the proposals, statutory bodies (including the Irish Human Rights and Equality Commission), and representatives from civil society and NGOs (including Independent Law Centres such as FLAC, Mercy Law Resource Centre, the Immigrant Council and Community Law and Mediation).
- ▶ Give effect to State Bodies' obligations arising from the Public Sector Equality and Human Rights Duty under section 42 of the Irish Human Rights and Equality Commission Act 2014. This includes consulting with the representatives of groups protected by the equality legislation.
- ▶ Involve the provision of support to impacted communities to allow them to engage fully with the consultation process. This must involve the publication of clear and accessible consultation material in a timely manner.
- ▶ Take place within a reasonable timeframe which allows all stakeholders to respond to the proposals fully.

The Government should identify what steps it intends to take to drastically improve the quality of administrative and quasi-judicial decision-making by State bodies, thus mitigating the need for judicial review at the outset. The work of the Law Reform Commission in this area will be vitally important and needs to be expedited.

1. The Fundamental Importance of Judicial Review

The fundamental importance of access to judicial review cannot be overstated. Judicial review is a core component of both the rule of law and access to justice, and it gives effect to the constitutional right of access to the courts. No other remedy holds the State and public bodies to account for unlawful behaviour to the same extent. It means that no Government Department or Public Body is above the law and it is an essential part of our democracy.

Lord Reed, in the *Unison*² case, provided a powerful statement of the fundamental purpose and value of judicial review which reflects its role in upholding the rule of law:

“At the heart of the concept of the rule of law is the idea that society is governed by law. Parliament exists primarily in order to make laws for society in this country. Democratic procedures exist primarily in order to ensure that the Parliament which makes those laws includes Members of Parliament who are chosen by the people of this country and are accountable to them. Courts exist in order to ensure that the laws made by Parliament, and the common law created by the courts themselves, are applied and enforced. That role includes ensuring that the executive branch of government carries out its functions in accordance with the law. In order for the courts to perform that role, people must in principle have unimpeded access to them. Without such access, laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade. That is why the courts do not merely provide a public service like any other.”

The present consultation process has not provided sufficient time to prepare and set out a comprehensive analysis of the relevant legal standards concerning access to environmental judicial review. However, a number of core principles must be highlighted:

- ▶ Article 6 of the European Convention on Human Rights guarantees the right to a fair trial. In its landmark decision in *Airey v Ireland*³, the European Court of Human Rights

² *R (on the application of UNISON) (Appellant) v Lord Chancellor (Respondent)* [2017] UKSC 51 at para 69.

³ Application No. 6289/73.

held that the Convention “*is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective.*”

- ▶ Article 47 of the European Union Charter of Fundamental rights provides: “*Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.*”
- ▶ Article 19(1) of the Treaty on European Union provides: “*Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.*”

The Aarhus Convention is at the heart of ensuring environmental democracy, by laying down a set of basic procedural rights for the public, imposing obligations on public authorities to make these rights effective, increasing transparency, and making governments more accountable to the public.

Article 9 of the Aarhus Convention is explicitly concerned with access to justice:

- ▶ Article 9(3) states that parties to the Convention (such as Ireland) “*shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.*” The Court of Justice of the European Union has held that “*if the ‘effective protection’ of EU environmental law is to be delivered, Article 9(3) could not be interpreted by a national court in such a way as to make it impossible in practice or excessively difficult to exercise rights conferred by EU law.*”⁴
- ▶ Article 9(4) provides that national judicial procedures “*shall provide adequate and effective remedies, ... and be fair, equitable, timely and not prohibitively expensive (emphasis added).*”

The Aarhus Convention places special emphasis on the role played by NGOs in environmental protection, in particular by enabling them to enforce the law in the public interest.⁵ However, the Irish civil legal aid legislation contains a blanket ban on the provision of legal aid in test cases. As the Civil Legal Aid Minority Report (which was written by FLAC Chief Executive Eilís Barry and which FLAC has endorsed) highlighted, this is clearly at odds with the Aarhus

⁴ Áine Ryall (2019), [The Aarhus Convention: Standards for access to justice in environmental matters](#) (in Turner, S. J., Shelton, D.L., Razzaque, J., McIntyre, O., May, J. R. eds., *Environmental Rights: The Development of Standards*, Cambridge University Press), pp.116-146.

