Submission on the General Scheme of the Civil Reform Bill 2025

Community Law & Mediation

Thursday 12th February 2026

Contents of this submission:

1. About Community Law & Mediation
2. Introduction
3. Judicial review: a vital last resort
4. Overarching concerns with Heads 8 – 11
5. Judicial review in practice: the steps involved to issue an application and why the proposed changes in Heads 8 – 11 would make it unfeasible in many meritorious cases
6. Recommendations
7. Conclusion

1. About Community Law & Mediation

Community Law & Mediation is an independent community law centre and charity, established in 1975 as the first community law centre in Ireland as part of the campaign for civil legal aid.

We provide free legal information, advice, advocacy and representation across a wide range of areas, including employment, equality, homelessness, housing, social welfare, debt, disability rights and environmental justice. We also offer child rights-based access to justice through free legal support and training for children, young people and the adults who support them. Alongside our legal service, we provide community mediation and conflict coaching services; and community information talks and training.

Since 2012, we have operated out of two locations, Dublin and Limerick, but the majority of our services are available nationwide. We also partner with Family Carers Ireland, EPIC (Empowering People in Care), Novas, the Irish Cancer Society, Bohemians Football Club and others to provide targeted outreach services.

2. Introduction

Community Law & Mediation (CLM) welcomes the opportunity to make a submission on the General Scheme of the Civil Reform Bill 2025 (the General Scheme).

At the outset we wish to note that our ability to engage with the proposals, which will have far reaching and significant consequences, was severely hampered by both the tight timeline provided for our submission (short extension notwithstanding) and by the lack of explanation or evidence provided by the Department of Justice to explain the purpose behind the proposals contained in the General Scheme.

Further, we are concerned about the nature and process of this consultation, with the General Scheme being examined by the Oireachtas committee, and submissions confined to invited organisations and experts. As the Bill constitutes a plan or programme relating to the environment, in accordance with Article 7 of the Aarhus Convention, CLM calls for the Bill to be opened to a full, public consultation to ensure early and effective participation while the legislation remains open. This is supported by Article 2 of the Directive 2003/35/EC on Public Participation, implementing the Aarhus Convention, which provides that "the public is entitled to express comments and opinions *when all options are open* before decisions on the plans and programmes are made." Access to justice provisions related to environmental matters should not be developed through processes that exclude the wider public.

3. Judicial review: a vital last resort

Community Law & Mediation is fundamentally concerned about the broader context in which the General Scheme is positioned, and in particular the proposals in relation to judicial review. In his introduction to the General Scheme, the Minister appears to frame access to justice, and the judicial review process in particular, as being in tension with the need to protect the common good.

The framing of access to judicial review as contrary to the common good is a fundamental misconception of the purpose of judicial review. Judicial review is a vital tool for ensuring that a decision of a public body is made in a lawful, fair and rational manner. It does not serve the common good to allow unlawful decisions of public bodies go unchallenged, or to unduly restrict the process which allows for public body decision-making processes to be reviewed. In fact, it is very much in the public interest that public bodies can be held accountable.

In line with recent statements by Government, the Minister identifies judicial review as a barrier to the delivery of key infrastructure and housing. No empirical evidence is provided to support this contention, and in any event the General Scheme is broadly applied to all judicial reviews, on any subject matter. It should be noted that judicial review is already subject to a number of procedural barriers, including a strict three-month time limit and a two-stage process with the initial leave stage requiring applicants to apply to the court for leave to bring proceedings.

If Government is concerned that there are too many successful judicial reviews, a solution would perhaps be to examine the underlying causes of poor decision making. If Government is concerned that judicial reviews take too long to conclude, investment in the court system would be a prudent step – research published this month (February) by the Law Society of Ireland showed that Ireland's per capita

spend on the courts in 2022 was 25% less than the European average and the average length of court proceedings in Ireland was more than three times that of Europe.[1] Blocking meritorious cases from reaching the courts through unjustified procedural hurdles is not a solution to these deep-rooted problems.

Moreover, this narrative ignores the reality that judicial review is not restricted to matters concerning infrastructure, housing or planning. In fact, judicial review is crucial to fully vindicate a whole range of fundamental rights.

In our more than 50 years as a community law centre, judicial review has served as a vital last resort for the communities we work with to challenge wrong decisions, to uphold their rights and to hold the State accountable. This includes vindicating rights to access essential services and supports, such as emergency homeless accommodation, social housing supports, educational and aftercare supports, and social welfare payments. Judicial review is of particular importance in areas where there is a notable absence of other avenues to appeal (e.g. in homelessness and social housing matters). Additionally, as the impacts of the climate and biodiversity crises become increasingly visible and urgent, the role of judicial review in holding public bodies and the private sector to account to meet their legal obligations is critical.

