Introduction

i) About Community Law & Mediation and the Centre for Environmental Justice.

Community Law & Mediation (**'CLM'**) is an independent community law centre and charity which provides free legal advice, advocacy, mediation and education services in communities experiencing disadvantage. CLM was established in Coolock in 1975 and opened a second law centre in Limerick in 2012. Today, it assists more than 4,000 people annually. In 2021, CLM established the Centre for Environmental Justice (**'CEJ'**) which works to ensure climate change and other environmental harms do not disproportionately affect those who have contributed least to the problem, and that the State's response to environmental issues addresses inequality and protects the rights of present and future generations. For more information, visit our website or email info@communitylawandmediation.ie

The primary issues which present to the CEJ's free legal advice clinics include queries relating to: planning, air and water pollution, waste management, quality of housing, noise pollution, energy, and land use. Through our clinics, we regularly observe that while strong statutory protections exist to protect the environment, enforcement is a significant challenge, particularly at a local authority level. This is dealt with in more detail within our submission. We also engage in strategic climate litigation. In our view, litigation is a critical tool in ensuring accountability to legally binding climate and other environmental objectives.

Timing of the consultation.

The Scale of Fees consultation opened December 3rd and is due to conclude January 15th . Due to the Christmas break, there is limited opportunity to engage on this complex issue of public interest. We are concerned about the capacity for the public to participate in the consultation in a meaningful manner, particularly those most impacted by environmental harms.

The consultation includes a 34-page report on the Regulation of Costs Payable in Matters Prescribed on Foot of Section 294 of the Planning and Development Act 2024 (the **Report**), and the information provided on the webpage has been substantially updated since its launch on December 3rd, with further detail and documentation provided as late as 23 December – most notably the 78 page report by Fieldfisher. The consultation questions are furthermore complex, and warrant careful consideration. The specialist nature of the consultation makes it one of the more challenging consultations our organisation has engaged in; as such, it is troubling that it has been afforded such little time for consideration. The late addition of complex materials without extension of the time period raise further procedural fairness and natural justice concerns. We wrote to the Minister to highlight this issue and request an extension of the consultation period but received no response.

Participating in decisions that affect you or your community is a core pillar of the Aarhus Convention. The Aarhus Convention Compliance Committee has previously found that public participation may not be considered reasonable "if such period includes days of general celebration in the country."[1]

[1] ACCC/C/2008/24 Spain https://unece.org/acccc200824-spain

The importance of Access to Justice in environmental matters.

As highlighted in a joint submission between the CEJ and Environmental Justice Network Ireland, as the impacts of the climate and biodiversity crises become increasingly visible and urgent, the role of judicial review in holding public bodies and the private sector to account to their legal obligations is critical. It can ensure that developments are consistent with Ireland's climate and environmental objectives. For instance, the *Edenderry Peatcase* (An Taisce v Bord Na Mona (2020) IESC 39) shows how judicial review can prevent the destruction of important habitats. *Friends of the Irish Environment v Ireland* (2020) IESC 49 ("Climate Case Ireland") highlighted how judicial review can be used to hold the Government to account on its climate commitments. Given Ireland's consistently poor performance in meeting its climate and environmental obligations, the role of judicial review should be protected, not weakened.[2]

CLM is currently engaged in two national strategic climate cases, which are detailed below:

- In 2023, a legal challenge was launched by Friends of the Irish Environment (FIE), represented by the Centre for Environmental Justice at CLM, against the Irish Government over its Climate Action Plan 2023 (CAP 23). The case challenges the failure to show with a sufficient level of specificity that the CAP 23 and its Annex of Actions will reduce greenhouse gas emissions in line with Ireland's legally binding carbon budgets. Judgment is expected from the Court of Appeal in 2026.
- In 2024, a grandfather, a youth climate activist, and a child, alongside CLM, were granted leave to challenge the Climate Action Plan 2024 (CAP 24). It is the first time CLM's history that we are acting as a client in a case. Low income and marginalised groups, the groups CLM has represented since its establishment 50 years ago, stand to be disproportionately impacted by climate change but have least opportunity to protect or vindicate their rights. We are seeking a declaration that by failing to ensure the Climate Action Plan is compliant with Ireland's carbon budgets, the Plan violates the fundamental rights of the three individual applicants, marginalised groups that CLM works with, and future generations, as protected by our Constitution, the European Convention on Human Rights and the European Charter of Fundamental Rights. The case will commence hearing before the High Court January 27th and 28th 2026.

