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Committee on Justice, Home Affairs and Migration,
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By Email only to:

justice@oireachtas.ie

info@justice.ie

Date: 5 February 2026

Our Ref: FMC

Your Ref:

Re: Civil Reform Bill 2025

A chara,

I understand that submissions have been sought before 12 noon today on the General Scheme of Civil Reform Bill 2025.

I am managing partner of a firm that practices primarily in the area of plaintiff personal injury and medical negligence litigation. I am also co-founder of the Solicitors Growth Network (www.solicitorsgrowth.com), a large independent community of hundreds of solicitors from predominantly small and medium-sized firms throughout the country and I have consulted widely among our membership and with fellow colleagues practising in the specific areas of practice of plaintiff personal injury and medical negligence litigation in preparing these submissions.

There are many matters of major concern in the proposals contained in the general scheme of bill that require much more detailed scrutiny and consideration than a deadline of 5 February 2026 will allow. Therefore, given the shortness of time within which it has been necessary to prepare these submissions, we have decided to restrict our submissions to the ares of personal injury and medical negligence litigation only, and to the single most serious and problematic aspect of the proposed changes that are evident on an initial review of the General Scheme in

respect of such litigation, viz. the proposal to increase the jurisdiction of the Circuit Court in civil matters from, what is stated to be, €75,000 to €100,000.

Head 30 of the General Scheme proposes to change the limit in the Circuit Court from €75,000 to €100,000 and Head 32 proposes to delete section 12A and to amend section 20 of the Courts of Justice Act, 1936, thus eliminating the distinction for personal injuries, which currently limits the jurisdiction of the Circuit Court in personal injury matters to €60,000.

At its simplest, the proposal to increase the jurisdiction of the Circuit Court from €60,000 to €100,000, and to thus transfer all cases worth between €60,000 and €100,000 from the High Court to the Circuit Court beggars belief and can have no basis in any considered policy.

Such a change would be a disastrous one for litigants and all court users, and it is difficult to understand how, or why, it is being proposed at all.

No change of this nature has been recommended or suggested in any of the many carefully considered reports delivered in recent years including, in particular, the Expert Group Report to Review the Law of Torts and the Current Systems for the Management of Clinical Negligence Claims dated 17 January 2020 (“the Meenan Report”) and the Review of the Administration of Civil Justice dated 30 October 2020 (“the Kelly Report”).

The only supposed basis for any such proposed change that has come to our knowledge anecdotally is that the proposal is based on inflation. If this were to be the case, it would bear no scrutiny whatsoever.

In fact, rather than it being the case that there might be some inflationary-based justification for a 66% increase in the jurisdiction of the Circuit Court in personal injury matters, the simple reality is that the value of personal injury awards have *fallen substantially* in the relevant period as a result of the introduction of the Personal Injury Guidelines in 2021.

Furthermore, despite the Judicial Council recommending an upward revision of awards of 16.7% in 2024, to date, as we now approach the fifth anniversary of the introduction of the Personal Injury Guidelines, there has been no review of awards whatsoever and they remain at the significantly deflated level introduced in 2021.

Accordingly, there is no inflationary justification whatsoever for any increase in the jurisdiction of the District Court or the Circuit Court in personal injury matters, having regard to the introduction of the Personal Injury Guidelines in particular.

In this context, it must also be borne in mind that when civil jurisdictions were last reviewed, a clear distinction was made in respect of personal injury matters, and whereas the civil jurisdiction of the Circuit Court generally was set at €75,000, the civil jurisdiction of the Circuit Court in personal injury matters was specifically set at €60,000, to have regard to the particular nature of personal injury litigation.

This requirement for the distinction in personal injury matters has been strengthened and underpinned by the subsequent introduction of the Personal Injury Guidelines, specifically limiting the levels of awards that may be made by the Courts in those matters.

While personal injury litigation generally requires particular consideration having regard to how this area of litigation has been treated in legislation, the more specialist subset of personal injuries litigation comprising clinical negligence litigation requires more careful consideration still.

In April 2025 a dedicated Clinical Negligence list was established by the President of the High Court pursuant to Practice Direction HC132. In addition to establishing a dedicated Clinical Negligence List in the High Court presided over by a judge who shall assign cases within the list to judges drawn from those assigned to the Personal Injuries List who are experienced in dealing with clinical negligence proceedings, the practice direction provides for interlocutory applications and case management directions in clinical negligence matters.

This dedicated Clinical Negligence List is a very welcome and progressive development in the High Court and follows on from the recommendations of the Meenan Report in 2020.

