DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART, GNÓTHAÍ BAILE AGUS IMIRCE

JOINT COMMITTEE ON JUSTICE, HOME AFFAIRS AND MIGRATION

Dé Máirt, 24 Márta 2026

Tuesday, 24 March 2026

Tháinig an Comhchoiste le chéile ag 3 p.m.

The Joint Committee met at 3 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	**Seanadóirí / Senators**
Tom Brabazon,	Robbie Gallagher,
Albert Dolan,	Michael McDowell,
Gary Gannon,	Anne Rabbitte,
Mark Ward.	Lynn Ruane.

I láthair / In attendance: Senator Maria McCormack.

Teachta / Deputy Matt Carthy sa Chathaoir / in the Chair.

General Scheme of the Civil Reform Bill 2025: Discussion

An Cathaoirleach: Apologies have been received from Senator Kelleher.

I advise guests that there are a lot of justice-related topics being discussed in both the Seanad and Dáil, so I know members will have to pop in and out. I will have to leave for approximately 20 minutes to speak in the Dáil Chamber, so my apologies in advance for that. I will be asking the Leas-Chathaoirleach or another of the members to fill in at that point.

I remind members to turn off their mobile phones or switch them to flight mode. I advise that the meeting has been convened to consider two separate items. The first will be pre-legislative scrutiny of the general scheme of the Civil Reform Bill. Later, we will be dealing with an engagement on the digital omnibus package. We will suspend briefly between the two hearings.

The purpose of this part of the meeting is to have an engagement with a number of stakeholders as part of the committee's scrutiny of the general scheme of the civil reform Bill 2025. On behalf of the committee, I welcome the following witnesses to the meeting. On behalf of the Bar of Ireland, we have Mr. Séamus Clarke SC and Ms Bairbre O'Neill SC. We are pleased to welcome Dr. Orla Kelleher from Maynooth University's school of law and criminology. From the Irish Refugee Council, we have Ms Katie Mannion and Ms Virginija Petrauskaite. From Free Legal Advice Centres, FLAC, we have Ms Eilis Barry and Mr. Christopher Bowes. From the Legal Aid Board, we have Ms Joan Crawford and Ms Catherine Fahy. From the Construction Industry Federation, we have Mr. Conor O'Connell and Mr. Kieran Rush.

As observers, we have officials from the Department of Justice, Home Affairs and Migration. I advise members that if questions need to be put to the Department officials by way of clarification on any topic, we will do that after our other guests have left because we are tight on space.

Here, in observer capacity from the Department, are Mr. Brien Henderson and Ms Liz Lyne.

The format of the meeting is that we will ask each of the organisations in turn to make an opening statement of three minutes. We will then open the discussion to members to ask questions in the order in which they have indicated. I ask members to stick to the times we have set.

Before I invite opening statements, I will explain some limitations to parliamentary privilege, particularly for the second half of the meeting. The practice of the Houses is that the evidence of witnesses physically present or who give evidence from within the parliamentary precincts is protected, pursuant to both the Constitution and statute, by absolute privilege. Later, we will have some members attending by video link. Witnesses are reminded of the long-standing parliamentary practice that they should not criticise or make charges against any person or entity by name or in such a way as to make him or her or it identifiable or otherwise engage in speech that might be regarded as damaging to the good name of the person or entity. Therefore, if their statements are potentially defamatory in relation to an identifiable person or entity, they will be directed to discontinue their remarks. It is imperative that they comply with any such direction.

I thank all our guests for attending this important hearing. I now invite Mr Séamus Clarke to make an opening statement on behalf of the Bar of Ireland.

Mr. Séamus Clarke: I thank the members of the committee for the invitation to appear before them today. The council of the Bar of Ireland welcomes the opportunity to address members of the Joint Committee on Justice, Home Affairs and Migration in relation to the general scheme of the civil reform Bill 2025. The general scheme seeks to implement some of the more than 90 recommendations of the Kelly report published in 2020, and three of the 27 recommendations contained in the Sheriff review group report, published in 2024. The Bar of Ireland fully supports meaningful and evidence-based reform to ensure the civil justice system is efficient, modern and accessible. The Kelly report represents a comprehensive and carefully considered roadmap for such reform. We are concerned that the general scheme departs in several important respects from the approach recommended in that report.

First, in relation to the replacement of discovery with a statutory self-production regime, the Kelly report recommended that any reform of document production should be implemented through court rules, developed by the rules committees and subject to judicial oversight. The general scheme instead proposes a rigid and front-loaded statutory model that is vague in scope, costly in practice and likely to generate extensive satellite litigation. The substantial upfront burden in producing documents risks entrenching inequality of arms and disproportionately burdening individuals, small businesses and legally aided litigants, particularly in complex or document-heavy disputes.

Second, the proposals in the general scheme relating to judicial review represent a radical curtailment, rather than a codification, of existing law. Judicial review is a fundamental safeguard against unlawful administrative action and a cornerstone of the rule of law. While the Kelly report recommended procedural reforms aimed at improving the efficiency of judicial review proceedings, the general scheme goes considerably further. The proposed introduction of new statutory thresholds for relief, combined with restrictions on appeal rights and significant changes to the applicable costs regime, would substantially alter how judicial review operates in practice. Taken together, these measures risk placing unnecessary barriers in the path of individuals seeking to challenge unlawful decisions of public authorities and vindicate their rights before the courts.

Third, the Bar also has concerns regarding aspects of the proposed civil procedure reforms contained in the general scheme. The Kelly report envisaged a programme of procedural reform driven through the rules committees of the courts, allowing changes to be introduced incrementally and refined in light of practical experience. By contrast, many of the reforms proposed in the general scheme represent significant structural changes to how civil litigation will operate in practice. Rules designed to combat delay should not inadvertently prejudice vulnerable litigants or those whose cases involve legitimate complexity. A more flexible, court-led approach to procedural reform, as recommended in the Kelly report, would better ensure that changes operate fairly and effectively for all litigants.

Fourth, the general scheme proposes raising the monetary limits of the District and Circuit Courts. While an increase in the monetary jurisdiction is supported in principle, we submit that changes should be phased, proportionate and evidence-based, as contemplated by the Kelly report.

We also have some modest suggestions to make in relation to the general scheme to the office of the sheriff.

In conclusion, the council of the Bar fully supports the objective of civil justice reform and recognises the importance of modernising the procedures that govern civil litigation. However, reform should strengthen not weaken the integrity of our civil justice system. We hope our submission on this issue and our discussions today will assist the committee in its consideration of the general scheme. We will be pleased to address any questions which members may have.

Dr. Orla Kelleher: My particular area of expertise is in the area of environmental human rights and climate litigation. I will, therefore, confine my observations to the impact of the general scheme on the right of access to justice in environmental matters.

It is possible to identify at least three major problems. First, the reforms are likely to create further legal uncertainty, generate complex satellite litigation and cause more delays within the planning system. Second, environmental pollution disproportionately affects already vulnerable and marginalised groups in Ireland and there is a real risk that further restrictions on access to justice would exacerbate this problem. Third, the general scheme, both by itself and taken together with the Planning and Development Act 2024, fails to take adequate account of the State's obligations under the Aarhus Convention and related EU law. The Aarhus Convention guarantees three interrelated procedural rights, namely, the right of access to information, the right to participate and the right of access to justice in environmental matters. The most relevant provision here are those on access to justice. Ireland signed the Aarhus Convention in 1998 and ratified it in 2012. The convention has had its most notable impact on Irish law through the mechanism of EU law. The EU has adopted several legislative measures to implement the convention and the Court of Justice has consistently adopted a strong interpretation of those access to justice provisions.

On the issue of backsliding, the Aarhus compliance committee has indicated that reducing Aarhus rights is not generally perceived to be in line with the objectives of the convention. Additionally, the European Commission's 2025 environmental implementation country report for Ireland identified, as a priority action, actually improving access to the courts in national environmental cases for the public concerned and eliminating practical barriers. The tenor of the reforms proposed in Part 3 of the civil reform Bill jars with the minimum standards on access to environmental justice. Certain environmental judicial reviews, such as those covered by the planning Act, are partially excluded; however, certain provisions would continue to apply. For example, in deciding whether to grant a remedy, a court would have to consider whether an error is material. In deciding this, the court would have to take into account whether, in the absence of that error, a different decision would have been made, which would have placed the applicant in a materially better position. As was famously stated by the former Advocate General Sharpston, "fish cannot go to court". The privileged status of NGOs under the Aarhus Convention flows from a recognition that environmental law is often, by necessity, enforced by members of the public acting in the public interest. Such individuals and NGOs may have no personal stake in the matter. For this reason, it is likely to be very difficult to satisfy the materially better position requirement. Other forms of environmental judicial review, particularly climate litigation under the climate Act, appear to be subject to the full force the Bill.

The impacts of the general scheme are even more regressive for these cases. For example, an applicant would need to prove they have suffered harm or prejudice and that the granting of the remedy would provide them with a significant benefit. This suffering harm requirement would be exceptionally difficult to prove in a climate case. If it were applied strictly, this could deprive applicants of their right to an effective remedy. Interestingly, it was on a very similar basis that the European Court of Human Rights found a violation of Article 6, the right to a fair trial, of the ECHR in KlimaSeniorinnen *v.* Switzerland. The significant benefit of a remedy for an applicant is likely to be a very difficult criterion to satisfy because the benefit of Government meeting climate obligations would accrue to the public at large.

Finally, the cost provisions are also likely to fall foul of the ban on prohibitively expensive costs in environmental litigation. The reform proposals are worrying given the importance of what is at stake. Against a backdrop of a worsening climate, environmental and pollution crisis, curtailing judicial review, one of the most important accountability tools the public has to uphold the rule of law, can be seen as nothing less than a retrograde step. I am happy to elaborate on any of these points and to address any questions members may have. I thank the committee for its time.

Ms Katie Mannion: I thank members of the committee for the opportunity to present to them today. We would like to focus our comments on asylum and immigration-related judicial review.

Immigration-related decisions made by the State, including international protection and family reunification, fundamentally impact a person's human rights. These decisions involve implementation and interpretation of complex and ever evolving EU law, and interpret the ECHR and international human rights standards. They also involve people whose status is dependent on the State, who have fled home and have limited resources. For these reasons, judicial review has proven to be a vital check on decision-making processes in this area and crucial to access to both justice and effective remedies. We oppose the proposals to transfer jurisdiction of immigration-related judicial review from the High Court to the Circuit Court and the introduction of increased leave and appeal thresholds for the following reasons.

We believe it is constitutionally dubious. It involves extremely complex judicial reviews in the asylum area. If implemented it would create a system of two-tier justice. The High Court is best placed to hear all judicial review cases due to its level of expertise, resources, time and available remedies, including a declaration of incompatibility with the ECHR. Finally, the current thresholds adequately protect the State's interests.

These proposed changes are being introduced at a time when the migration and asylum pact, transposed through the International Protection Bill 2026, which will commence in June 2026, significantly restricts the rights and freedoms of international protection applicants, introduces immigration-related detention and restrictions on movement, as well as truncates the processing time. This will require oversight and judicial scrutiny to ensure that the protective features of the pact are implemented.

Judicial review is an integral component of the High Court's exclusive full original jurisdiction. Confining immigration cases in the High Court and allowing them to be heard only in the Circuit Court risks violating the requirements of Article 34.3.1° of the Constitution. It proposes implementing a two-tier system for immigration-related decisions. This will impact

migrants in Ireland who will have a completely different way to access justice in Ireland than Irish citizens. This risks breaching Article 40.1 of the Constitution.

It is submitted that the High Court is best placed and that it is not necessary or appropriate to remove the role the High Court is playing very well in judicial review in this area, having developed specialist expertise and a specialist list. The High Court has already reduced delays in this area, for example, the median time was reduced to 151 days in 2024. We are concerned that placing the burden of interpreting EU law on the Circuit Court would lead to much longer delays.