The following examples from our casework highlight the crucial role judicial review plays in vindicating a wide range of rights:

- Community Law & Mediation issued judicial review proceedings challenging the lawfulness of a local authority's refusal of our client's application for a priority transfer. Our client, a victim-survivor of domestic abuse, sought a transfer of social housing on exceptional grounds, seeking to secure safe long-term housing for her and her child;
- We challenged an unlawful decision of a local authority to refuse to assess our client's application for a loan to purchase a caravan under the Caravan Loan Scheme. The family of five, including three minor children, were left living in grossly overcrowded accommodation;
- We issued judicial review proceedings on behalf of a Ukrainian young adult who came to the State as an unaccompanied minor, to vindicate his right to an aftercare plan and supports;
- We issued judicial review proceedings challenging a decision of the Legal Aid Board to include the Housing Assistance Payment as part of the means assessment. Our client was a victim-survivor of domestic violence and a lone parent, and was unable to access legal aid to pursue family law reliefs owing to the restrictive interpretation by the Legal Aid Board of their means test; and
- CLM is currently engaged in two national strategic climate cases, including judicial review proceedings against the Climate Action Plan 2024, alongside a grandfather, a youth climate activist, and an infant represented by their mother. This is an example of an environmental judicial review that aims to hold Government to account for, we say, failing to put in place a Climate Action Plan that is sufficient to meet binding legal obligations under the Climate Act. It is the first time in CLM's

[1] Law Society of Ireland, Justice Indicators Report, February 2026 https://www.lawsociety.ie/policy-and-law-reform/justice-indicators-report/

50-year history that we are ourselves as the applicant in a case, representing the communities we work with who are disproportionately impacted by climate change.

4. Overarching concerns with Heads 8 – 11

Due to the short timeframe provided, this submission is confined to the proposals on access to judicial review set out in Heads 8 - 11 and provides practical examples of how the proposed changes would affect the individuals and communities we work with.

At the outset, we wish to highlight overarching concerns we have in relation to the proposed changes set out in Heads 8 - 11:

- **Lack of evidence proffered**: No evidence is provided to justify the proposed changes, which go far beyond what was recommended in the Kelly Report, or to demonstrate the problem they claim to solve. It is particularly concerning that the press release accompanying publication of the General Scheme makes extensive reference to infrastructure and related matters but does not demonstrate or evidence how the proposed measures would affect such matters. Further, it fails to acknowledge that a significant volume of judicial review cases have no relevance whatsoever to such matters.

  We have given a number of examples above from our own casework, and other widely reported examples include the large number of judicial review cases taken against the HSE concerning disability need assessments for children. Further, drawing from our own work, the area of climate is a striking example where Government enacted binding climate targets but is not taking sufficient or effective action to meet those targets. Again, there is a total failure to provide any evidence as to how or why restricting such cases further is in the interest of the common good. In the absence of any such evidence, it appears that the proposals simply serve to create obstacles to accessing justice and create legal complexity and uncertainty. The effect will be to disrupt what is currently a clear and predictable legal principle and tool, which will in turn generate further litigation at all levels.

- **Unlawful infringement on fundamental rights**: The proposed changes will have a disproportionate impact on communities who experience disadvantage in vindicating their rights. Those without legal knowledge or without the means to engage private lawyers will be disproportionally affected by the shorter timeframes for bringing cases. The proposals are likely in contravention of the Irish Constitution, the European Convention on Human Rights and the European Charter of Fundamental Rights which guarantee the right of access to justice and the right to an effective remedy. Furthermore, the proposed changes are in contravention of the Aarhus Convention, Article 9(2) of which requires Parties to ensure wide access to justice for members of the public concerned, including environmental NGOs.

- **Impact on decision-making:** If the changes proposed in Heads 8 - 11 are implemented, it will become significantly more difficult for a person to challenge unlawful decisions. This will have a chilling effect with consequences for the quality of decision-making and a real risk of fostering

impunity. Indeed, in our own casework experience we have observed many instances of poor decision-making becoming entrenched in areas such as homeless assessments where external oversight and challenge is difficult due to lack of appeals mechanisms and the existing practical challenges with judicial review in certain types of cases. The press release refers to the need to protect the common good. However, it does not address the important question of how it can be in the common good for poor and unlawful decision making to go without recourse.

- **Unworkable in practice:** We find that the proposals are unclear and are likely unworkable in practice. For example, the heightened threshold proposed for leave applications would, in practice, require individuals to litigate their case twice, while affording them less time in which to do so. This will inevitably result in protracted proceedings, with increased legal costs, which runs contrary to the General Scheme's purported purpose to result in '*greater transparency and a more streamlined process'*. We also note that previous attempts to alter the judicial review framework as introduced in the Illegal Immigrants (Trafficking) Act 2000 were ultimately reversed.