⁵ *ibid.*

Convention.⁶ Further, only individuals can apply for legal aid which means that it is not available to NGOs, including environmental NGOs, under any circumstances.⁷ In *Friends of the Irish Environment CLG v The Legal Aid Board*,⁸ Murray J stated that he accepts “*there is an argument that the complete exclusion of legal persons from the possibility of obtaining legal aid in cases involving issues of EU law might, at least in certain circumstances, present a breach of Article 47(3) of the Charter of Fundamental Rights of the EU.*”

2. FLAC’s Experience & Expertise concerning Judicial Review

FLAC’s perspective on judicial review is based on our experience representing clients in judicial review cases through our Independent Law Centre and its Roma Legal Clinic and Traveller Legal Service. These cases mostly concern access to the most basic and essential public services such as social welfare, emergency accommodation and social housing, as well as other critical areas such as education and citizenship. The vast majority of our clients are experiencing poverty, and often have very low incomes and no resources. The Legal Aid Board is not in a position to provide these clients with legal assistance. FLAC relies heavily on barristers who will act on a ‘no foal-no fee’ basis in such cases. This means that the barristers will only be paid if the case is successful and costs are recovered. This is, of itself, a major barrier to accessing judicial review as it requires finding lawyers who are prepared to work for no money at the outset.

FLAC is keenly aware of how extraordinarily difficult it is to take a judicial review case and the complexity of the legal issues which can arise in those cases. Judicial review cases are not initiated without due consideration. There are already significant barriers to taking such proceedings - with procedural requirements that do not arise in other types of proceedings.

While our direct experience of environmental litigation is limited, housing judicial review cases often contain a planning/environmental dimension. FLAC has also developed a considerable body of detailed policy and law reform work in relation to housing⁹, homelessness¹⁰ and access to justice (including in the environmental context)¹¹.

⁶ Department of Justice, Home Affairs & Migration (2025), [Civil Legal Aid Review - Minority Report](#), p.12.

⁷ Department of Justice, Home Affairs & Migration (2025), [Civil Legal Aid Review - Minority Report](#), p.46.

⁸ [2023] IECA 19.

⁹ See, for example: FLAC (2022), [Submission to the Housing Commission Consultation on a Referendum on Housing](#), FLAC (2024), [Traveller Accommodation: Access to Justice, Human Rights and Equality - Submission to the Joint Committee on Key Issues affecting the Traveller Community](#) & FLAC (2024), [Submission to inform the Oireachtas Joint Committee on Housing, Local Government and Heritage’s Pre-Legislative Scrutiny of Part 2 of the General Scheme of the Housing \(Miscellaneous Provisions\) Bill 2024](#).

¹⁰ See, for example: FLAC (2022), [Submission on the development of a Youth Homelessness Strategy](#).

¹¹ Department of Justice, Home Affairs & Migration (2025), [Civil Legal Aid Review - Minority Report](#).

3. The Present Consultation Process in Context

The present consultation concerns just one element of the myriad and sweeping changes concerning judicial review which have proposed over the last few months. The proposal to introduce a scale of fees for environmental judicial reviews (which is subject to the present consultation process) is outlined in Action 1.i of the *Accelerating Infrastructure Report and Action Plan* (the “Infrastructure Plan”) published in December 2025.¹² Action 1 of the plan contains several other proposals concerning judicial review:

“ii. Implement the process and procedural enhancements contained in Chapter 1 of Part 9 of the PDA 2024

iii. Investigate and implement a series of further reforms to judicial review, including but not limited to:

- Commencing new standing requirements of the Planning and Development Act 2024. Examining further reforms to standing, prioritising parties directly affected by projects;*
- Whether requiring the assessment of the likelihood of success before granting leave will accelerate cases;*
- Examining the appropriateness of fee structures, including “no foal, no fee” and an examination of own costs rules, including the use of the UK model capping costs for unsuccessful applicants*
- Implementing enhancements to ensure all avenues must be exhausted prior to the issuance of quashing orders*
- Reforms to court procedures to provide for expedited hearings*

iv. Introduce legislation progressing agreed package of further reforms from step iii.”¹³

Further, Action 7 of the Infrastructure Plan commits to the introduction of a Civil Reform Bill to “codify law on judicial review by placing it on a statutory basis.”¹⁴ The Department of Justice has very recently published the General Scheme of the Civil Reform Bill which proposes sweeping changes to the ‘general’ judicial review process (i.e. the process in non-planning and environmental cases).¹⁵ The responsibility for implementing (and supporting the

¹²Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, [Accelerating Infrastructure Report and Action Plan](#), p.72.