The availability of High Court remedies is also relevant. I mentioned the possibility of issuing declarations of incompatibility. As well as moving the jurisdiction from the High Court to the Circuit Court, the general scheme also suggests increasing the threshold for leave for judicial review, requiring a "significant benefit" to the applicant and introducing a "public interest" element. However, the State already enjoys significant procedural protections in asylum cases, such as higher thresholds than other judicial review proceedings and requiring substantial grounds instead of arguable grounds in this area. There is already a two-stage process and a shorter timeframe of 14 days. In 2024, 97% of leave applications in asylum judicial reviews were granted, indicating that High Court judges consistently identify relevant grounds for challenging decisions of the State. We consider that both a change of standard of leave and a change of jurisdiction are unnecessary and arbitrary.

Ms Eilis Barry: FLAC is very grateful for the opportunity to appear before the committee. We would welcome any court reforms that would improve accessibility, efficiency and effectiveness and reduce delays. While our concerns extend to the whole general scheme, this statement focuses in particular on the proposed changes to judicial review. Separately and cumulatively, they constitute a radical curtailment of access to judicial review, and are likely to have a disproportionately negative effect on ordinary people whom FLAC represents, who are trying to establish and vindicate their legal, constitutional or fundamental rights in relation to very basic public services like social housing, emergency accommodation, additional educational supports and access to basic social welfare payments. The reason for these cases and their very high success rate is often poor quality decision-making by public bodies and the lack of an alternative meaningful way to make an appeal. If the general scheme is implemented, it is very likely that it will be extremely difficult, if not impossible, for the average person to challenge unlawful actions in any case that is complex or is without precedent, in that it involves a new point of law or public interest, such as the O'Meara case, which was about cohabitants' entitlement to the widowers' pension, or the July provision case, which was about educational supports for children with disabilities during the summer months.

The fundamental importance of judicial review cannot be overstated. It is a core component of access to justice, the rule of law and democracy. It is fundamentally about accountability, ensuring that Government and public bodies do not ignore the laws which have been passed by the Members of the Oireachtas, exceed their authority or act in an unfair or unlawful way. It is open to doubt as to whether the proposed changes are consistent with the rights of access to justice, the courts and good administration, which are protected by the Constitution, European law, the Aarhus Convention and human rights law. Judicial review is already highly inaccessible, with no legal aid, difficulty in finding lawyers willing to act for free, the existing three-month time limit and the delays in hearings.

It is inexplicable and wholly unsatisfactory that the general scheme does not include an explanatory section which sets out the purpose, rationale and intended effects of each provision. It is unintelligible to non-legal readers and most of the people who will be impacted by the changes it proposes. No supporting documentation or evidence-based rationale has been articulated or produced.

The general scheme should not proceed. We have written to the Minister and asked the following questions. Why are these changes, which will impact judicial reviews about social welfare, social housing, education and immigration and which have nothing to do with planning and infrastructure, part of the accelerating infrastructure plan and contained in the scheme? Why do the changes go beyond those which were recommended by the Kelly review and the Law Reform Commission reports? Has there been any human rights, equality and access to justice impact assessment? If not, when will this happen? Why has the Department not published a clear and accessible statement of the law pertaining to judicial review and each of the areas? When will it do so? Why has there been no consultation about these proposals? It was promised. What consideration has been given to improving the quality of, and reducing delays in, decision-making by public bodies, especially in areas like social welfare and social housing?

The courts need to be treated like an essential social service and adequately resourced so that judicial reviews can be heard promptly and not have to take over a year for cases to be heard. The leave requirement should be reviewed and outdated and unnecessarily complex court rules, forms and procedures need to be updated.

We are using the attention-grabbing submission title, "Don't Shoot J.R.!", not to be in any way flippant but to attract attention to the depth and seriousness of our concerns, which we have set out in our detailed written submission. We are happy to answer any questions from members of the committee.

Ms Joan Crawford: We are grateful for the invitation to address the committee today. I welcome the opportunity to outline the Legal Aid Board's views on the general scheme of the civil reform Bill 2025. The Legal Aid Board provides civil legal aid and advice to individuals who meet statutory financial eligibility and merits criteria. Our solicitors represent clients in a broad range of civil matters, including family law, housing, employment and equality. We also represent applicants for international protection and, in a small number of cases, applicants in judicial review matters.

We acknowledge and support the overarching objective of improving efficiency, proportionality and cost-effectiveness in civil proceedings. We also welcome provisions that strengthen the role of mediation and other forms of alternative dispute resolution. These measures have the potential to divert appropriate cases from litigation, thereby reducing costs, delay and the adversarial burden on individuals.

However, the general scheme also contains a number of significant reforms that warrant careful consideration. First, the proposed restructuring of judicial review would introduce shorter time limits, higher thresholds for obtaining leave and more front-loaded procedural duties. For many legally aided clients, who often face delays in seeking advice due to personal circumstances or pressures within the legal system, these compressed timelines may make it more difficult to prepare a sufficiently detailed grounding statement at the outset.

Second, the proposed changes would require earlier and more comprehensive production of documents, including under head 5, which moves toward more intensive obligations at the start of litigation. While early clarity can be beneficial, given that applicants frequently seek assistance close to deadlines, these requirements risk placing additional pressure on clients and practitioners at the very earliest stages.

Third, changes to adjournments, the introduction of new case conduct principles and envisaged penalties for non-compliance with pre-action protocols may have differing impacts across the system. Many legally aided clients experience complexity in their personal circumstances and solicitors sometimes require additional time to gather information or engage in parallel processes. A rigid approach to adjournments could unintentionally limit the Legal Aid Board's ability to prepare cases adequately and protect clients' interests.

Fourth, the increased resource demands should not be underestimated. While the proposals may ease pressures on the courts and Judiciary, there is a risk that they could correspondingly increase workload, cost and potential delay for solicitors. Such an outcome would merely shift pressures within the system, resolving one set of challenges while creating another. If reforms are to achieve their intended benefits, it is important that all statutory bodies involved in civil justice, including the Legal Aid Board, have the resources required to discharge their obligations effectively.

Fifth, the Legal Aid Board is concerned that the general scheme, as currently drafted, contains a high level of generality and a lack of detail in key areas. This makes it difficult to provide fully focused or definitive observations on the practical operation of several proposed reforms at this stage. A number of important concepts are not defined and the interaction between certain provisions will only become clear once the Bill itself is published.

I conclude by reaffirming that the Legal Aid Board supports reforms that improve efficiency, reduce delay and enhance the functioning of the civil courts. Our central concern is to ensure that these reforms do not inadvertently impede access to justice for the people we serve, particularly those who are most vulnerable. We welcome continued engagement with the committee as this legislation progresses and will be happy to assist further in any way we can.

Mr. Conor O'Connell: I thank the Chair, Deputies and Senators for the invitation to address the committee today on behalf of the Construction Industry Federation, CIF. The CIF welcomes the opportunity to contribute to the committee's consideration of the general scheme of the civil reform Bill 2025. Our perspective is shaped by one fundamental reality, namely, that wasteful or technical legal challenges impose a real and measurable cost on society. As highlighted in the Government's Accelerating Infrastructure Report and Action Plan of December 2025, every delay in delivering housing, infrastructure, energy and water services increases costs for taxpayers, constrains economic growth and ultimately limits the State's ability to deliver homes, schools, hospitals and other essential public infrastructure.

Ireland faces a disproportionate volume of legal challenges compared with other common law jurisdictions. The consequences of that are now well understood. For these reasons, the CIF broadly welcomes the reforms proposed in the Bill. We believe they are sensible, timely and necessary to protect both the public interest and the integrity of the planning system.

On heads 4 and 5 of the Bill, we support the move to ensure that only documents material to the outcome of litigation must be produced. This will reduce unnecessary legal costs and delays for all parties, including the courts.

On head 8, concerning judicial review, we welcome the enhanced reforms building on those in the Planning and Development Act 2024. We emphasise three points, on which we made a more detailed submission to the committee earlier this year. First, an applicant seeking to quash a decision should be required to request that remedy expressly. Other parties should not face uncertainty arising from relief that was never sought. Second, the requirement that applicants demonstrate harm or prejudice suffered is an essential safeguard against purely technical or trivial challenges. Third, the public interest consideration is sensible but could be strengthened by anchoring it to Government policy, particularly in areas such as housing. This would help provide clarity and avoid disputes about the meaning of "public interest".

We strongly support a more robust "no difference" principle to provide that, where an error would not have altered the outcome, the courts should be prohibited from granting relief. This principle is well established internationally and is increasingly recognised in Irish jurisprudence.

On head 9, we respectfully suggest that transferring planning-related judicial reviews to the Circuit Court would be premature. The High Court's planning and environment list is now a specialised, highly efficient forum and its expertise should not be diluted.

On heads 10, 11 and 12, we invite the committee to consider greater alignment across the various consent regimes, namely, planning, environmental licensing, maritime regulation and utilities. The current procedural differences create unnecessary complexity. The reforms introduced under the 2024 Act provide a strong foundation that can and should be applied more broadly, including the removal of the leave stage and the adoption of clear and consistent limitation periods.

The CIF supports reforms that improve the efficiency, proportionality and fairness of Ireland's planning and judicial review systems. These reforms matter not for abstract legal reasons alone but because they directly affect the State's ability to deliver the homes and infrastructure our communities urgently need. We thank the committee for its work and for the opportunity to contribute.

An Cathaoirleach: I thank Mr. O'Connell and all of the speakers for their opening statements. I will now invite members in the order in which they have indicated to engage with witnesses because of the number of interactions we are likely to have. If we want to allow a second round, I suggest a limit of five minutes for the opening round. Is that agreed? Agreed.

Deputy Gary Gannon: My question is for the Irish Refugee Council. The High Court is resolving judicial review cases in 151 days and the Circuit Court's most recent figure is 740 days. The International Protection Bill 2026 is coming into force in June. Will the witnesses explain to the committee, if they know, what happens to an asylum applicant whose case involves detention or removal and whose judicial review is sitting in a 740-day queue in a court with no written judgment? That person will obviously not have any expertise in asylum law?

Ms Katie Mannion: That is one of our big concerns. It is such a broad area of law to get on top of. That is why there are specialist judges on a specialist list who have developed expertise

in that area in the High Court. They receive detailed written submissions in advance and consider them in advance of the leave application initially. It is now proposed to transfer this level of expertise, which has developed. The European Court of Human Rights, the Court of Justice of the European Union, the huge amount of new legislation in the pact and also the implementation of the Charter of Fundamental Rights of the European Union, which is relevant to so many of these cases, all need to be considered. The Deputy mentioned that there are no written judgments in the Circuit Court. It will be extremely difficult to even understand what the law is, in the absence of written judgments in the Circuit Court. This is an area on which so many different judgments are so frequently made in Ireland, internationally and throughout the EU - and Ireland needs to be aware of that as well. Transferring the level of expertise needed to the Circuit Court is extremely concerning.

Deputy Gary Gannon: Very much so. In 2024, High Court judges granted leave in 97% of asylum judicial review applications. The existing threshold is already filtering out vexatious cases. On what evidential basis do the witnesses feel the Government is claiming that the threshold needs to be raised for asylum applicants specifically? If head 8(7) is enacted as drafted and costs can only be awarded where a significant benefit is conferred on the applicant, in the view of the witnesses, does the no foal, no fee model survive? If not, who represents the person who has a meritorious case and does not have the money to pay for it?

Ms Katie Mannion: Exactly. The fees in the area of international protection, asylum and migration more generally are extremely concerning. As has been set out, the Legal Aid Board can only provide representation in judicial review in an extremely limited number of cases. International protection applicants have not had an opportunity to build up time in employment or to build up their lives in Ireland to have the income to seek justice or access solicitors. They most regularly access legal representation on a no foal, no fee basis. Even taking on international protection cases, at €300 per application, is extremely limited and difficult for solicitors. Then there are the costs involved in bringing judicial review litigation. It is impossible to see how anybody would take on that level of potential debt and risk if there is no possibility of getting any payment at the end, particularly given the level of expertise and work required in each application.

Deputy Gary Gannon: My next question is for the Construction Industry Federation. I think Dr. Kelleher told the committee that head 13(1) disapplies heads 10, 11 and 12 to planning judicial reviews. Given those are the provisions CIF's members seem most concerned about, can Mr. O'Connell explain to the committee CIF's interest in the remaining provision, which primarily seems to affect asylum applicants, homeless families and social welfare recipients?