5. Judicial review in practice: the steps involved to issue an application and why the proposed changes in Heads 8 – 11 would make it unfeasible in many meritorious cases

The communities CLM works with already face obstacles and practical difficulties in seeking access to justice through the judicial review process, which is often the only legal process available to vindicate their rights following unlawful official decision-making. This is abundantly clear in the steps required to issue an application for judicial review, namely:

Steps involved in the Judicial Review process	**Head (s) of the General Scheme that will impact these steps**	**Practical impact of proposed changes**
1. Identify that a decision was made	**Head 10 (2) (d)**	It is often unclear whether a final decision has been made by a public body. This may be due to, for example, poor quality decision-making on the part of a public body or a failure to issue a written decision. Furthermore, a public body may have refused or omitted to make a decision (e.g. failed to conduct a homeless assessment), which failure is susceptible to challenge by way of judicial review. In our experience, people are often unaware that a refusal or failure to make a decision can, in and of itself, be subject to challenge. Head 10 (2) (d) proposes to shorten the timeframe in which an applicant can apply for leave to take a judicial

		review to eight weeks. The shortened timeframe increases the risk that the window for making an application for leave is closed before the potential applicant is even aware that a challenge is possible.
2. Identify that there is a legal issue	**Head 10 (2) (d)**	Many people are unaware that what they are experiencing is a legal issue and that they should seek legal advice. For example, in our experience, it is not widely known that access to emergency accommodation or aftercare supports is governed by a legal framework. Many clients might not contact our service until a number of weeks have passed since they received the decision in question. This may be for a number of reasons, such as life circumstances, lack of awareness that what they have is a legal issue, difficulty identifying that a final decision has been made, literacy difficulties, waiting times for appointments with referral services and then our own or another legal service, etc. The shortened timeframe proposed in Head 10 (2) (d) does not reflect this reality.
3. Obtain legal advice	**Head 10 (2) (d)**	Many people cannot afford to instruct a private solicitor. Owing to the limitations of the Legal Aid Board and the Civil Legal Aid Scheme, their main options are to attend an independent law centre like Community Law & Mediation (which are massively under-resourced) or find a solicitor who will agree to act on a pro bono or no foal, no fee basis. The twelve-week timeframe for judicial review applications is already a significant challenge in this context so the eight-week timeframe proposed in Head 10 would significantly reduce the practical ability of these services to assist clients and would undoubtedly result in meritorious cases being denied access to justice. The timeframe as it stands is already substantially shorter than in other areas and mechanisms.
4. Gather documentation	**Head 10 (2) (d)**	We often need to submit a request under the Freedom of Information Act 2014 or an Access to Information on the Environment Request to the public body to gather

		further information on the decision and to fully investigate any potential legal issue. A public body has four weeks after receipt of the request to provide the requested records, but they can seek a further four-week extension in certain circumstances. Furthermore, the requested records might also only be provided following an appeal. The proposed eight-week timeframe is unworkable, in circumstances where a public body can take up to 90 days to respond to a request for records - records which are often necessary to determine if a cause of action exists. It is in the interest of all parties that full information is available before a decision to litigate is taken. Further reducing the likelihood that this can occur is contrary to the proper administration of justice.
5. Issue correspondence	**Head 10 (2) (d)**	After fully investigating any potential legal issue, we engage in correspondence with a public body, with a view to resolving the matter. The aim of pre-litigation correspondence is to reach a resolution before issuing proceedings. The reality is that the proposed eight-week timeline significantly reduces the opportunity to resolve the matter before litigation.
6. Instruct counsel	**Head 10 and Head 11**	If no resolution is forthcoming, we instruct counsel to review files, advise on legal options and prepare the papers for filing as appropriate. Again, we are concerned about the feasibility of the proposed eight-week timeline in this regard, particularly in light of the proposed new higher threshold for obtaining leave, as detailed below. This will be exacerbated for applicants without means who are reliant on a small pool of pro bono lawyers.
7. Issue proceedings	**Heads 8 and 11**	At this point, we file the papers in the High Court and make our application for leave. In addition to the tightened timeframe, we note that the proposals introduce a significantly higher test for the leave stage, including satisfying the Court that the