These proceedings are particularly timely in light of Ireland's ongoing and repeated failure to comply with national and EU climate laws. The Climate Change Advisory Council recently reported that Ireland is set to overshoot its first carbon budget (2021-2025) by about 10 Mt. The Council have highlighted that this will need to be carried forward to the next budget period of 2026 to 2030, making it "increasingly difficult to achieve".[3] In January 2026, Minister for Climate Darragh O'Brien stated that Ireland will miss its 2030 emission reduction target by half, a significant shortfall which could mean the State is liable for fines running to €28 billion.[4] While not all such cases would be

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[2] Hough, A., Elliott, G. 2023. 'Planning and Development Bill 2022 (Ireland): A solution in search of a problem.' *Community Law and Mediation and Environmental Justice Network Ireland.* https://communitylawandmediation.ie/change/planning-and-development-bill-2022-a-solution-in-search-of-a-problem/

[3] Climate Change Advisory Council. 2025. 'Climate Change Advisory Council calls for faster action.' https://www.climatecouncil.ie/media/climatechangeadvisorycouncil/contentassets/documents/news/AR2025%20Cross%20Sectoral%20Press%20Release%20for%20web.pdf

[4] McGee, H. 'Ireland will miss emissions-cut target by half, says Minister for Climate Darragh O'Brien.' 2026. *The Irish Times* https://www.irishtimes.com/politics/2026/01/07/ireland-will-miss-emissions-reduction-target-by-half-says-obrien/ accessed January 8, 2026

directly impacted by these proposals, Community Law and Mediation is deeply concerned that, faced with a failure to meet legally-binding emission reduction targets, steps are being taken to limit access to justice in environmental matters.

From a practical perspective, limiting costs payable to successful applicants may reduce short-term litigation expenditure, but restricting access to the courts risks increasing systemic failure to comply with EU environmental law and expose Ireland to significant financial penalties. It is possible that an introduction of capped fees will fail to reduce litigation costs, even in the short-term, as it may spur satellite litigation thereby creating prolonged legal uncertainty. Further, those with private means will continue to be able to bring challenges, with marginalised communities who are most impacted by climate and environmental harms most excluded from access to justice by these reforms.

A finding from a CEJ report published earlier this year, *Constitutionalising Environmental Rights in Ireland*,[5] highlighted that the European Commission has reduced its enforcement activity in the area of EU environmental law in recent years. Enforcement is now 'outsourced' by the Commission to private actors, and in particular to environmental NGOs. This approach has shortcomings– it relies on an issue capturing the attention of civil society, which could result in less visible issues going unaddressed, and litigation is costly, time-consuming and uncertain. However, if access to justice is restricted, the practical result is not just fewer court cases, but potentially weaker enforcement of EU environmental laws in Ireland as a whole.

Prohibitively expensive

Affordable access to justice is central to the rule of law and effective enforcement of environmental law. Rights protected by the Aarhus Convention are at risk of being significantly weakened if the public and environmental NGOs cannot afford to bring judicial review proceedings. Article 9 of the Aarhus Convention requires that access to justice in environmental matters is not 'prohibitively expensive'. However, 'prohibitively expensive' is not defined in the Aarhus Convention, and it does not require the provision of free legal aid. In practice, legal aid is not available in environmental matters in Ireland.[6] A minority report published as part of a review of Ireland's Civil Legal Aid Scheme recommended that an environmental law centre such as the Centre for Environmental Justice operated by CLM should be fully resourced to bridge this gap.[7] The Aarhus Convention Implementation Guide states that "The cost of bringing a challenge under the Convention or to enforce national environmental law must not be so prohibitively expensive that it prevents the public, whether individuals or NGOs, from doing so."[8] Ryall has noted that in *Solvay*, the CJEU considered the Aarhus Convention Compliance Guide 'an explanatory document' when interpreting

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[5] Kelleher, O., Dobbs, M. 2025. Constitutionalising Environmental Rights : Practical Insights into the Irish Context.' *Community Law and Mediation*. https://communitylawandmediation.ie/publications/cej-report-constitutionalising-environmental-rights-practical-insights-into-the-irish-context/