Mr. Conor O'Connell: We are here to speak about its impact. We are representative of builders. We are not representative of the legal profession and we are certainly not here to talk about any matter in relation to asylum or-----

Deputy Gary Gannon: Does Mr. O'Connell not feel that the issues CIF has are addressed in head 13(1), which disapplies heads 10, 11 and 12?

Mr. Conor O'Connell: That is a fair comment, without going through our original submission and the detail.

Deputy Mark Ward: I thank the witnesses for their very comprehensive opening statements. There seems to be a number of people and groups raising concerns around transferring the

judicial reviews from the High Court to the Circuit Court. Will the witnesses describe any consequence, good or bad, in relation to transferring the powers from the High Court to the Circuit Court?

Mr. Séamus Clarke: Head 9 contains a number of sections. One of them grants concurrent jurisdiction to the Circuit Court, which is not one of the recommendations in the Kelly report. The creation of this new or concurrent jurisdiction raises a number of questions. The Circuit Court is not traditionally designed to process cases of this type. It does not have experience doing so. It is a court of local jurisdiction as opposed to a court of national jurisdiction, so that is a concern.

The change could prejudice the High Court's full original jurisdiction that it has under the Constitution. That is another thing we think is very important. The Circuit Court is not a court of precedent, whereas the High Court is. There is a risk that there might be inconsistent decisions and uncertainty in the law as a result of the law being dealt with at the Circuit Court level. Additional appeals due to the new layer of decision-making will mean that we will end up with more litigation rather than less, although there are obviously attempts to reduce appeals in respect of circumstances where it is necessary to get a certificate to get leave to appeal from the Circuit Court before it is possible to go to the Court of Appeal. This is a very high bar to get over, so it could reduce the number of appeals that can be brought. We have a real concern about access to justice not being allowed, which is a constitutional requirement. In fact, these measures may cause much more litigation around the constitutionality of the particular sections.

Another concern is the mandatory Circuit Court proceedings, which are a new aspect in taking immigration and citizenship cases. Effectively, that is ousting the High Court's constitutionally mandated full original jurisdiction, so we again have concerns about the potential constitutionality of those particular sections and the interference with the right of access to the High Court, which is a constitutional right that has been protected in a number of cases. We list MacAuley *v.* Minister for Posts and Telegraphs as one example. It is a long-standing decision.

In relation to the Dublin Circuit Court jurisdiction being exclusive in particular areas, that would wipe it out as a local jurisdiction and effectively turn it into a court of national jurisdiction. That needs to be looked at very closely in terms of the legality of the provisions in the general scheme.

Deputy Mark Ward: The Irish Refugee Council has similar concerns about the transfer.

Ms Katie Mannion: Exactly. We have similar concerns around time it might take to deal with these cases, as I mentioned, given their complexity, the level of expertise at the Circuit Court level, the remedies available and the resources available to deal with the caseload if it were transferred. There is also the matter of the available remedies for applicants, which, as mentioned, are not available at Circuit Court level in a similar way to the remedies at High Court level. The gravity of the issues now being dealt with at High Court level means it is a more appropriate court to deal with these issues.

Deputy Mark Ward: The Construction Industry Federation has concerns about the transfer as well. Was that down to competency, experience, and so on? Would the witnesses like to elaborate?

Mr. Conor O'Connell: That is it exactly. Regarding experience, and it is not necessarily our own experience, we are hearing that the resources have been assigned to the High Court for the planning and environmental list. It is becoming a court of expertise in that particular area, so why interfere with its work now when it is getting through the cases and has the expertise to deal with them?

Deputy Tom Brabazon: I thank everybody for coming in and giving their detailed statements on this matter. As someone who practised in the area of judicial reviews for a number of years, I can say that it was certainly one of the more enjoyable aspects of legal practice. I have a certain sympathy for what many of the witnesses have said and for what the CIF has said as well. As a public representative, one of the big frustrations has been the slowness in the delivery of certain large infrastructural projects and housing developments. They have been blighted or plagued by judicial review applications that have slowed down the delivery of critical infrastructure and housing. I am not exclusively blaming judicial reviews for that, but it is certainly one element of it. The *status quo* in that context is not going to deliver anything. Will the witnesses outline their views on that?

Mr. Séamus Clarke: The discussion around judicial review and infrastructure delivery is often shaped by assumptions rather than actual analysis of what has happened. The data available to date show that of 147 judicial reviews started in 2024, only 19 related to infrastructure projects. Many cases are actually brought by developers who are challenging the refusal of planning permission. Some of the cases are fast-tracked in the Planning and Environment Court, which is a division of the High Court and which can resolve cases in a number of months. While there is a perception that a lot of delays are frequently due to the courts, the courts have actually adapted very quickly to make sure they can deal with these types of infrastructure projects. This means that while complaints were made a long number of years ago, they do not seem to be valid concerns at this stage. Unfortunately, the great reform being pushed in this general scheme is mopping up all the other areas of law as opposed to planning and infrastructure projects. Those are the ones suffering as a consequence of the drive for planning and infrastructure to change.

Deputy Tom Brabazon: Would anyone else like to comment?

Dr. Orla Kelleher: I am happy to address that question. I will develop one of the points made by my colleagues from the Bar Council. I will highlight that the UN special rapporteur for human rights and the environment recently undertook an in-country visit to Ireland. It is worth noting that as part of her exit report, she highlighted that Ireland is significantly below the EU average in terms of investment in its judicial system, particularly in the context of the number of judges. Something worth highlighting is the importance of adequately resourcing the courts and the planning system. This is about having enough institutional capacity. As has been highlighted, this seems to be starting to work quite well with the Planning and Environment Court. Similarly, it has been highlighted by the chair of An Coimisiún Pleanála that improvements in staffing there are already helping to clear backlogs. It is also important to highlight that there is very much a public interest in improving the quality of decision-making and that it is not in the public interest to have unlawful decisions being immunised or insulated from challenge. This is some of the concern with the nature of a number of the reforms being proposed in the general scheme.

Going back to the comments of the UN special rapporteur, she specifically singled out this proposed legislation as potentially regressive in the context of reducing access to justice. She acknowledged that while it is important that we can advance infrastructure and planning decisions, it is also vital that this is done in compliance with human rights and democratic obligations. She also said that effective judicial oversight can actually help the Government to improve the adequacy of evaluations done on planning applications. The courts have also been clear, and reiterated it even in the last couple of weeks, that courts typically do not quash decisions on a mere technicality. The courts have said that repeatedly.

Mr. Conor O'Connell: Comments were made in relation to the evidence for reform and mere technical matters. The Government has decided that reform is urgently required in this area, and it would not change a system in relation to a very important matter of law and the adjudication of law unless there was evidence.

I could list many different cases. One involved planning permission for 221 homes in Blackrock, County Dublin, being quashed because of the existence of two versions of a report regarding the potential impact on bats, one of which was available to the public online and another only available in hard copy. Another case concerned the quashing of planning permission for a wind turbine farm in County Longford because the particulars of the proposed turbines referred only to a maximum height and not a minimum height. I could go on in relation to planning permissions for infrastructure in housing that were quashed on the basis of minor technical matters. There is quite a body of evidence of the need for reform based on these minor technical matters.

In relation to the impact and the numbers, we cannot just judge it on the number of individual judicial review cases taken. To take an example, the greater Dublin drainage project facilitated wastewater treatment for 500,000 people and the construction of tens of thousands of housing units. There must not only be a quantification in relation to the number of individual judicial review cases taken; there must also be a focus on the impact of individual judicial reviews. We could go back to the Apple case, where the company applied for planning permission in 2015. By the time the matter eventually got through the court system, two data centres had been built by Apple in Denmark. The list goes on and on in terms of evidence of the need for reform.

Senator Michael McDowell: I want to raise two things with the spokespersons for the Bar Council, Mr. Clarke and Ms O'Neill.

In relation to judicial review, as I understand it, the proposal is that in every action the original parties to the action must, at the very beginning, make disclosure of all relevant documents. That may or may not be a good idea. It could be abused. Second, it could add to the expense of litigation if that is imposed in every single case. A third point is that the Bill does not seem to deal with the privacy of those documents which are disclosed. If I make disclosure on a discovery order, the other party is not entitled to hand it to a newspaper and say, "Look what I have found." There is nothing like that in the Bill that I can see, which is disturbing. I ask the witnesses to consider that.

On the question of judicial review, I have very considerable sympathy with the CIF. The idea that somebody can say they want to quash an apartment development on the basis that no bat survey was conducted is unfair. Was it obligatory on them to draw to the attention of the

planning authority that there are bats or there are not bats or there is a reason to worry about bats? Is there a mandatory requirement for them to say bats are a serious concern on their part and a serious issue in respect to this area of Killiney, or whatever it is? Is there is a relevance to that?

I take the point that it is proposed that minor or correctable problems should be a bar to making judicial review. However, and this is the point I am very strong on, the Circuit Court is the worst possible place to have judicial reviews done. Circuit Court judges do not produce ten- or 15-page documents by way of judgment, let alone 200-page documents. The whole court is done on the basis that in the morning it deals with landlord and tenant cases, in the afternoon it deals with a bit of family law and in the evening it deals with personal injuries or whatever. The naivety of saying that a Circuit Court judge is to produce a 200-page judgment on a highly complex area of judicial review is serious. The High Court, under the Constitution, is given the sole function of determining whether an Act of Oireachtas is compatible with the Constitution. However, judicial review requires constitutional consideration of a vast number of issues. It is proposed to convert the Circuit Court into a constitutional court as well. Those are propositions I put to the Bar Council in relation to what is proposed. I hope I am going to get agreement from it.

Ms Bairbre O'Neill: I will respond to what the Senator said about the discovery and production of documents. The Bar Council has serious concerns about what is set out in the general scheme in relation to production of documents. What is set out does not apply only to judicial review; it applies to all civil proceedings. That is the first point to note. We would support anything that would make discovery cheaper and more efficient. It is a really heavy cost for people bringing proceedings. In Ireland, it can represent up to half of the cost of litigation, and that should not be the case. There is ample scope for reform, such as that set out in the Kelly report, but, perhaps through inadvertence or something, the general scheme appears to do something which will not work at all. It proposes two different phases of discovery. The initial phase, as Senator McDowell rightly pointed out, is to take place 28 days after you start the case. It is extremely broad in scope. Within 28 days of issuing a summons or statement of claim, you are required to make full-blown discovery of anything which might be relevant, material or necessary for the case. It is not narrower than what we now have. It is equally as broad, and takes place at a much earlier stage in proceedings.

To make matters worse, at a later stage in proceedings, after you have had an exchange of expert reports and legal submissions are done, you are supposed to then produce anything else that might be relevant and material. What will that do? Predictably, it will derail the trial. If, at 28 days before any trial, a party produces a host - a big dump - of additional documents, that will always be a reason for an adjournment. No expert is going to give evidence when he or she has not reviewed the documents. No witness or lawyer is going to appear in a case where he or she has not properly reviewed the documents.

I believe this can only be an inadvertent mistake because it is so serious and will effectively risk doubling the cost of discovery and lead to huge delays. That is a real problem with this Bill.

Mr. Séamus Clarke: I will reply in relation to the Circuit Court, as a court dealing with judicial review. As Senator McDowell knows very well, judicial review discharges a significant constitutional function which courts police, legislative and administrative

boundaries, and the Circuit Court is just not used to dealing with that kind of work. Circuit Court judges, as the Senator said, are very good at dealing with family law in the morning, and they can do a civil criminal appeal in the afternoon. They squeeze a huge amount of work into a limited number of days. To ask a Circuit Court judge to then turn around and deal with the judicial review when, in fact, he or she is going to have to spend days writing a judgment on top of all the other work seems to be ill thought-out. I agree that there is a degree of naivety to think that a Circuit Court judge could do that. Serious consideration needs to be given to resourcing the High Court. If it seems there are shortcomings in the High Court in dealing with judicial review, those need to be sorted out, rather than putting it down to the Circuit Courts and adding to all the work they already have.