		granting of the remedy would provide a significant benefit to the applicant. If these changes are introduced, the leave stage will now become a more protracted and inevitably more costly stage in the proceedings. It is unclear how 'significant benefit' will be established in practice for both individuals and NGOs (for example, can an NGO be said to have been provided with a "significant benefit" on winning a public interest environmental case?). Environmental NGOs do not initiate judicial review for personal interest, but to ensure compliance with domestic and EU environmental and climate law. The benefit of successful environmental judicial review is not a private gain, but the remedying of unlawful decision-making and prevention of environmental harms, which are experienced most often by the communities CLM works with.
8. Forum for judicial review proceedings	**Head 9 (1) and (2)**	Head 9 (1) and (2) proposes that certain judicial review applications will be initiated in the Circuit Court. It is unclear why this change is being introduced and how it would work in practice. We are concerned that this will place additional burden on the Circuit Court in terms of resourcing and training needs.
8. Substantive hearing:	**Head 8 (5)**	Following the exchange of pleadings, the substantive hearing is held and a decision issued. Head 8 (5) of the General Scheme provides for a potentially restrictive new standard for obtaining relief under judicial review, including satisfying the Court that the remedy should be granted in the interests of justice, and again, that it would provide a 'significant benefit' to the applicant. This represents a radical departure from decades of settled jurisprudence relating to the granting of leave, again with no empirical evidence or reasons proffered as to why such an overhaul is necessary.

6. Recommendations

1. **Consultation**: The General Scheme should not progress without a comprehensive, transparent public consultation. The consultation process should include the provision of clear and empirical evidence from the Department as to why reform is necessary. This is particularly warranted in circumstances where the changes proposed in Heads 8 - 11 go far beyond what was recommended in the Kelly Report.

2. **Amend the proposals in Heads 8 - 11**: The proposals contained in Heads 8 - 11 in their current form are unlawful, unevidenced, and will create additional and onerous barriers, effectively shutting out those seeking to challenge wrong decisions, to uphold their rights and to hold the State accountable.

   If judicial review is to be put on a statutory footing, we recommend the following:

   a. Head 8 (5) – the introduction of a new standard for obtaining relief; For the reasons outlined above and in the absence of any evidence-based justification, we propose this amendment be dropped.
   b. Head 10 (2) (d) - the shortening of the timeframe in which an applicant can apply for leave to eight weeks; For the practical reasons outlined above, if the timeframe for judicial review is to be amended, we propose that the timeframe be extended to 24 weeks. This would address the practical barriers outlined above, including providing more time for the obtaining of records to evaluate claims and for engaging in pre-litigation correspondence to endeavour to resolve matters without recourse to proceedings, as well as allowing those without means a more reasonable timeframe to identify their need for legal support to obtain it.
   c. Head 9 – extending jurisdiction for certain judicial reviews to the Circuit Court; For the reasons outlined above and in the absence of any evidence-based justification or assurance that the Circuit Court will be resourced to deal with such matters, we propose this amendment be dropped.
   d. Head 11 (1) - the introduction of a new standard for obtaining relief at leave stage; For the reasons outlined above and in the absence of any evidence-based justification, we propose this amendment be dropped. If reform to the leave stage is to proceed, consideration should be given to potential barriers to access to justice presented by the current two-stage process, which is particular to judicial review.

3. A high level of judicial reviews is an indicator of poor administrative decision-making. The solution to this is not curtailing judicial reviews but better decision-making. Where measures to improve decision-making have been adopted, as occurred, for example, at the Refugee Appeals Tribunal after 2013, the result was that the number of new judicial reviews dramatically decreased. It is inherently in the common good for official decision making to be of a high quality and for people to have trust in decision making systems, and to be able to trust that the State will be held to account to comply with its own laws.

7. Conclusion

As a general comment at the conclusion of this submission, we are concerned that the proposals in Heads 8 - 11 form part of an ongoing and intentional pattern by Government to curtail access-to-justice rights and weaken key protections enshrined in Irish legislation and international human rights frameworks.

This is increasingly evident in how the individuals and communities we work with stand to be impacted by new and proposed restrictions across a range of legislation, including changes to eligibility for social housing and emergency accommodation in housing legislation; restrictions on family reunification and other measures introduced in the International Protection Bill; limitations on access to judicial review introduced through the Planning and Development Act 2024; the proposed introduction of a new scale of fees for environmental judicial reviews; and the recent call by 27 Council of Europe members, including Ireland, to weaken key protections under the European Convention on Human Rights. Taken together, these measures represent a significant erosion of access to justice and dismantling of the rule of law.

As no reason or evidence has been supplied to justify the changes proposed in Heads 8 - 11, we can only conclude that the intention is to create additional and onerous barriers to reduce the number of cases that are brought regardless of merit, rather than addressing the underlying causes of poor decision-making. This will have a disproportionate impact on communities who experience disadvantage in vindicating their right of access to justice and their right to an effective remedy, rights which are protected by the Irish Constitution, the European Convention on Human Rights and the European Charter of Fundamental Rights and the Aarhus Convention.

The emphasis should be on ensuring lawful, fair, and rational decision-making by public bodies, thereby reducing the need for recourse to the courts. This could be done by focusing on improving decision making within public bodies and providing robust and transparent appeals systems to reduce the need for judicial review applications – instead of restricting individuals' basic right to hold the State to account.

ENDS