[6] Hough, A. 2022. 'Finding Common Ground Synthesis Report: All-island implementation of the Aarhus Convention.' *Irish Research Council* https://research.thea.ie/bitstream/handle/20.500.12065/4459/Syntheis%20report%20All-island%20implementation%20of%20the%20Aarhus%20Convention.pdf?sequence=1

[7] Department of Justice. 2025. 'Civil Legal Aid Review 2025: Minority Report.' https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/press-releases/minister-jim-ocallaghan-publishes-historic-review-of-civil-legal-aid-scheme/

[8] United Nations Economic Commission for Europe. 2019. 'Guide to the Aarhus Convention Compliance Committee.' https://unece.org/DAM/env/pp/Publications/Guide_to_the_Compliance_Committee__second_edition__2019_/English/Guide_to_the_Aarhus_Convention_Compliance_Committee__2019.pdf

the Convention.[9] The CJEU has determined that if the 'effective protection' of environmental law is at stake, Article 9(3) could not be interpreted in a manner which would make it impossible or excessively difficult to exercise rights under EU law.

To align with the requirements of the Aarhus Convention, s.50B of the Planning and Development Act 2000 (as amended) was introduced in 2011 to ensure that individuals, communities or eNGOs could challenge certain planning and environmental decisions without exposure to prohibitive legal costs if their case was unsuccessful. This provision was indeed flawed - legal actions which did not fall within the special costs rules carried significant financial risk. Aurel Ciobanu-Dordea, who oversees governance, enforcement action and compliance on EU environmental legislation for the European Commission, noted on access to justice that Ireland continues to be the most expensive EU member state in which to make an environmental claim before the courts stating 'the case law of the national courts has meandered through different interpretations of the costs rules, and has left many environmental litigants unable to predict with any certainty their costs exposure'.[10]

In 2022, the Supreme Court clarified the issue in *Heather Hill v An Bord Pleanála.*[11] The Court considered the correct interpretation of s.50B of the Planning and Development Act 2000 and held that the protective costs order provided by s.50B applies to any challenge to a decision made pursuant to a statutory provision which gives effect to the Directives listed in the provision. It further held that neither s.50B or the Aarhus Convention provide for the splitting of costs where some grounds raised in the proceedings engage those Directives and others do not. It was noted that s.50B "means precisely what it says" that costs protection should be provided for the "proceedings" as a whole, and not just specific grounds.[12] This interpretation was informed by Ireland's obligations under the Aarhus Convention, specifically Article 9(4) which requires that access to justice in environmental matters be "fair, equitable, timely, and not prohibitively expensive."

In practice, this meant that an applicant advancing a planning/environmental challenge under Irish or EU law would not generally be exposed to excess legal costs if their case was unsuccessful. This ruling provided clarity and predictability regarding costs protection and allowed environmental and planning cases to be brought on a "no foal, no fee" basis, a mechanism which is relied upon significantly by the public and NGOs (including Community Law and Mediation) in bringing cases in the interests of the common good. Notwithstanding this, there are few lawyers who have the expertise in this area and are willing to take cases on this basis, so it is a very high bar for NGOs to meet; and the bar is even higher for communities who may not have relationships with lawyers.[13]

Court costs are a significant barrier to accessing justice in Ireland, even under the existing regime. The 2020 Kelly report found that Ireland ranks among the highest-cost jurisdictions internationally for civil litigation.[14] In 2017, then Chief Justice Frank Clarke noted that 'it has increasingly become the

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[9] Case C-182/10 Solvay v Région wallonne EU:C:2012:82.

[10] Brennan, C., Hough, A. 2024. 'Demystifying the cost of environmental justice on the island of Ireland.' https://ejni.net/publications/demystifying-the-cost-of-environmental-justice-on-the-island-of-ireland/

[11] *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General* [2022] IESC 43

[12] Dunne, Catherine BL. 'Environmental Challenges to Planning Permissions – Case Summary of Heather Hill v An Bord Pleanála.' *Law Library* https://www.lawlibrary.ie/viewpoints/heather-hill-case/

[13] Hough, A., Elliott, G. 2023. 'Planning and Development Bill 2022 (Ireland): A solution in search of a problem.' *Community Law and Mediation and Environmental Justice Network Ireland.* https://communitylawandmediation.ie/change/planning-and-development-bill-2022-a-solution-in-search-of-a-problem/