Senator Michael McDowell: Every High Court judge has a judicial researcher attached to him or her. There is none of that in the Circuit Court.

An Cathaoirleach: We will allow Senator McDowell in for a second round. I call Senator Rabbitte.

Senator Anne Rabbitte: I thank the witnesses for their comprehensive opening commentary and presentations. Many of the questions have been asked, with the more detailed legal questions put already. I am glad they have been asked and answered in depth. As the witnesses know, I am from Galway. Judicial review seem to be the second term in the dictionary down in Galway, arising from what it is called the Galway ring road. We are living with that story continuously. Mr. Clarke referred to Bill doing a lot of mopping up. While we are talking about judicial review, I am also conscious we are talking about people, their rights and a two-tier system. I have heard all that. At the same time, the Chair only gives me five minutes to focus. I am very conscious that this involves human rights as well as the right to deliver critical infrastructure, which is so badly needed.

I read the witnesses' opening statements. If this Bill comes to pass, will infrastructure be delivered at a quicker pace? I know it might but does it reassure people in Galway or any other part of the country? When we look at the flooding in Enniscorthy, there was a judicial review issue there. We closed down the Derrybrien wind farm because of a judicial review. In the middle of an energy crisis, we closed down 84 turbines of a good or medium height on a hill. Will this legislation address the delivery of critical infrastructure? I will address the human rights elements shortly.

Mr. Conor O'Connell: I do not think anyone can answer with 100% certainty. I am not a legal expert. I am sure the barristers in attendance could find a hole in any legislation, which could possibly delay any piece of infrastructure. We cannot take the Bill in isolation. We have to take it as part of a matrix of solutions to the delivery of infrastructure. These include funding, streamlining the planning and judicial review systems, and the implementation of the critical infrastructure Bill, which will be published shortly. That Bill will hopefully include the Galway ring road as a critical piece of infrastructure. In 2022, the development Act was introduced for critical pieces of electricity infrastructure.

It is those pieces in the jigsaw that will definitely help to deliver infrastructure quicker in Ireland. We cannot continue going the way we are at the moment-----

Senator Anne Rabbitte: Absolutely.

Mr. Conor O'Connell: -----where it takes years and years, and we have to go back again and again for critical projects to enable the delivery of critical infrastructure, whether this is housing, hospitals, schools or whatever.

Senator Anne Rabbitte: It is important that I have heard clearly the situation in respect of the High Court versus the Circuit Court in terms of where the expertise sits and should continue to sit. I will not speak further about that. I heard Ms Mannion speak about the two-tier approach. Would she like to expand on that? It is important for us to understand very clearly what she means.

Ms Katie Mannion: I was mentioning dealing with other types of cases outside immigration and asylum in the High Court, in the context of dealing with asylum- or immigration-related cases in the Circuit Court. The limitations on the appeal from the Circuit Court to the High Court have been mentioned. The limitations around that could make it extremely difficult for anybody to get that permission to appeal a decision of the Circuit Court to the High Court.

To make it more real, the types of cases and decisions we are thinking about include decisions on international protection that are refused. We must bear in mind, as we discussed, that this will be in a truncated system. All those decisions will be made very quickly. The longest time will be six months, so there is a real pressure on the whole system. Those decisions concern whether persons are to be recognised as refugees, granted subsidiary protection, have permission to live in Ireland or be at risk of *refoulement* back to a country where their lives might be at risk. Decisions around family reunification are also involved, where families have been separated by borders. In the last few years, we have dealt with a lot of situations of international protection applicants who have been homeless on the streets where the State has failed. These are the types of fundamentally important issues being dealt with, and it is so important that people in those situations, who are so vulnerable, have access to justice and effective remedies.

Senator Anne Rabbitte: Could I have 30 seconds?

An Cathaoirleach: Dr. Kelleher wants to come in to address that point.

Dr. Orla Kelleher: I will follow up on the point made about the flooding specifically. The civil reform Bill will be layered on top of the planning Act and the climate Act. From my perspective, it is concerning that we have these legally binding targets that are necessary to combat climate change and studies have already been done to show that these flooding incidents were made more likely due to climate change. We have these legally binding targets, but we are not meeting them. I do not think there is any evidence for why we should then be restricting access to the courts, where that has been a particularly important avenue for ensuring compliance with the climate Act.

Another point I want to make concerns the nature conservation perspective. The National Parks and Wildlife Service, NPWS, published information regarding the status of EU-protected habitats and sites in Ireland in 2024, and it was found that already 90% of EU-protected sites are in an unfavourable conservation status and over 50% are in a deteriorating status.

Senator Anne Rabbitte: One of my pet projects is the special areas of conservation, SACs. When the concept came into EU law at the time, there were only supposed to be 31. We had

53. We have ended up with 47, so I understand exactly why it would be deemed unfavourable at this point in time.

An Cathaoirleach: I thank Senator Rabbitte. I just have a couple of points I would like to raise before I invite Senator McCormack to contribute. The committee received an important written submission from Professor Paul Daly, a leading scholar of administrative law. He would be considered an expert on judicial reviews. His submission raised an alarm bell with the committee because, essentially, he is saying that as with promises made on previous planning law reform and judicial review reform, the actual outworking of this legislation could, in fact, be more litigation, more court cases and further delays.

The questions that I think would benefit from analysis include what precisely has been driving the increase in judicial review applications, if, indeed, there has been a substantial increase, what other, alternative policy or procedure options could be taken to address some of the causes of the JR applications, and the extent to which the high volume of judicial reviews is driven by the lack of effective alternative oversight mechanisms. I refer to the possibility of having other areas. This aspect was dealt with by FLAC in its submission too. I will address these questions to our witnesses from the Bar Council and FLAC to get their thoughts.

Mr. Séamus Clarke: I will deal with immigration cases first. There has been a significant increase in the number of decisions handed down by the International Protection Appeals Tribunal, IPAT, in the last number of years. Appeals pending before the IPAT doubled between 2024 and 2025. In 2025, the tribunal received 14,570 appeals, compared with 8,835 in 2024. When there are more appeals, there will be more judicial reviews in relation to those appeals coming into the High Court. Essentially, we now have a double factor here because the EU pact on migration and asylum is due to take effect in June. That is again going to increase the number of persons being processed under that legislation. To add to all of that, there is going to be a new reform whereby the Circuit Court is going to be dealing with all these types of cases. Those courts will be grappling with these matters for the first time. Judges will be trying to work out how to deal with these types of cases, while the numbers are exponentially increasing year on year.

Perhaps, with an eye on what lies ahead and the number of appeals likely to come before the courts, it might have been considered by somebody that it would be better for the Circuit Court to deal with it for a number of reasons, including that costs might be lower. I do not know what the rationale behind it is, but some rationale has gone into the idea that the Circuit Court is the better place to be dealing with these types of cases. In fact, however, what is going to happen is that there is going to be a tsunami of cases being sent down to the Circuit Court, a court of local jurisdiction, to deal with issues that are really issues of national jurisdiction. My view is that this is likely to lead to challenges to the constitutionality of it happening in the first place, if it proceeds as it is. There will be lots more litigation and perhaps cases then left waiting to find out what the lead case on constitutionality gives as an answer. In that particular area, there is potentially a calamitous road ahead if the legislation proceeds as currently drafted.

An Cathaoirleach: I thank Mr. Clarke for that.

Ms Eilis Barry: Judicial review is one of the least researched areas of law, and this is a real issue. There is a real need for research to be carried out into the numbers of judicial reviews and bad decision-making, and to what extent judicial reviews are caused by bad decision-

making. To go back to the numbers, lots of academics are disputing the figures. We need actual evidence on this as to what the position is in relation to the numbers because we can see they have been interpreted by different people in different ways.

From FLAC's perspective, the biggest issue in terms of judicial review and why we have to engage in it is the quality of the decision-making, particularly in areas like social welfare and access to social housing and emergency accommodation. The Comptroller and Auditor General has commented on how successful people are in their appeals in social welfare cases and the length of time it takes for appeals to happen, and the failure of the impact of positive appeals to work its way back to decisions so that we do not see improved decision-making by deciding officers in situations where they should be looking for applicants to submit relevant information. This means things just continue on as before, with no actual improvement to the quality of the decision-making.

We also see this in the areas of access to emergency accommodation and homelessness. Again and again, local authorities will apply a circular or a policy that has no basis in law and that denies people access to emergency accommodation or supports. We will then challenge that on their behalf and the case will be settled, but the local authority will continue to apply the practice it has conceded on in the settlement. Improving decision-making is a vital part of this process. If we can improve decision-making, that will hugely reduce the need for judicial reviews in the first place.

Dr. Orla Kelleher: I will be brief. I echo FLAC's comments on improving the decision-making process.

The second point I wanted to emphasise on the environmental side, which I recommended in my written statement, was a particular practical step. The Chair asked about preventing judicial review, and that outworking point would be to seek advice in advance from the Aarhus Convention compliance committee about the compatibility of the general scheme of the civil reform Bill with the Aarhus Convention before it progresses. My suggestion is that would help to tease out compliance issues in advance but also foster greater public buy-in from civil society about the reforms.

An Cathaoirleach: I thank Dr. Kelleher. Senator McCormack is very welcome to the committee.

Senator Maria McCormack: I thank the Cathaoirleach. I also thank everybody for coming in. I have learned so much while I am here but I have yet to hear anything positive. I am quite a solutions-focused person so I would love to try to see how we could look at this or if we could go back and see what steps could be in place to make this better. It is clear we have a bit of a problem with the number of reviews. What steps do the witnesses think could be put in place? It seems like going back to the Circuit Court is a complete nightmare. It looks like you would be double-jobbing then and you would end up back in the High Court. There are all sorts of human rights issues. To quote Mr. Clarke, there would be challenges to constitutionality or a calamitous road ahead. It looks like this will be a disaster if it does come in.

Is there anything the witnesses see that could be put in place to deal with this or ways in which the High Court system could keep these cases there? I refer to the solutions Ms Barry from FLAC came up with to improve the decision-making process in appeals and such like. Has anybody else any solutions for better ways of doing this?

Mr. Séamus Clarke: One simple solution is that there needs to be better judicial resourcing at the High Court level. Judges in the High Court are used to dealing with these types of cases, whether it be planning, immigration or asylum cases. It has a very good track record of getting them right. In the context of judicial resourcing at that level, it seems that if there are any particular difficulties perceived in relation to the way cases are decided, then it should be dealt with at the High Court level rather than going on new ground and devolving a load of work to the Circuit Court and its judges. Judicial resourcing is one immediate thing that could be done. That is coming in any event. It is in the pipeline but perhaps more judicial resourcing at the High Court level might be required. I do not know if anyone else has any other comments.

Ms Katie Mannion: Another area, certainly in immigration, is delays. There are a lot of judicial review *mandamus* cases because of the long delay and people are waiting for a decision on family reunification. That is another area of resourcing for the Department of justice so that people are issued with decisions in a more timely fashion and are not forced into a situation where they have no choice but to issue judicial review proceedings.

Another area is general immigration law. While in international protection we have the International Protection Appeals Tribunal and there will be another appeal mechanism, in general immigration and when it comes to issues in respect of visa applications and decisions, there is no independent appeal mechanism. When a final decision issues, there might be an opportunity of an internal review but there is no independent appeal mechanism in the area of general immigration. That would be an important fix that the Immigrant Council of Ireland has been calling for for 20 years.

Senator Maria McCormack: It makes total sense.

Ms Eilis Barry: I agree with the need to resource the courts because they are a vital social service. Other than the planning courts, it takes over a year for a judicial review to be heard. That is excessive. At the moment, you have to apply for permission to bring a case. That involves one hearing. It could involve two hearings if you are told to put the other side on notice. Then you will have your third hearing of the case itself. One way would be to get rid of looking for permission to bring the case. That should speed things up. If the courts are then resourced properly in order that they can hear judicial reviews and make their judgments promptly, that should also improve things considerably.

Ms Joan Crawford: It is not only a question of resourcing the courts. It is not just about extra judges but about all the facilities that need to go with that. From the point of view of the Legal Aid Board and our statutory obligations, there is also a resourcing issue for us in being able to represent people.