No such dedicated clinical negligence list exists in the Circuit Court, nor is there any panel of judges experienced in dealing with clinical negligence proceedings available for assignment to such cases in the Circuit Court.

There are a number of particular features of clinical negligence cases that make them particularly unsuitable for being dealt with in the Circuit Court:

- Clinical negligence cases tend to be complex, requiring extensive expert medical evidence in relation to interrelated questions of liability and causation, which generally take much longer to be heard. As a result, clinical negligence cases can be called on for multiple days or weeks at a time, something which a Circuit Court is simply not going to be able to accommodate given the current structure of the courts system.

- The vast majority of personal injury cases, including clinical negligence cases, are resolved at varying stages in the proceedings. Therefore, for instance, a case that is called on for two weeks, may resolve on day two, in circumstances where the judge has made provision to be available for this case alone for another week and a half and put back other matters as a result. The panel system in the High Court is specifically designed to accommodate this, but no such similar structures exist in the Circuit Court.

- Clinical negligence cases require significant input from expert medical witnesses, many of whom have to travel from abroad to give evidence. As such, it is a feature of clinical negligence cases that they will be specially fixed for a particular date to ensure that an expert medical witness who is likely to be a very busy medical practitioner abroad will be booked to travel and attend to give evidence on a particular date fixed months in advance. Such arrangements are simply not going to be possible in the Circuit Court given the current structure of that Court and its listing systems.

- The Circuit Court does not have any arrangements for case management directions to facilitate the efficient preparation and hearing of clinical negligence proceedings as currently exists in the High Court.

Given that Personal Injuries Guidelines apply to awards made in clinical negligence proceedings a very substantial number of clinical negligence proceedings requiring to be brought in the High Court currently fall into the category of cases valued between €60,000 and €100,000 currently heard in the High Court, but which if these proposals were introduced would be transferred to the Circuit Court.

While we could cite a myriad of examples, given the short time frame required to make submissions in this case, we have only been able to obtain the consent of one client to the use of the circumstances of her case by way of example as follows:

> *A woman in her 50s presented at the emergency department of a large regional hospital on multiple occasions over a period of several months complaining of worsening chest pain. On certain of these occasions, she had been referred by her general practitioners and on others she had self-referred because of the seriousness of the symptoms which she was suffering from. Notwithstanding the fact that her symptoms were clearly suggestive of pericarditis, she was discharged home on each occasion. The patient's pericarditis went untreated for a period of 9 months due to the repeated negligence of the hospital staff concerned. Apart from the extremely worrying symptoms which she suffered from during this protracted period, when she believed that she was suffering from a heart attack and was about to die on several occasions, the expert cardiological evidence which was obtained confirmed that she had developed an increased risk of recurrent pericarditis as a consequence of the hospital's negligent delay in diagnosing and treating her condition. Her overall damages were agreed at €75,000.*

We encounter and deal with cases of this nature day-in and day-out, that are extremely complex clinical negligence cases in nature and yet are likely to fall into the €60,000 to €100,000 range of awards given Personal Injury Guidelines etc, but require to be managed in the Clinical Negligence List of the High Court, given the particular circumstances and requirements of these types of cases.

Wrongful death cases are another very important category of case where because of the nature of the statutory cap on general damages in cases of wrongful death, the value of awards in those cases will often fall within the €60,000 to €100,000 range. The victims in these cases are often the most vulnerable court users we are every likely to encounter and justice demands that their cases are heard expeditiously and efficiently, as the structures and resources that have been developed around the dedicated Clinical Negligence List in the High Court currently seek to do.

Inadvertently transferring all of these clinical negligence cases to the Circuit Court as a result of an ill-considered, blanket change in jurisdiction levels would have disastrous consequences for those most vulnerable court users who are genuine victims of negligence, and clinical negligence, and wrongful death in particular.

It is currently being reported that the Irish courts are the slowest in the EU at hearing and deciding cases, and that it takes more than three times the European average for litigants to have their cases disposed of in the Irish judicial system.

Proposing an entirely retrograde step of taking a substantial proportion of the clinical negligence cases in Ireland out of the carefully designed and implemented system created specifically for them in the High Court Clinical Negligence List and simply dropping them into an already overburdened Circuit Court that is simply structurally incapable of dealing with them, is impossible to understand or to justify.

It would have unforgivable consequences for the most vulnerable victims of negligence in our society who find themselves with no alternative but to have recourse to our judicial system as a result of what has happened to them through no fault of their own.

No such change should be made.

Is mise le meas,

This letter has been sent by email
and therefore bears no signature

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Flor McCarthy,
Managing Partner,
McCarthy & Co. LLP