[14] Department of Justice, Home Affairs and Migration. 2020. 'Review of the Administration of Civil Justice: Review Group Report.'

case that many types of litigation are moving beyond the resources of all but a few.'[15] Applicants must go through the leave stage of judicial review to litigate costs with no guarantee that costs will be covered by costs protection. The leave stage application can amount to tens of thousands of euro.[16] Ryall (2019) notes that whether a sum of costs is compatible with Article 9(4) will depend on the nature and facts of the case, but she notes that the following costs orders were found by the Aarhus Convention Compliance Committee ('ACCC') to be prohibitive:

- £39,454[17] (ACCC/C/2008/27 United Kingdom)
- £8,000 against an NGO (ACCC/C/2012/77 United Kingdom)
- DKK3,000 (approximately €400) for NGOs to appeal a decision before the Danish Nature and Environmental Appeal Board.[18]

According to Ryall, the ACCC's considerations when assessing compliance with Article 9(4) and 9(5) of the Aarhus Convention are:

- whether a clear, legally binding direction from the legislature or the judiciary is in place to ensure costs are not prohibitively expensive
- whether the costs involved would prevent an applicant from initiating the proceedings in question
- whether there is 'equality of arms' between the parties concerning costs
- whether the public interest nature of environmental litigation is taken into account when considering costs liability
- the costs borne by the applicant 'as a whole' must be assessed to include objective and subjective elements
- the cost system of the party as a whole must be taken into account.

Ryall has further noted that broadly similar principles have emerged from the CJEU's jurisprudence on the requirement that costs must not be 'prohibitively expensive':

- In Edwards,[19] the CJEU connected the ban on prohibitive costs with the right to an effective remedy protected by Article 47 of the EU Charter and to the principle of effectiveness of EU law. It emphasized that the public should not be prevented from seeking to review a decision 'by reason of the financial burden that might arise as a result.'
- In Commission v United Kingdom, the CJEU noted that when assessing costs the national court may take account of any costs already incurred at earlier levels in the same case.
- In North East Pylon Pressure Campaign Ltd v An Bord Pleanala, as part of a reference for a preliminary ruling form the High Court of Ireland, the CJEU held that the amount of costs imposed on an applicant cannot be 'unreasonably high.'[20]

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https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/publications/review-of-the-administration-of-civil-justice-review-group-report/

[15] Phelan, S. 2017. 'Caveat emptor: The soaring cost of legal services.' *Irish Independent* https://www.independent.ie/irish-news/caveat-emptor-the-soaring-cost-of-legal-services/36222383.html

[16] https://ejni.net/wp-content/uploads/2025/07/EJNI-Costs-Handbook-Dec-2024.pdf

[17] ACCC/C/2008/27 United Kingdom

[18] https://cora.ucc.ie/server/api/core/bitstreams/42bfce2d-bfbf-4796-89d5-9ad628029aa0/content

[19] Case C-260/11 R (Edwards) v Environment Agency EU:C:2013:221

[20] Ryall, Á. (2019) 'The Aarhus Convention: Standards for access to justice in environmental matters', in Turner, S. J., Shelton, D. L., Razzaque, J., McIntyre, O., May, J. R. (eds.) Environmental Rights: The Development of Standards. Cambridge : Cambridge University Press, pp. 116-146. doi: 10.1017/9781108612500.006

It is of considerable concern that the Report underpinning the consultation proposals does not appear to engage with these principles and considerations to any significant level.

The Costs Cap in the UK

The Report appears to have relied on the cost cap applied in Aarhus cases in England and Wales as a benchmark for setting a cap in Ireland. According to the Report, there is no standard hourly rate paid by the State that could be relied upon as a benchmark for setting the proposed scale. However, the Report does not justify this comparison to England and Wales, and does not assess differences between the Irish legal system with that of England and Wales in relation to procedural rules or cost structures.[21]

It must be questioned whether relying on the English and Welsh costs structures is appropriate given their compliance with the Aarhus Convention has repeatedly been disputed. At the Seventh Meeting of the Parties in 2021, the UK was requested to submit a phased plan of action to the ACCC by 1 July 2022 demonstrating how it intended to bring itself into compliance with Article 9(4) of the Convention.[22] Relevant to this consultation, the action plan was required to:

(a) Ensure that the allocation of costs in all court procedures subject to article 9, including private nuisance claims, is fair and equitable and not prohibitively expensive;
(b) Consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice;
(c) Establish a clear, transparent and consistent framework to implement article 9(4) of the Convention.[23]

In 2022, the ACCC deemed the submitted action plan only partially appropriate.