Last year in particular, we had 15 judicial reviews in respect of people involved in childcare law, which is where the State is taking children into care. They are probably our most vulnerable clients. It is sometimes not as easy to get instructions from people who are vulnerable. They have other difficulties that can arise. For us, putting that work into the Circuit Court, as everybody has stated, is absolutely not acceptable at all. It is just not the right forum. There is other legislation where other matters in family law are already being devolved to the lower courts. There is already a breaking system there and putting such important work into the Circuit Court in that system is just not going to work.

Ms Bairbre O'Neill: In regard to a possible legislative solution directed at the production of documents and general case management reforms, there is a body of work available to the committee and the Minister through the Kelly report, which took two years to produce. It is evidence-based, looks at the comparative position in a host of other jurisdictions, and provides a roadmap for how to go about having good solutions. The Commercial Litigation Association of Ireland has also put forward some suggestions to the committee that could be looked at. There is an opportunity here to achieve efficiencies in cost reduction but what is in the general scheme is at risk of doing the opposite.

An Cathaoirleach: Following on from Ms Barry's point, do we have a proportion, in percentage terms, of JR applications that do not receive leave to proceed?

Mr. Séamus Clarke: The bar for getting across leave stage at judicial review is a very low bar. In fact, it would probably be the opposite. There would be very few cases that would not get across the bar.

An Cathaoirleach: That is the point, I think, that Ms Barry was making.

Mr. Séamus Clarke: A lot of cases do get across the bar.

I might make one very brief point to do with civil legal aid because I know the Chair was at the Bar Council civil legal aid conference. One of the things happening in this Bill is that it is shrinking access to the courts. What needs to take place is what Mr. Justice Frank Clarke's report on civil legal aid actually means, which is that people should have more access to the courts through the civil legal aid system being reformed. That is something I think all of us here share, that there is a need to tackle that legislation and bring in real reform of civil legal aid to assist people in having more access to the courts rather than the other way around and shrinking access to the courts through the civil reform Bill.

An Cathaoirleach: I thank Mr. Clarke. I need to leave. Will Deputy Ward sit in the Chair?

Deputy Mark Ward: Yes.

An Cathaoirleach: I suggest we have a second round of interactions followed by a final short round with Department officials if members have points of clarification.

Deputy Mark Ward took the Chair.

Deputy Gary Gannon: Thanks again to our witnesses. It has been said quite frequently here that the measure in this Bill will simply shift the pressure from the system rather than resolve the pressure that is already on the system. In the witnesses' experience of representing legally aided clients, is an eight-week timeline workable in practice?

Ms Joan Crawford: I believe it is not, particularly because, as I said, some of our clients would be vulnerable. It is extremely difficult to get instructions. Some people do not have English as their first language, so we have to bring in interpreters, and that takes time. It takes time, with the system that is there at the moment, even to find enough interpreters to be available. We also have clients who come to us, sometimes very late in the day and sometimes very near the expiry of a statutory deadline because they do not understand the legal aid system or the legal system. Sometimes when we get people in, we are already up against difficult time limits to prepare the paperwork for them. Putting us on an eight-week time limit is only going to exacerbate that situation. It is just not giving the solicitors involved enough time to get

proper instructions and to do a proper job, which is what every solicitor wishes to do for a client.

Ms Eilis Barry: I agree with that. Very often, our clients might need to bring a freedom of information application. It is supposed to take only a month but it could take way longer than that. There might be a need to get medical reports from consultants. We have experienced, under the Equal Status Act, an obligation to send a written notification within eight weeks. Many of our clients simply fail that test. They do not come. They cannot get legal advice quickly enough and they may come to us when that time limit has expired. We are finding the three-month limit, as it is, quite difficult.

We have to persuade our colleagues in the Bar to take on cases on a no foal, no fee basis because of the lack of legal aid. Often, they run the risk that there will not be any foal and they will not get paid, so there are lots of barriers as it is. The difficulties that arise with the three-month time limit cannot be discounted.

Deputy Gary Gannon: Who should we assist? To me this Bill seems to be creating a two-tier legal system. Who will be shut out of the system if we pass this Bill?

Ms Eilis Barry: Our view is that because of the time limit and the new threshold for getting leave to apply, people will be shut out who have complex cases, such as cases involving complex points of law or EU law, particularly around access to services such as social welfare or housing or cases relating to homelessness. The combination of the tougher leave to apply provisions and the reduced time limit will make it virtually impossible for them to get legal advice in a timely fashion and satisfy the court, on the onus of proof, that their case is likely to succeed. That will be very difficult. The people who will be shut out are the likes of John O'Meara, who took the case about access to the widower's pension. Many TDs and Senators congratulated him on the stance he took, but we believe if he were to take the case under the new scheme, he would find it very difficult to get leave to bring it. It is that sort of case. Also, cases about access to July provision, where children with disabilities took cases under judicial review to have access to educational support during the holidays. are the sorts of cases we believe will be almost impossible to bring.

Deputy Gary Gannon: Poorer people, vulnerable people, migrant people and people looking to vindicate basic rights with the State will all effectively be shut out.

Ms Joan Crawford: The other point is that we are regulated to the extent we have to financially assess people. We also have a merits test. All those are administrative functions we have to perform. They eat into a little time as well when people come in to us. It is not as straightforward as people coming in and us taking the case straight away. We have a duty to do that work first. That will eat into the time. People may not have the documentation we require to do that at the outset and it takes time to acquire the documentation. The people who will miss out will be the very people who need access to justice, who have real needs that affect their daily lives. They are the people we are concerned about.

Senator Michael McDowell: I will try to end on a positive note. It occurs to me that this draft Bill needs to go back to the drawing board for many reasons. It is naïve. I am thinking of the CIF, things like Galway Circular Road, the north Dublin main drainage scheme, the Shannon-Dublin water mains project and such issues. We are the only country in western Europe that has vested in a single institution, An Coimisiún Pleanála, the function of

determining whether I should be allowed to have a bicycle shelter in my front garden, if I am having a row with Dublin City Council, whether my neighbour's extension is one foot too high, whether any compulsory purchase order, CPO, of any kind can be ratified and whether offshore wind farms are available or Dublin MetroLink should be built. We are the only country in western Europe that has centred in one body all these functions and it seems to me that issues such as whether there should be apartment block in Milltown or Killiney in Dublin and whether bats are involved should not have to join a queue behind MetroLink and all the rest.

This brings me to my point, which is that the Planning and Development Act 2024 is a disastrous Act. It will not speed up anything and we now realise that, with the complexities of our planning system, we have centralised everything. If we wanted, we could do what the Free State Government did in 1924, with its Act of Parliament for the Shannon hydroelectric system. We could have an Act of Parliament to authorise the Dublin main drainage system, the Shannon-Dublin project or other projects. The onus could be put on people who want to challenge those projects to say the Oireachtas, in authorising this measure, was acting unconstitutionally. That would solve a lot of the major problems.

The real issue is that the figures do not back up the proposition that judicial review has ruined the country, but the public do see, in the middle of a housing crisis, that an argument about bats in Killiney is absurd. They realise that and want remedies to deal with it. We should not be pessimistic, but bringing this to the Circuit Court, as the Bill does, is a horrific idea. Tired Circuit Court judges will come to the Bench at 2 p.m. and suddenly be confronted with a four-day case with piles of documents demanding a 100-page judgment. This will not work. By the way, most Circuit Court judges did not apply for that kind of job. They applied for a job where they could do criminal work and landlord and tenant work and they had little or no homework to do. None of them are required to write 100-page judgments and it is naïve of the Department of justice to think that will happen. I will reiterate the point I made earlier. High Court judges have libraries, researchers and all sort of things that can speed up the process available to them. God help a Circuit Court judge who tries to run a circuit and gets one of these things thrown at them. They will not give judgments. They will delay judgment.

An Cathaoirleach Gníomhach (Deputy Mark Ward): I have one or two questions for Ms Barry and FLAC. It was mentioned that local authorities settle judicial reviews and then go back to the same practices that caused the judicial review to be brought in the first place. Could FLAC give an example of that?

Mr. Christopher Bowes: One we come across quite often relates to access to emergency accommodation where people apply a local connection test, which comes from the separate social housing legislation and not the 1988 legislation that deals with the definition of homelessness and when emergency accommodation can be provided. FLAC and other independent law centres, such as Mercy Law Resource Centre, repeatedly see cases where those local connection tests are applied from the social housing legislation in the context of emergency accommodation and homelessness. It is important to highlight that there is no social housing or homelessness tribunal or accessible tribunal where people can appeal a decision that has been made. It is in those circumstances that people have no choice but to take the risk of taking a High Court judicial review about a decision that has been made about social housing or emergency accommodation. There is the issue of the decision-making to begin with, the

lack of a tribunal and then people face all the barriers of the judicial review process to advance their cases.

An Cathaoirleach Gníomhach (Deputy Mark Ward): Mr. Bowes mentioned homelessness. My local authority is South Dublin County Council and part of the form involves people having to have a connection of some sort to the area, whether that is family or other reasons. Mr. Bowes said that is what people are winning judicial reviews on.

Mr. Christopher Bowes: That is on the homelessness side. There is separate legislation and a separate process for access to social housing, for which people apply to be on the housing list. An issue we see quite often in that area is the application of a non-legislative circular which supposedly sets out the conditions EU and non-EU nationals have to meet to be eligible for social housing in Ireland. We have repeatedly seen this non-legislative circular being applied as though it were legislation. It is based on outdated EU legislation and we have consistently seen cases where clients of our Roma clinic see that circular applied. The repeated experience of those cases is that local authorities are not willing to defend them. They settle the cases, but continue to apply the circular later, even though they are not willing to defend its application when faced with the prospect of a judicial review case.

An Cathaoirleach Gníomhach (Deputy Mark Ward): Ms Barry said there were six bullet point questions she asked the Minister. Has she received any answers?

Ms Eilis Barry: No, not yet.

An Cathaoirleach Gníomhach (Deputy Mark Ward): Would the Department officials like to make any remarks in respect of what they heard here today?

Mr. Brien Henderson: I was not prepared to give a general remark. I will make two points. One is that a lot of the focus here has been on judicial review rather than the wider areas. To be clear, the Department considers judicial review to be an essential mechanism for the protection of the rights of the people of the country. We are a nation of rule of law. Part of that means we must be able to hold the State to account. The judicial review process is to enable people who have suffered harm as a result of an unlawful act of the State to be able to proceed and get an effective remedy. Everything in the Bill here is designed to protect that.

The second element is that there has been quite a degree of comment on the Circuit Court proposals. The policy objectives there, as is the same with a lot of the other elements here, are to lower costs, improve access to justice and to provide greater efficiencies. The Minister does, however, consider that these objectives can now be better achieved through the reform type of process that is being proposed. As such, the Minister has directed that the proposals to expand the jurisdiction of the Circuit Court are to be removed from the Bill.

An Cathaoirleach Gníomhach (Deputy Mark Ward): Do members have any questions they want to ask the Department? I am mindful that the Department is not the sponsor of the Bill. The officials are here to assist the committee by providing clarification on the Bill and they cannot be cross-examined.

Senator Michael McDowell: I welcome that flexibility on the part of the Minister and the Department. That is very welcome.

An Cathaoirleach Gníomhach (Deputy Mark Ward): We are going to suspend now for ten minutes. I thank all the witnesses for coming in and for taking part in a very informative debate.

Sitting suspended at 4.44 p.m. and resumed at 4.55 p.m.

Digital Omnibus Package: Discussion

An Cathaoirleach Gníomhach (Deputy Mark Ward): The purpose of this part of the meeting is to engage with a number of stakeholders on submissions received in relation to the digital omnibus package. On behalf of the committee I welcome the following witnesses to the meeting. Joining us via MS Teams we have Dr. Itxaso Domínguez de Olazábal, who is a policy expert from European Digital Rights, and Mx. Blue Duangdjai Tiyavorabun, who is also a policy adviser for European Digital Rights. Joining us here is Dr. Eileen Culloty, associate professor from the school of communications at DCU and who is also deputy director at the DCU institute for future media, democracy and society. We also have Dr. Tetyana Lokot, who is associate professor in digital media and society from the school of communications. From DIGITALEUROPE we have Mr. Alberto Di Felice, who is its policy and legal counsel. Finally, we have Dr. Johnny Ryan who is director of enforce at the Irish Council for Civil Liberties.