¹³ *ibid.*

¹⁴ *ibid* at p.78.

¹⁵ Department of Justice, Home Affairs and Migration (2026), [Minister Jim O’Callaghan publishes Civil Reform Bill to overhaul Judicial Review and streamline courts processes.](#)

implementation of) the judicial review proposals in the Infrastructure Plan is spread across five different Government Departments and two State Bodies.¹⁶

At the recent conference on civil legal aid held by FLAC in conjunction with the Law School at Trinity College Dublin¹⁷, Professor Áine Ryall (Co-Director of the Centre for Law and the Environment at University College Cork and Chair of the Aarhus Convention Compliance Committee) described the emergence of a strong anti-rights, anti-Aarhus and anti-rule of law narrative in Ireland.¹⁸ This narrative has sought to frame judicial reviews as a barrier to the resolution of the housing/homelessness crisis and addressing Ireland’s infrastructure deficits. It overlooks the two central reasons for most judicial cases and the strikingly high success rate of those cases, namely:

- ▶ poor-quality administrative decision-making, and
- ▶ the lack of accessible and independent appeals mechanisms in respect of those decisions in certain areas (noting, however, the role of An Coimisiún Pleanála in the planning/environmental sphere).

The Civil Legal Aid Review minority report expressly highlighted that *“the low quality of decision-making by State bodies and the resulting appeals to quasi-judicial bodies or the courts increases the overall level of legal need.”* It references statistics and studies illustrating this phenomenon, including in the areas of planning and environmental law:¹⁹

- ▶ In its 2022 Annual Report, An Bord Pleanála states: *“It is accepted that recent judicial review outcomes have seen a greater number of such cases conceded or lost and this is an outcome of the increasing complexity of those European law issues and novel issues relating to the strategic housing process.”*²⁰
- ▶ The 2023 Annual Report of the Office of the Commissioner for Environmental Information shows clear evidence of poor quality decision-making at first instance by public authorities. The Commissioner has described an *“unacceptable situation where*

¹⁶ Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, the Department of Justice, Home Affairs and Migration, the Department of Climate, Energy and the Environment, the Department of Housing, Local Government and Heritage and the Department of Housing, Local Government and Heritage, as well as the Courts Service and the Office of the Attorney General.

¹⁷ FLAC, [‘Civil Legal Aid: From Review to Reform’ - A Conference](#).

¹⁸ Professor Ryall has been quoted as making similar comments elsewhere: *“There is an enormous anti-Aarhus rhetoric right now and there is even more seriously an enormous anti-judicial review rhetoric and you could say, if you took it to its logical conclusion, an anti-rule of law rhetoric.”* See: Irish Times (28 November 2025), [Plan to raise cost of judicial reviews could lead to people representing themselves in court](#).

¹⁹ Department of Justice, Home Affairs & Migration (2025), [Civil Legal Aid Review - Minority Report](#), pp.52-3.

²⁰ An Bord Pleanála (2023), [Annual Report and Accounts 2023](#), p.28.

some public authorities are clearly failing in their responsibilities when dealing with requests for environmental information” and stated:

“We issued 136 formal decisions in 2023. I am disappointed to report that in only seven (5.14%) of the cases closed by formal binding decision in 2023, the decision of the public authority was affirmed. In four of the decisions (2.94%), the decision of the public authority was varied and in 125 cases (91.91%) the public authority’s decision was annulled.”²¹

The quality of administrative and quasi-judicial decision-making by State bodies needs to be drastically improved, along with increased access to accessible and independent appeal mechanisms. The work of the Law Reform Commission in this area will be vitally important and needs to be expedited.²²

4. Analysis of the Present Consultation Process

The present consultation process is fundamentally flawed and should be abandoned. The consultation is wholly inadequate given its timing, deficits in the consultation material, the late publication of that material, and because it only relates to one facet of the broader changes to judicial review currently being proposed.