In a joint report, the Environmental Law Foundation, Friends of the Earth and the Royal Society for the Protection of Birds, found that costs rules governing Aarhus cases in England and Wales are having a cumulative deterrent effect on prospective claimants.[24] The authors recommended removing the imposition of a costs cap on successful claimants.[25] They found there is no basis for such a cap in the Aarhus Convention with the ACCC determining that fairness in Article 9(4) of the Convention refers to what is fair for the claimant, not the defendant public body. They also highlighted that claimants being unable to recover their costs in full even if they win or having to rely on legal professionals being willing (and able) to act on the basis that they, unlike their counterparts acting for public authority defendants, will have to act at heavily discounted rates poses a threat to access to justice.[26]

The experience of the English and Welsh structures to date should caution against introducing a costs cap in Aarhus cases, rather than being used as a reference point.

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[21] https://elflaw.org/wp-content/uploads/2023/06/A-Pillar-of-Justice_Report.pdf
[22] Day et al, 'A Pillar of Justice II: The Continuing impact of legislative reform on access to justice in England and Wales under the Aarhus Convention' June 2023 available here 5
[23] Decision VII/8s on compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention, available here
[24] Day et al, 'A Pillar of Justice II: The Continuing impact of legislative reform on access to justice in England and Wales under the Aarhus Convention' June 2023 available here 4
[25] Day et al, 'A Pillar of Justice II: The Continuing impact of legislative reform on access to justice in England and Wales under the Aarhus Convention' June 2023 available here 18
[26] Day et al, 'A Pillar of Justice II: The Continuing impact of legislative reform on access to justice in England and Wales under the Aarhus Convention' June 2023 available here 18

Equality of Arms

The concept of equality of arms is protected by Art.6 of the European Convention on Human Rights. It is central to the concept of a fair trial and requires a sense of a fair balance between the parties. It requires that each party is afforded a reasonable opportunity to present their case under conditions which do not place one party at "substantial disadvantage" relative to the other.[27]

The proposed scale of fees only applies to applicants. As noted in the Report itself, the proposed fee scale is not based on the comparative fees which would be paid by the State in defending such cases because there is no standard hourly rate paid by the State that could be relied upon as a benchmark for setting the proposed scale. It appears that the State could continue to pay whatever commercial rate it deems fit to defend cases while forcing applicants without means to source legal counsel at discounted rates or even *pro bono*. Applicants with means, such as commercial entities, will continue to be able to fund litigation. This means that it is community members and the NGOs who represent them with the least means who will be most impacted by these changes.

Further, Section 294 of the Planning and Development Act 2024 grants the Minister for the Environment, Climate and Communications power to determine the level and scale of entitlement to costs. As the Minister is a frequent respondent in environmental judicial review cases, this appears to be a conflict of interest. Where the respondent controls its own litigation resources and the level of costs recoverable by successful applicants, a structural imbalance may arise. Any consideration of fairness attached to the proposed scale assumes a false parity between the resources of civil society and the resources of the state. The Report supporting the consultation notes that any scale fee could be subject to litigation, particularly regarding equality of arms in terms of legal representation. The Aarhus Convention Compliance Committee has found that it is essential, where costs are concerned, that there is equality of arms between parties such that applicants should not have to rely on pro bono or junior legal counsel.[28]

Adding to this, the Report notes that the author understands there to be a policy decision not to commence the Environmental Legal Costs Financial Assistance Mechanism (ELFCAM) at this time. While the adequacy of the ELFCAM to offset these proposed reforms sufficiently to satisfy the State's Aarhaus obligations is itself questionable, the apparent decision of Government to press forward with the introduction of costs caps without bringing in the ELFCAM is of grave concern.