The format of the meeting is that I will invite each organisation in turn to make an opening statement to a maximum of three minutes. I will then call on members of the committee, in the order they indicate to me, to put their questions.

Before I invite opening statements, I wish to explain there are some limitations to parliamentary privilege and the practice of the Houses with regard to reference witnesses may make to other persons in their evidence.

I invite Dr. Itxaso Domínquez de Olazábal and Mx. Blue Duangdjai Tiyavorabun to make their opening statements.

Mx. Blue Duangdjai Tiyavorabun: Thank you. I will take the floor first and then my colleague will join.

I thank the Chair and members of the committee for the invitation to speak. The AI and digital omnibus package is simultaneously amending three laws that, taken together, took more than ten years to negotiate, and with the current timeline, specifically looking at the AI omnibus as precedent, it is taking mere months to significantly change the spirit of the law, the structure of the law, and threaten to leave people without protections from harm.

In both process and substance, this proposal raises very serious concerns for us. Starting with process, to create good laws, it is of the utmost importance that due diligence is exercised and that any reform affecting people's rights follows a transparent, evidence-based, inclusive process which is consistent with the treaties. A criterion, which this omnibus and the prior nine likely do not meet. was confirmed by the European Ombudswoman, who recently found maladministration in the preparation of prior omnibus initiatives. We see these issues also with the AI omnibus, a reform that requires full transparency and rigorous fundamental rights and environmental assessments. None of these elements are present.

Additionally, the gravity of these changes cannot be understated. Both GDPR and e-privacy are foundational laws of the digital rule book. Hence, subsequent laws were created with the

GDPR and e-privacy in mind, such as the AI Act, which entire logic of high-risk AI systems rests on the foundation built by laws such as GDPR. Therefore, changing the foundation law in the era of big data needs to be done with the utmost due diligence and care as even mapping the impact of this change, for example, of a definition throughout the whole digital *acquis* and beyond and the subsequent impact on people's lives, is a monumental task. This underlines that a supposedly simple change such as definition, for example, threatens the rights of people in the EU in a way that cannot easily be undone.

Dr. Itxaso Domínguez de Olazábal: The digital omnibus comes at a very sensitive moment. Across Europe, there is growing concern about whether the digital rule book is being effectively enforced. That concern is not limited to one member state, but Ireland is central to how this system works in practice. Ireland's reputation as a human rights champion is, therefore, at stake. Many of us in the digital rights community across Europe have been deeply concerned by how the Data Protection Commission has handled enforcement and the consequences this has had across Europe for the human rights of individuals and collectives. This is happening just as Ireland prepares to take on the Council Presidency. That mean setting priorities and signalling what kind of digital framework the EU stands for.

In that context, weakening the rules instead of strengthening enforcement risks undermining trust in the whole system.

On substance, the issues with the digital omnibus package when it comes to GDPR and privacy are clear. Changing the definition of personal data risks fragmentation, which means people may have rights in one context but may not have the same rights in another. More data will be used to train and develop AI systems without people knowing about it, and even when they do, it would be very difficult to challenge. Loosening rules on access to devices increases tracking in environments where people are already constantly monitored. Reducing transparency and access rights makes it harder to detect and challenge abuses for individuals and organisations. It will become easier for systems to make decisions about people’s opportunities, such as jobs or services, without meaningful human oversight.

These are not just small technical changes, which is how the digital omnibus has been sold to us. They reshape how the system works and move us towards a model where companies assess their own compliance. Self-regulation has never worked. At the same time, there is a shocking cognitive dissonance. We hear of strong commitments to protect children online, yet this proposal makes it easier to profile and influence people, including children. These directions do not align.

There is a broader risk. A "move fast and break things" logic that is typical to big tech is entering EU digital policy-making, but here what can break are fundamental rights. Once data is processed and reused at scale, the harm is very difficult to undo. This translates into harm of fundamental rights. This is not a simplification. It is a political choice about deregulation, about the level of protection we maintain, and about the credibility of the EU’s digital framework.

I thank members and look forward to the discussion.

An Cathaoirleach Gníomhach (Deputy Mark Ward): I thank Dr. Domínguez de Olazábal. I now call Dr. Tetyana Lokot.

Dr. Tetyana Lokot: I thank the members of the committee for having us. Dr. Eileen Culloty and I will speak on behalf of DCU's Institute for Future Media, Democracy and Society, a leading research centre focusing on the digital transformation of media, democracy, and society.

Based on our work on media literacy, digital rights and platform regulation, we find that the substantial changes proposed by the digital omnibus package represent a significant weakening of safeguards designed to protect the public, secure personal data and govern AI systems. The justification for the digital omnibus is to simplify complex rules and increase European competitiveness. However, the omnibus introduces complexity instead of clarity and consistent enforcement for the disproportionately burdened small and medium enterprises that comply with existing EU rules. In fact, the key benefactors of the digital omnibus appear to be the major, mostly American, tech companies, which have lobbied aggressively for deregulation.

We are particularly concerned that the omnibus package and its proposals weaken the definition of personal data under GDPR, moving from an objective assessment to a controller-specific interpretation, which restricts the possibility for data subjects to exercise their right to gain access to their own data. These measures undermine legal certainty and weaken personal data protections for individuals. We find that the package also dilutes existing mechanisms for external scrutiny and oversight of AI development systems. It allows developers to rely on so-called legitimate interest rather than consent when processing personal data for AI training. It also allows for special category data to remain within AI training datasets where companies consider removal to be too difficult, with little detail as to how such an assessment would be carried out. The package also delays certain obligations for high-risk AI systems and removes the requirement for public registration of some of these systems. We believe that these changes reduce transparency and risk further normalising the broad use of personal data without sufficiently robust necessity and proportionality checks.

By broadening the definition of research activities under the GDPR to include a wider range of industrial and commercial activities, the omnibus blurs the boundary between commercial activity and scientific research that serves a clear public interest.

The decision to downgrade AI literacy from a direct legal duty on AI providers and deployers to a matter of encouragement by the Commission and member states risks hollowing out existing expectations around meaningful explanation and accountability. Without clear legal obligations, and given the distinct lack of financial support for bodies capable of promoting AI and digital literacy at national level, commitments to improving public understanding of AI systems risk remaining largely aspirational. While public demand for platform accountability is growing, the EU seems to be pursuing a deregulation agenda with little evidence to support it.

Notably, the Commission did not conduct a dedicated rights impact assessment of the omnibus. This is surprising, as the very point of GDPR and the e-privacy framework is the protection of fundamental rights. Instead, such regulatory streamlining risks further restricting the possibilities of data subjects to exercise their rights.

I thank the members for their attention.

Deputy Matt Carthy resumed the Chair.

An Cathaoirleach: I thank Dr. Lokot. I also thank Deputy Ward for stepping in as Chair. Our next speaker is from DigitalEurope, Mr. Alberto Di Felice.

Mr. Alberto Di Felice: I thank the Cathaoirleach and members of the committee for the invitation to appear today on behalf of DigitalEurope. DigitalEurope is the broadest coalition of Europe's digital technology industry. We have national trade associations, including Technology Ireland, which is part of IBEC, as well as global companies across the full digital ecosystem.

Much of the discussion around the digital omnibus to date has focused on the GDPR, and the other testimonies so far have confirmed that. That is understandable. There are questions around rights, trust and legal certainty that concern the GDPR. On the GDPR, we think that the Commission has done more good than bad and that some of the proposed clarifications are genuinely useful. There is a risk that, in the noise around them, we would miss an opportunity to make the GDPR more predictable. In particular, clarifying what counts as anonymous data and confirming that security and research can rely on the legitimate interest legal basis are sensible steps that to a large extent confirm existing case law and the more progressive guidance from the European Data Protection Board, EDPB. For us, the GDPR remains a fit-for-purpose framework. It does not need to be reopened wholesale. We consider most of the changes brought forward by the Commission as being targeted clarifications that can be improved.

On e-privacy, we see that there are a lot of structural problems that remain. The proposal puts in place a separate, consent-centred regime for terminal equipment data. That is not just about cookies and advertising, which are mostly addressed in public discourse around these changes. It affects a much broader range of device and machine data, including in industrial environments. A lot of our members are industrial companies from across a number of manufacturing sectors. The only clean solution that we see is to bring all terminal equipment data fully under the GDPR's legal bases rather than continuing with a parallel system that creates overlaps and actually discourages responsible data use.

If the debate stops at privacy, we will miss a very interesting and important part of the debate, which is very heavy on business models and compliance for Europe's industrial and business ecosystem, the other parts of the digital omnibus. The Data Act and cyber rules are also part of the same package. On the Data Act, consolidation of several laws is welcome, and tightening business-to-government access to genuine public emergencies is also positive, but the core problem remains untouched. There are mandatory, horizontal data-sharing obligations and ill-fitting cloud-switching rules that cut directly into how European companies build data-driven products and services. For sectors such as manufacturing, health, energy and mobility, this goes directly to investment, product design, trade secrets and Europe's ability to compete in AI-enabled markets.

On cyber, a single entry point for reporting is useful but a new portal is not simplification if companies still face multiple thresholds, multiple templates and multiple timelines for reporting. The real need is one portal, one core template and convergence around a workable reporting standard rather than a cascade of early warnings and follow-up reports that pull resources away from actually fixing incidents. The Cyber Resilience Act, which is a key piece of compliance for devices and software, still needs substantive adjustment now and not in later omnibus proposals.

Our message today is largely positive but very firm. The Commission has started the right conversation. It is not perfect but the final omnibus must go much further. If known problems are deferred to future fitness checks and future packages, the momentum for real simplification will be lost at exactly the wrong time for European competitiveness.

An Cathaoirleach: I thank Mr. Di Felice. Our final speaker is Dr. Johnny Ryan from the Irish Council for Civil Liberties, ICCL.

Dr. Johnny Ryan: I thank the Cathaoirleach, Deputies and Senators. The committee is right to scrutinise what has been misrepresented by the Commission as a mere simplification. That is not what is before the committee. If we believe, and there are many who do, that AI will displace large numbers of workers and that it will up-end our understanding of society, then diligent monitoring of data and diligent scrutiny of the laws of data are all the more important.

The ICCL therefore commends the committee. It is good that it is having this hearing. I hope it will produce a report.

I have spoken to senior European Commission officials and people in the chancelleries in several of the capitals pushing this omnibus agenda. I sympathise with their objective, which is to boost European competitiveness. Before I joined this NGO, I worked in industry for many years. I understand the need. There is a problem, however. Europe has many competitiveness problems, but as I wrote in *The Guardian* in November and again in February, the GDPR, if only it were applied by Ireland, is not among those problems. In fact, it is the solution; we are the problem.

There is a problem with how we regulate data and with our relationship to it. I will present a diagnosis to the committee and suggest three things that it could perhaps factor into its deliberations. Here is the diagnosis, and this committee already produced it in 2021. I will quote from the committee's 2021 report, which states:

> Of serious concern to the committee were reports of the particularly slow progress of some cases being handled by the DPC.
>
> [...]
>
> It is now more than five years since the GDPR went into effect, and more than three years since it was applied. The Committee fears that citizens' fundamental rights are in peril.

Half a decade later, those concerns, which the committee's predecessors had, remain live. They are simply more urgent. For all of Europe, it is Ireland that has the responsibility of supervising TikTok, Google, Snapchat, Microsoft and so on. At a meeting of the Committee on Artificial Intelligence earlier this month, the chair of the DPC admitted that it has never completed an inquiry into a company called Google. When we do not complete inquiries into Google, it stops every other European country acting. That is because we are in the way. This should give the committee a sense of where the problem is, not just in the area of data protection law but also in the areas of competitiveness and AI.