It has been noted that *“...the consultation is only realistically open for 10 calendar days or eight working days. This is clearly not an adequate amount of time for consultees to inform themselves and to formulate comments in relation to a complex proposal with profound effects on fundamental rights and the environment.”²³* The timing of the consultation means that FLAC has not had the ability or opportunity to directly consult important stakeholders, including relevant academics and NGOs.

FLAC regularly supports smaller and non-legal NGOs in making submissions in areas which impact them. We have been contacted by a number of NGOs seeking support and proposing collaboration in relation to the present consultation. This has proven to be impossible given the restrictive time limit (which included the Christmas to New Years period) for making a submission.

The restrictive time limit (and the late publications of additional consultation material) means that FLAC can only provide a preliminary analysis of the proposals which are subject to the consultation. We have been unable to undertake a detailed analysis of the critical research

²¹ Office of the Commissioner for Environmental Information (2024), [Annual Review 2023](#), p.3.

²² Law Reform Commission (2019), *Reform of Non-Court Adjudicative Bodies and Appeals to Courts*, [Fifth Programme of Law Reform](#).

²³ An Taisce (2026), [Correspondence on behalf of An Taisce and Friends of the Irish Environment to the Minister for Climate, Energy and the Environment dated 9 January 2026](#).

which supposedly provides an evidence basis for the current proposal. That consultation material does not clearly set out the State’s legal obligations in this area and how they will be met under the proposed new regime. It is also silent as to the actual cost of taking an environmental judicial review under the new regime.²⁴

FLAC would emphasise the superficiality of the present consultation and would question whether the process currently being undertaken by the Department of Climate, Energy and the Environment is a serious and genuine consultation at all:

- ▶ The proposal to introduce a scale of fees for environmental judicial reviews is clearly quite well advanced. The public’s views have effectively only been sought on the details of that proposal.
- ▶ While the consultation questions ask the public whether they “agree” with the introduction of a scale of fees, it does not seek alternate proposals.²⁵
- ▶ No consultation has been announced in relation to any of the many other proposed judicial review changes published in recent months. It is impossible (and meaningless) to assess the proposed introduction of a scale of fees for environmental judicial reviews in isolation.

The approach being taken to the present consultation is inconsistent with the extensive consultations that took place with external stakeholders in other major reviews in the justice sector in recent years such as the Strategic Review on Penal Policy and the Commission on the Future of Policing in Ireland.

The Department of Climate, Energy and the Environment is subject to the Public Sector Equality and Human Rights Duty under section 42 of the Irish Human Rights and Equality Commission Act 2014. This duty requires the Department to have regard to the need to “*promote equality of opportunity and treatment of... the persons to whom it provides services*” and “*protect the human rights of... the persons to whom it provides services*” in “*the performance of its functions*”, including its policy development functions and in carrying out consultations. This duty involves consulting with representatives of groups protected under the equality legislation. We would seriously question whether this duty has been complied with in both the conduct of the present consultation or the development of policy in this area more broadly.

²⁴ These concerns have also been raised by environmental NGOs. See: An Taisce (2026), [Calling on Minister to scrap the consultation on changes to legal cost rules for environmental cases](#).

²⁵ Department of Climate, Energy and the Environment (2025), [Consultation on the regulation of costs payable in matters prescribed on foot of section 294 of the Planning and Development Act 2024 \(Scale of Fees\)](#), p.6.

5. Analysis of Proposed Scale of Fees for Environmental Judicial Reviews

FLAC's preliminary analysis of the current proposals suggests that the proposed scale of fees is entirely out of sync with the actual cost of environmental litigation i.e. the costs recoverable in a successful case under the proposed new legal regime would fall far short of the successful applicant's actual legal bill. This would leave people or groups who have successfully challenged an unlawful decision by a public body with significant legal bills, and act as a major practical barrier to such individuals and groups' access to the courts.²⁶

We would highlight the comments of Professor Áine Ryall to the effect that "*plans to force objectors to pay their own legal costs for successful judicial reviews could lead to a surge in the number of people representing themselves in court*" which would lead to such cases taking up even more of the courts' time.²⁷