Specific comments on the Report on the Regulation of Costs Payable in Matters Prescribed on Foot of Section 294 of the Planning and Development Act 2024

It is our view that the proposed scale of fees payable to successful applicants in certain environmental law judicial review cases lacks a clear evidence base, and underestimates the practical and procedural complexity of environmental litigation. We request that consideration is given to the below comments on the Report, which are not exhaustive:

(i) Costs protection: The Report places disproportionate emphasis on the issue of costs protection, noting that because an unsuccessful applicant will generally not be exposed to adverse costs, allowing a successful applicant to recover costs could encourage applicants to initiate weak proceedings. However, costs recovered in successful cases are compensatory, and the courts impose a high threshold for the granting of leave to

27 Kress v France [GC] 2001

28 ECE/MP.PP/C.1/2010/6/Add.3.

initiate judicial review proceedings. The proper focus should be on the costs incurred by a party who has been vindicated by the court.

(ii) Existing rules applicable to adjudication of costs
The consultation is premised on an inherent contradiction which at once implies that applicant's essential costs will be adequately covered by the caps while also suggesting that the caps will significantly reduce the State's costs bill in successful cases. Costs awards are already subject to established rules and can be adjudicated if there is a dispute. If the State believes that it has been overpaying for costs settlements, the question should be asked as to why the State has been settling cases above the level required by law. If the State believes that it has not been overpaying, the question arises as to how the interests of justice are met by applicants being capped at fee recovery levels that, applying the logic of the FieldFisher report, could be substantially below their actual costs.

(iii) Complexity: The Report acknowledges that environmental cases involve varying levels of complexity, but does not provide a definition or criteria as to how cases may be categorised. Those consulted in the preparation of the Report were not able to define how complexity in environmental cases might be distinguished. The Report proposes a single standard fee across all three categories of complexity that are identified. If complexity is a relevant factor, it should have a meaningful impact on the level of recoverable fees. The adoption of a uniform fee does not facilitate this.

(iv) Lack of consideration for interim or interlocutory relief: The Report fails to separately account for interim or interlocutory relief. Under the law of England and Wales, courts may, and usually do, require claimants to give cross-undertakings in damages. As shown, for example, by the Sullivan Report, this may entail potential liabilities of several thousands, if not several hundreds of thousands of pounds.[29] This leads to the situation where injunctive relief is not pursued, because of the high costs at risk, where the claimant is legitimately pursuing environmental concerns that involve the public interest. Such effects would amount to prohibitively expensive procedures that are not in compliance with article 9, paragraph 4.[30]

(v) Inadequate provision for expert evidence: The Report proposes a flat fee of €2,000 for experts, without accompanying explanation or justification. This is strikingly low in the context of environmental litigation, where specialist knowledge is required. The High Court in *Friends of the Irish Environment v Government of Ireland,* in a case contesting the validity of the Climate Action Plan 2023, required the provision of expert evidence.[31] It is furthermore noted in the 'Costs of Environmental Justice Handbook' that the costs of experts can vary widely across subject matter,[32] which may include for example,

[29] Day et al, 'A Pillar of Justice II: The Continuing impact of legislative reform on access to justice in England and Wales under the Aarhus Convention' June 2023 available here
[30] https://unece.org/fileadmin/DAM/env/pp/compliance/CC-29/ece_mp.pp_c.1_2010_6_add.3_as_20submitted.pdf
[31] https://www.climatecasechart.com/documents/friends-of-the-irish-environment-v-government-of-ireland-judgment_7385
[32] Ciara Brennan, Alison Hough BL, Caitlin McIlhennon, Clíona Kimber SC, Maria O'Loan, Emma Cassidy, Laura Neal, Monye AnyadikeDanes KC, Marc Willers KC. 2024. 'Demystifying the Cost of Environmental Justice on the Island of Ireland.' *Environmental Justice Network Ireland.* https://ejni.net/wp-content/uploads/2025/07/EJNI-Costs-Handbook-Dec-2024.pdf

engineering, climate science, planning, and ecological experts. This is essential to enabling applicants to present focused pleadings, based on the best available evidence.