This is not for want of resources. Remember, the DPC has almost 300 staff and a budget of €33 million. It is asking for €10 million more. That should be considered carefully. It is also worth reflecting on comments made by Sarah Wynn-Williams, who wrote *Careless People*. A former Meta executive, Ms Wynn-Williams stated that the industry looks upon the DPC as its

lapdog. We have a problem here. I will not read out the section from the Oireachtas banking inquiry's report, but members will recall what it said, namely was that our financial regulator, in the disastrous years leading up to 2008, relied on moral suasion and protracted correspondence, sometimes for more than a decade, and would not use its enforcement powers. That is exactly what we see with the DPC, and the same level of risk is building up now.

Before I get to the recommendations, which I will talk about briefly, let me say that we have obtained from the Public Appointments Service documentation, which we can share with the committee, relating to the process to recruit the latest Data Protection Commissioner. It states clearly that the criteria for selecting our enforcer were senior management criteria for normal civil servants. They were not about expertise or being an enforcer. We carried out no assessment of whether this person had - and I am not suggesting she had - stock options from her previous employer in tech, nor whether she had any enduring contractual obligations not to disparage. This comes around the same time - it is very recent, in the last short period - as the previous holder of the DPC leadership joined the firm that represents Meta in ongoing cases against the DPC. We clearly have a problem.

An Cathaoirleach: I remind the speaker to be careful about identifying individuals.

Dr. Johnny Ryan: Absolutely. I am not going beyond anything that is in the written statement. We have a situation that is not one of the gamekeeper turning poacher, because we do not do gamekeepers. We have a real problem, and the justice committee would be well served, and we would all be well served, by looking at three things. One is that this omnibus tackles the wrong problem. Second, it would be useful to finally have hearings on how it is possible that we have yet to complete a single inquiry into a company like Google and, I suspect, others of its size. We need a report on that. This will be a crisis. Third, I suggest that we have a full set of hearings on the general question of why Ireland can not recruit enforcers. There is something wrong with our process of recruitment. We do not just have a revolving door problem; we have a problem with the people who got into particular jobs in the first place as a result of how we specify roles and who is involved in the process of recruitment.

An Cathaoirleach: I thank Dr. Ryan. I invite members to indicate and suggest we have a first round of five minutes each.

Senator Lynn Ruane: I have two questions. Maybe Dr. Culloty and Dr. Lokot could answer the first one. I am sure others may have contributions to make. In the current GDPR legislation, there are special exemptions for things that are in the public interest. I want to understand in a bit more detail what is happening with this omnibus Bill in the context of those exemptions when it comes to the training of AI systems. Will the witnesses speak a little more about what the omnibus does to those types of protections, especially as it places the burden on individuals to prove that their data was used inappropriately rather than having the in-built protections that exist currently?

Dr. Eileen Culloty: I will go first and then pass over to Dr. Lokot. Building on what the Senator said, it is important to see that the changes to the GDPR are not a clarification. That is a massive simplification of what they are. They are fundamentally redefining how the GDPR works and how data and personal data are defined. It makes it much more subjective. If data controllers are allowed to decide whether something is personal data, it is no longer an objective decision, which it currently is, and that inherently ends in a bizarre scenario where, with the

same piece of data, one organisation might decide it is personal data and afford the rights that go with that, and another organisation might decide it is not. In those circumstances, it will be entirely up to individuals to know it is personal data and that they should fight the decision.

Dr. Tetyana Lokot: Specifically in respect of the training and development of AI systems, a lot of the changes proposed in the omnibus focus on allowing developers to define, for instance, what constitutes legitimate interest and what constitutes data they require to train their systems or data they say could be difficult to remove or isolate in their training data sets. The onus of defining what constitutes these types of data is entirely on the companies. That really undermines the rights of the data subjects because it takes away a lot of their agency, because these decisions might differ from developer to developer or company to company and because no individual data subject has the right, tools or scope to check how each specific AI system is potentially using their data.

Senator Lynn Ruane: There is obviously no transparency. Individuals would not be informed, for example, that their data is being used in a particular way. They have to be able to know that.

Dr. Tetyana Lokot: No, because it is not consent based. Under legitimate interest, the users are not asked for their consent. In fact, when users try to exercise the right to gain access to their data used by a particular system, the proposed changes essentially limit their rights because they provide that if they are asking for data protection purposes, they can only ask for this data to figure out how it is used. That might not necessarily be the case and, again, it is on the individual data subjects to-----

An Cathaoirleach: Dr. Domínguez de Olazábal wants to come in.

Dr. Itxaso Domínguez de Olazábal: It is worth mentioning that it is important to understand how the right of transparency and the right of access have been undermined. It is not just about the data subject not being able to understand whether their data is being used for AI operation and training and subsequent processing. It is also important to understand how the digital omnibus is also weakening the principle of purpose limitation. Even if people go to the company and ask about their data and how it is handled, the company can consider this an abusive request. It can just say "No" or ask for money in exchange for that kind of information. We have a situation where the data subject and even the regulator have to run after the companies, which are just going to self-assess that the GDPR does not apply and they do not have to protect people for that reason.

Senator Lynn Ruane: Dr. Ryan wants to come in on this question too. Will he clarify what was meant when he said that because there has been no completion in any of the Google pieces, this means nowhere else can pursue Google because something active is in play? Is that what he meant?

Dr. Johnny Ryan: We are the lead authority because Google has its headquarters in this jurisdiction. It has its main establishment here. This means that if a French person complains to the French authority, the Commission Nationale de l'Informatique et des Libertés, CNIL, and if it is a cross-border matter affecting more Europeans than just French people, CNIL has to send that complaint to the Irish DPC, and there it shall stay interminably. Dr. Domínguez de Olazabal made a very good point. She referred to something called "purpose limitation". This is the great hope for European AI. It means that if a big business is collecting lots of data

because it runs a popular email service and a popular video service, it cannot automatically use the data it is getting from those services, great though they are, to win the AI market. The data can only be used for those specific purposes. If the digital omnibus goes through, however, that prohibition will be removed by this other concept, the legal basis called legitimate interest. It is very dangerous. The assumption is that it gives European AI a chance to compete in the market. In reality, it will make the unassailable but unlawful data lead that the-----

Senator Lynn Ruane: Basically, Europe is using and debasing the rights of individuals to be able to compete with the likes of the US, for example, which is leading in AI development.

Dr. Johnny Ryan: Yes, but ineffectively.

An Cathaoirleach: I thank Senator Ruane. We will let her back in for a second round of questions. I call Deputy Ward.

Deputy Mark Ward: I thank all the witnesses for their opening statements. I have to say that Dr. Ryan's opening remark was scathing. He linked the current lack of regulation enforcement to the similar situation in the banking industry before the last financial crisis. That is a stark statement because we know what happened then. Why does Dr. Ryan think the Data Protection Commission has not undertaken a single inquiry into Google despite repeated complaints?

Dr. Johnny Ryan: I cannot get into what individuals' motives are, but I can tell the Deputy that when I was in industry I blew the whistle to the Data Protection Commission about something in online advertising back in 2017. I then filed a formal complaint, with evidence, in 2018. Some of this material made it to the front page of the *Financial Times*. The last time the Deputy will have heard about this issue was when "Prime Time" showed the location data scandal, when people were shown moving around the Oireachtas. A lot of that came from something called real-time bidding. The DPC has been sitting on an inquiry into Google's real-time bidding system since I complained about it formally back in 2018. I do not know why it cannot produce things, but I do know that it does make Ireland a very convivial environment to operate in. It means that giant US and Chinese firms can operate with impunity in Europe. They are violating European law and we are the back door. That is how it works.

Deputy Mark Ward: Senator Ruane asked a question I intended asking on the knock-on effect on Europe. Do the same rules exist in relation to complaints being made and followed up for TikTok, Snapchat and other platforms? Has the DPC undertaken any inquiries into those companies?

Dr. Johnny Ryan: The DPC has delivered quite a few decisions on Meta, for example, and several on TikTok. The most famous one involved a very large fine of €1.2 billion against Meta. That sounds impressive but if we read paragraph 38 of the EDPB decision, in which the DPC was overruled, we will see that the DPC was pushing hard for there to be no fine at all. As per usual, it was overruled by its European counterparts.

Deputy Mark Ward: The DPC was looking for no fine whatsoever.

Dr. Johnny Ryan: Not only was it looking for no fine-----

Deputy Mark Ward: Would the money from that fine have come back into the public purse? It reminds me of the Apple tax stuff that was going on.

Dr. Johnny Ryan: The Deputy may be aware that there is an issue with the courts and their resourcing, so it is still on appeal. I am referring to the earlier session. Speaking of courts, though, we have the bizarre situation where, in January last year, the European Court of Justice delivered a decision in a case called DPC *v.* European Data Protection Board, that is, our enforcer versus all the other European authorities. The other authorities had voted to force the DPC to investigate what Meta does with people's most intimate data. The DPC had refused to do this for five years. When this was voted on, the DPC, instead of investigating Meta, sued the EDPB, that is, all of its European counterparts. In January, that case was thrown out, of course, by the European court. We are way out on our own. It is the wild west here. It is a situation where there is no sheriff and no shame.

Dr. Itxaso Domínguez de Olazábal: One of the most recent investigations from the DPC, which is the one about Grok and the nudification of women's bodies and how this has been handled throughout Europe, was also allegedly forced by the EDPB. The DPC had no intention of acting, but the EDPB forced it to act. The DPC knew it would get a gold star. It is really egregious how the DPC does not want to intervene in some of the cases where people's rights are clearly being harmed, especially in this case where we are looking at women and children. I think we do not even have to ask the reason for this. The whole GDPR and enforcement depends on the DPC acting in good faith or just delivering on its mandate. It is not doing so. Even when it is imposing fines, it is not collecting those fines. Companies keep using the system to lodge appeals and abuse the system, instead of complying with the law and respecting human rights.

An Cathaoirleach: Does Deputy Brabazon wish to contribute?

Deputy Tom Brabazon: No. I have been gazumped. Deputy Ward asked my question.

An Cathaoirleach: Fair enough. I will ask a couple of follow-on questions. What is described by the European authorities as an accelerated procedure might be described by others as a rushed procedure. What risks does doing things in this fast-tracked timeline, to use that term, create? I ask our speakers to address if any specific safeguards are missing that could very quickly, and, arguably, easily from a legislative timeframe perspective, address some of the concerns mentioned?

Mr. Alberto Di Felice: In terms of the timeline, we actually have two different timelines because two different omnibus proposals are being talking about. There is one on AI, which has been accelerated. We will probably see a final vote in the Council and Parliament in April. We are very concerned, as a business association, because we have not really had time to discuss with policymakers the changes we would have wanted. On the digital omnibus, which includes the GDPR, cyber and data, the timeline is much more dispersed. We expect there will be longer discussions, particularly because the GDPR points are very contentious between policymakers. The timeline in terms of the democratic discussion will be much longer. I understand the concerns in terms of impact assessments, but this is the nature of omnibus proposals. They are largely the result of emergency interventions that the Commission needs to put forward to fix something. In this case, they stem from a need to address competitiveness issues, and they go beyond these areas of laws.

When it comes to the fixes, there are genuine philosophical differences when it comes to interpreting effectively how broad these changes are.

If you read the opinions from the EDPB and the European Data Protection Supervisor, EDPS, you would get a better idea of what sort of problems we are talking about.

Particularly looking at those opinions, there are fixes that could fix some of the concerns that come from civil society, both when it comes to the use of legitimate interest and when it comes to the definition of personal data. I hear direct and absolutistic statements when it comes to these changes. We need to start with the fact that these changes come from a basis in case law. They start from a basis in guidance that we have seen from the EDPB and EDPS. We can discuss the merits and boundaries of what that guidance and case law say, but there is language, both in the current proposal and that we could be putting forward, to address some of the concerns whereas what I see coming from civil society is a pure rejection of addressing these areas of the GDPR.

I have spoken about other things than GDPR and data protection. I have to be very honest with everybody and say that the changes to the GDPR were not the main things that we as an industry were asking the European Commission to do in the digital omnibus. We are looking at other areas, such as rules pertaining to how data from companies needs to be shared with other companies and how companies have to comply with cybersecurity legislation.