On the basis of our preliminary analysis of the current proposals, we have serious concerns regarding their compliance with the European Convention on Human Rights, the Aarhus Convention, as well as with Article 47 of the Charter of Fundamental Rights of the European Union.²⁸

The proposals would limit and in many cases block access to judicial review. Given the fundamental nature of the rights at stake and the potential negative practical impact on the ability of people in Ireland to access justice and the courts in environmental matters, FLAC

²⁶ These conclusions also emerge from the analyses by leading environmental NGOs and environmental law practitioners. See: An Taisce (2026), [All Hands on Deck Needed to Respond to the Latest Attack on Access to Justice](#) & Fred Logue (2026), [Have your say - Should it cost you a hundred grand to stop the state breaking environmental law?](#).

²⁷ Irish Times (28 November 2025), [Plan to raise cost of judicial reviews could lead to people representing themselves in court](#).

²⁸ An Taisce have stated that the proposals are not consistent with the requirements of the Aarhus Convention: "Ireland and the EU are parties to the Aarhus Convention, a key pillar of which is access to justice. Article 9(4) of the Convention provides for the right to 'adequate and effective remedies, including injunctive relief as appropriate' and that these procedures must be 'fair, equitable, timely and not prohibitively expensive'. In 2011, Ireland introduced special cost rules (as laid out in s.50B of the Planning and Development Act 2000, as amended) specifically to bring Ireland into compliance with its legal obligations under the Aarhus Convention and EU law to ensure that individuals and groups seeking to judicially review certain decisions with environmental implications were not exposed to prohibitively expensive costs.

Not prohibitively expensive requires that in each individual case the public should not be prevented from seeking or pursuing a claim for judicial review by reason of the financial burden that might arise as a result. However, these new cost rules would mean that even if you win your case, you could end up with cost exposure of hundreds of thousands of Euro. This is clearly not compliant with the not prohibitively expensive requirement. It will create a chilling uncertainty around costs for those seeking to take a case. This is compounded by the other recent restrictions on judicial reviews, including in the new Planning and Development Act 2024.

Therefore, in our view, given the proposed scale of costs which applicants would still have to pay even if they win, these proposed cost rules are unlawful under EU law and the Aarhus Convention." See: An Taisce (2026), [All Hands on Deck Needed to Respond to the Latest Attack on Access to Justice](#)

believes the proposal to introduce a scale of fees for environmental judicial reviews should not proceed

6. Next Steps

FLAC is in the process of preparing a detailed response to the changes proposed in the General Scheme of the Civil Reform Bill. The proposals in that General Scheme emerged from the Kelly Report (i.e. the report to emerge from the Review of the Administration of Civil Justice) and were also not subject to adequate consultation.²⁹ There are also major questions and concerns regarding the evidence basis for those proposals and their potential negative impact.³⁰ Following the publication of the Kelly Report in late 2020, FLAC repeatedly wrote to the Department of Justice highlighting the need for and seeking a formal consultation process in relation to judicial review. No such consultation has ever taken place.

Changes concerning judicial review should only be advanced where they have emerged from a transparent and evidence-based policy development process, including an inclusive and accessible consultation process. The current slate of changes to judicial review have not emerged from such a process and should not proceed.

²⁹ The membership of the Kelly Review group did not include external stakeholders, litigants or other relevant bodies. like the Irish Human Rights and Equality Commission, Independent Law Centres or groups representing disadvantaged communities. There was comparatively limited time frame to make submissions and limited publicity about the review which meant that the individuals and communities who would be likely to be most negatively impacted by the proposed changes were not enabled or encouraged to make submissions. This is evident from the appendix containing the list of individuals that made submissions.

³⁰ The Kelly Report relies on the significant number of judicial review cases which are ‘struck out with no order’ to suggest that a high number of non-meritorious judicial review cases are initiated. However, it is FLAC’s regular experience that cases are ‘struck out with no order’ after the State concedes and a settlement in favour of the applicant has been agreed. Many, if not the majority, of those ‘strike out’ orders reflect a concession by the Government Department or Public Body that they have not behaved in accordance with law. Further, the Kelly Report did not attach sufficient weight to the recommendations of leading academics and judges of the Court of Appeal for speeding up and simplifying the judicial review process by abolishing the ‘leave procedure’ altogether, rather than making it more onerous, time-consuming and costly by ‘raising the threshold’.