Challenges can be reduced by improved decision making - the need for adequate resourcing and training

If the underlying aim of the proposed changes is to reduce challenges to relevant decisions, it should be noted that this could be achieved simply by improving the quality of decision-making. Ireland has strong environmental laws in some areas, but a lack of adequate enforcement in relation to both Irish and EU environmental regulation undermines the effectiveness of environmental law. This issue arises in the CEJ's free legal advice clinics, whereby laws pertaining to (for example) planning, air and water pollution are not effectively enforced, particularly at a local authority level. More generally, the Environmental Protection Agency found that Local Authorities' environmental performance is improving but has called on Local Authorities to increase their focus on water, air and noise enforcement to fully deliver on the National Enforcement Priorities.[33]

Capacity constraints seem to underpin these enforcement challenges. Recent research from University College Dublin found that a lack of staff is a primary barrier to the implementation of environmental policies in Ireland, with particular shortages in renewable energy, retrofitting, transport, water services and agriculture.[34] Key regulatory bodies, such as the Commission for the Regulation of Utilities, have warned that their capacity to delivery on their strategy is currently undermined by a lack of staff.[35] Similarly, the Climate Change Advisory Council ('CCAC') has previously highlighted that human resources gaps in relation to climate change adaptation have been met by contracting external consultants and adding adaptation responsibilities to existing job descriptions. The CCAC expressed the view that permanent, standalone positions were needed to meet this gap.[36]

It is CLM's view that environmental decision-making, and enforcement of environmental laws at local and national levels more generally, could be vastly improved by adequate financing and human resourcing of local authorities, enforcement agencies, and relevant public bodies. This should be supported by regular training to ensure that public bodies, at all levels of government, are equipped to meet their environmental obligations. The impact of improved resourcing was recently made clear

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[33] Environmental Protection Agency. 2025. 'Local Authority Environmental Enforcement Performance Report 2024.' https://www.epa.ie/news-releases/news-releases-2025/local-authorities-environmental-performance-improving-but-continued-commitment-needed-to-deliver-on-national-enforcement-priorities.php

[34] Augustenborg, C. A., Lentz, P., & Pender, A. (2025). Barriers to environmental policy implementation: stakeholder perceptions in the context of Ireland. *Journal of Environmental Policy & Planning*, 1–23. https://doi.org/10.1080/1523908X.2025.2585944

[35] Sargent, N. 2025. 'Staff shortages at utilities regulator hindering strategic plan delivery.' The Currency https://thecurrency.news/articles/192147/high-risk-staff-shortages-at-energy-regulator-will-hinder-strategic-plan-delivery/

[36] limate Change Advisory Council. 2023. 'Third Climate Change Adaptation Scorecard.' Available at : https://www.climatecouncil.ie/councilpublications/otherpublications/Final%20CCAC%20Scorecard%20Assessment%20Report%202023%20web.pdf

by the Chairperson of An Coimisiún Pleanála , who reported that increased staffing of ACP enabled the organisation to clear its planning backlog and increase its decision-making capacity.[37]

Access to justice should also be understood in the context of capacity constraints in the courts. Ireland has one of the lowest numbers of judges per capita in the European Union and spends the lowest proportion of GDP on its judicial system.[38] The OECD highlight that Ireland has a shortfall of judicial capacity, recommending the appointment of an additional 36-108 judges, alongside increased support staff, more streamlined court operations and a long-term strategy for the judiciary at every level.[39]

Restricting access to justice does not improve the quality of environmental decision-making, it simply reduces the likelihood that legal errors will be identified and corrected. Improving the quality of decision-making can be achieved by addressing institutional capacity, rather than restricting access to the courts. The proposed scale of fees exposes successful public-interest applicants to irrecoverable costs, creating a deterrent effect incompatible with the requirement of Art. 9(4) of the Aarhus Convention that procedures be fair, equitable and not prohibitively expensive. The likely result will not be fewer unlawful decisions, but fewer legal challenges to those decisions.

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[37] Chambers, A. 2025. 'Backlogs, reputation, and judicial reviews: ACP boss says planning is back on track.' *The Currency* https://thecurrency.news/articles/209307/backlogs-reputation-and-judicial-reviews-acp-boss-says-planning-is-back-on-track/

[38] European Commission for the Efficiency of Justice (CEPEJ). 2024. 'Individual country profiles 2024 (2022 data).' https://rm.coe.int/ireland-en/1680b21e8c

[39] OECD. 2023. 'Modernising Staffing and Court Management Practices in Ireland.' *OECD* https://www.oecd.org/en/publications/modernising-staffing-and-court-management-practices-in-ireland_8a5c52d0-en.html