We consider that the GDPR overall has worked. It has been cumbersome for companies across the spectrum to comply with but it does not need to be fundamentally changed. To the extent that these clarifications from the European Commission can actually be clarifications, we think they would be useful. If they cannot be done, we need to think about the other areas.

Dr. Itxaso Domínguez de Olazábal: Many industry players and others are presenting all of this debate as if civil society is absolutist and we do not understand anything that has to do with pragmatism whereas the others are more pragmatic, but nobody defines all data as personal data. That is a really bad-faith characterisation.

Of course, we are looking at the case, but how the Commission is interpreting the last ruling, which is the SRB ruling, is a very interesting codification that does not read the whole ruling and does not take into account the other precedents. When we look at case law, we already have enough indication about how GDPR needs to be applied. We do not need the Commission coming in not only changing the definition of personal data, but also self-declaring that the Commission could have the power to determine what is and is not pseudonymised data, giving itself much more power than it could ever have had when the GDPR was being negotiated.

In terms of the safeguards and timeline, what is interesting is that even the Council is acknowledging that this process is not the right process in order to reopen fundamental rights legislation, neither GDPR nor e-privacy. When you look at the draft Presidency compromise text, most of the very harmful provisions, such as the definition of personal data or automated decision-making, which should be prohibited but is now permitted under certain conditions, have been struck down. There is a framework for that. This is a digital fitness check. We need a full-on impact assessment, we need to respect the better regulation guidelines, we need democratic oversight, and we need to go article by article and not force colleges later to adopt a package deal just because that is what some companies - I am going to say "some companies" very clearly - are saying. This is not clarification; it is changing the full essence of the GDPR. We are actually looking at the definition of personal data. How is that just clarification? We need to take that all seriously because we are speaking about human rights, and if we are going

to touch fundamental rights, we need to do it the proper way and not take advantage of this omnibus and simplification package, which, like all of the nine other omnibuses we have seen, is actually deregulating people's rights and putting people's lives in danger without knowing whether there are going to be enough safeguards to protect them.

Dr. Eileen Culloty: It is easy to position industry on one side and civil society on the other and end up saying that one person's simplification is another person's deregulation, but what do we have regulation for? It is meant to be to protect the public interest, to protect democratic values and human rights. What civil society is saying is those things are being undermined.

It is entirely legitimate for business and industry to say that these things are complex and we need these to be clarified. One of the criticisms of this is which business and which industries is it actually helping. There is a legitimate question about whether this aids European SMEs or whether it primarily aids the major tech companies that lobby at European level quite extensively.

The Cathaoirleach mentioned specific measures. One very specific thing is around AI literacy. This sounds very simply, but Article 4 of the AI Act said that any company deploying AI systems should have a requirement that the employees using those systems be given basic training to understand what they are doing. If you think about the importance of human beings making moral choices and human beings as whistleblowers as well, it means people need to have a basic understanding of the tools that they are using and what the implications of those are. It is not a huge obligation to say your employees should be informed, and now it is being removed.

An Cathaoirleach: I thank the witnesses for that.

Deputy Tom Brabazon: Dr. Ryan mentioned the conviviality of the environment in Ireland. He also mentioned the example of someone in France making a complaint to their local data protection commission, service or whatever. In circumstances where the European headquarters are based here, is there a lot of frustration throughout Europe in that regard? Is that conviviality simply about encouraging more FDI into this country?

Dr. Johnny Ryan: It took a long time before Irish people were willing to accept that maybe the country was a tax haven. It started with one academic in Trinity, who was a lone voice for a while. The reality is we appear to be a tax haven again, which is a testament to our innovative capacity, and we are also a digital haven, and there are more and more people in Brussels who see those two things together.

Dr. Eoin Drea did a very good podcast with Hugh Linehan recently. Dr. Drea is a senior person at the European People's Party, EPP's think-tank in Brussels and he gave a very good Brussels insight into just how bad Ireland's reputation was in Brussels. This place is a haven for some of the most dangerous companies in the world. When I say dangerous, we are talking about children committing suicide. This is not just things like CCTV cameras being hacked. This is stuff that every person in this building feels. Everyone knows there is something wrong. We have not yet internalised that we won the race to the bottom and are the cause of that happening, but we are.

Deputy Tom Brabazon: It is extraordinary that I have seen the Data Protection Commission, DPC, haul owners of management companies over the coals over breaches of legislation owing

to security cameras that are designed to protect their members when what Dr. Ryan described on an international level is much more insidious.

Dr. Johnny Ryan: If you go back through the history of the DPC to the early days, you will see private investigators getting hauled up. It is easy to enforce easy, but if you actually want to change a system and a market, you must enforce proportionately and fairly, which means top-down and highest impact. There is no point going after the local butcher for some filing error when the local butcher is using a system created by Microsoft but you are afraid to go after Microsoft. Trickle-down regulation is the way this needs to happen but the DPC is far from doing that.

When the Deputy is asking questions about this, he should ignore the DPC because the people to ask the question of are in the Department of justice. They specify the roles for European enforcers in such a way that an enforcer will not get through that process. The documents show how the interviews were designed. There was a maximum of ten minutes set for anything involving expertise, but that also involved other things. Then, the person who would question you about expertise, according to the documents, is a corporate lawyer who represents big tech. That is Ireland's approach to enforcement.

It is not serious, and it is going to hurt us all very badly.

Deputy Tom Brabazon: This is something we could examine again.

An Cathaoirleach: Absolutely.

Senator Lynn Ruane: There are not many things in my life that I have been afraid of, but this type of stuff is one. It is insidious in the sense that it is very hard for society or people to grab hold of what it means for AI to have such control and input into our lives and decisions, the shape of what you see and do not see, and what your children see. It is very hard for people to grab onto that, understand it and make sense of it. When it came to colonialism, imperialism and war, people could see the brute force and control of those. This is much more liquid in terms of how it seeps into your everyday life. Deputy Ward asked what we can do. The problem is that the omnibus is on its way. This committee only has GDPR as part of its brief, and other committees have waived the scrutiny of this. Even in terms of what we are doing here, it is more of a commentary on something that we do not seem to really want to address or acknowledge.

At a European level, is there something we should be doing? Should our Government be standing up at the European level? At the same time, I can understand why it might not want to, when we want to be attractive to big tech and its systems. There is not really a question within that. It is just that I am constantly dismayed and even a little scared of what it all means.

Dr. Itxaso Domínguez de Olazábal: There is something that Ireland can do. When we speak about the perception that Europeans have of Ireland, it is funny. We said that GDPR and the privacy parts of the omnibus will mainly be taken into trilogues during the next six months, or potentially afterwards. We were saying that it is going to be the Irish Presidency and asking whether we want Ireland to be in charge of that, even though the Council Presidency should be moderate. Ireland has a great responsibility in terms of enforcement, but also in legislative terms. The Council is setting the boundaries for what the Commission can and cannot do, and the Council is a group of member states. I want Ireland to continue what the Cyprus Presidency

is doing. It is sending a message to the Commission that it is going too far, this is not the process, this is not the framework and this is not the time. It is saying that we have to look at enforcement and potential laws to protect children, for example, the digital finance Act, which is a modernisation of consumer law.

I really think there is something that Ireland can do, including the Irish MEPs. The European Parliament is going to have to adopt a position on the data omnibus, and it should be a good position. Anything that has to do with law-making has to do with democratic oversight and respecting fundamental rights. There is something that Ireland can do. Otherwise, we would not be speaking about it. I have high hopes for the Irish Presidency precisely because Ireland has a great record when it comes to the rest of human rights. Why should it not have a great record when it comes to digital rights, which are also human rights?

Senator Lynn Ruane: I am concerned because most Government members constantly use the word "simplification" without ever really explaining what the backdrop of that means.

Dr. Tetyana Lokot: That is part of the story. It is perhaps about educating Irish policymakers, but also going back to the very roots of what due process is, and how such a far-reaching legislative change or set of legislative changes could be processed and discussed. There is a particular process for how the European Commission decides, and that usually involves things like impact assessments and consultation periods that should not be bypassed or compacted. It involves having certain evidentiary requirements. Even if particular Irish policymakers do not feel they know enough to make specific suggestions or criticisms, it is on them to find somebody who does know and can inform them about processes like this. It is to make sure that on the European level, that process is followed. It is to make sure that everybody who this Bill impacts, but also everybody who can speak to that behind-the-curtain, black box stuff knows what actually happens to people's data when it enters AI systems and the particular dangers and threats that we are talking about, in this case, threats to fundamental rights.

Simplification is a misnomer. We are not really talking about simplification if we look through the omnibus in its entirety. These are genuine changes. These are not simplifications of rules or clarifications. These are not aiding enforcement in some way. In some cases, these are pretty spectacular changes that we are talking about. Calling that out, and also asking for greater evidence and impact assessments for those who these changes might impact, is the least that Ireland can do during its Presidency term or otherwise.

Mr. Alberto Di Felice: I lived in Brussels, so I know Ireland was seen very positively there, irrespective of what one thinks of the DPC. The DPC has nothing to do with the omnibus, and I want to set the record straight on this. As to what Ireland can do regarding these changes, members will have seen that there is a certain amount of disagreement about how much they change, and how much is simplification or rewriting everything. What Ireland can do under its Presidency is look at these issues. The problem that we have seen so far, in the first months of the current Cyprus Presidency, is that all issues where there is minimal disagreement are not looked at. They are parked, and they are not adopted. Ireland could take a proper look at these issues, which are not new. It is true that the omnibus process does not involve the usual process for legislative proposals in terms of impact assessments, but these are not new issues. People in the room know the court cases, the case law and the guidance. They can look at these issues and try to find fixes, with the right objectives in mind.

Dr. Johnny Ryan: This committee's previous report mattered. It still matters, and we are still citing it. That is the first thing the committee can do. The second thing is that there is an Irish Commissioner for justice. It is his job to make sure that member states apply the law. Third, I agree with my colleague that it is actually something useful to do. There are two decisions that have led to this. One is the IAB Europe decision at the European Court, where I was one of the parties, and the other is the more important SRB decision. Parsing them during the Presidency would be useful.

An Cathaoirleach: I have a final question. The Data Protection Commissioner is an important post. Without referencing any individuals, or the fact that the new Commissioner is in place for a five-year term, regarding the recruitment process that Dr. Ryan mentioned, what precisely does he feel needs to change in respect of that? Is he advocating a cooling-off period or other safeguards to protect the integrity of the office in the way this would be in place for officeholders of the Government?

Dr. Johnny Ryan: Those are sensible questions. Asking the questions and considering them in detail is the first result. We must have a situation where the specification of the role must acknowledge what the role is. It cannot be that you are an assistant secretary in the Department of fisheries, and suddenly, with that same set of criteria, you are able to investigate and supervise the most complicated businesses in human history. Clearly, there is something different. It would be useful to take a look at other areas of complex regulation, perhaps in other jurisdictions, and break away from this generic approach where we just appoint managers.

I should say that I am aware of several eminent enforcers who applied and were not shortlisted. I cannot say who they are, but the fact that they were not shortlisted is astonishing. There is something wrong with the system. One element is who is on the panel. In this situation, we had four operative people on the panel, and there was a fifth person from the Public Appointments Service who just sat in.

Of the four, one was from the State and the other was the expert but they were a corporate lawyer representing big tech. There were two others we would not necessarily take issue with. The balance of the panel was wrong. We need careful scrutiny. We are now in the process of appointing an interim head of our new AI office and the way that has been specified is very similar. It asks whether they are a good soldier who can manage an organisation. That is not what we need. We need someone who can keep an eye on these things that are going to shape our lives.

An Cathaoirleach: I thank all our guests. Is it agreed we publish all the opening statements from today's hearing on the committee's website? Agreed. I thank all who have taken part and especially for their patience regarding the uncertainty over when we would start. I have to disappoint the members by suggesting we go into private session to deal with a couple of housekeeping items. Is that agreed? Agreed.

The joint committee went into private session at 5.51 p.m. and adjourned at 6.08 p.m. until 3 p.m. on Tuesday, 21 April 2026.