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Consultation on the regulation of costs payable in matters prescribed on foot of section 294 of the Planning and Development Act 2024 (Scale of Fees)

Submission by Chambers Ireland

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About Chambers Ireland

Chambers Ireland is an all-island business organisation with a unique geographical reach. Our members are affiliated Chambers in the cities and towns throughout the country – active in every constituency. Each of our member Chambers is central to their local business community and all seek to promote thriving local economies that can support sustainable cities and communities.

We are the only business organisation with a truly geographic footprint and as a result are uniquely positioned to assist in the development of critical transport infrastructure to meet our economy's future needs.

Questions

1. A scale of fees to be awarded to successful applicants in a judicial review have been proposed and are set out in the attached report. Do you agree with this approach? Please explain the reasons for your answer.

We agree with the introduction of a structured scale of fees for costs payable in environmental judicial review proceedings. Establishing a clear and predictable framework for legal costs is a positive step that can bring significant benefits. A transparent scale of fees has the potential to improve cost certainty and reduce the likelihood of disputes over legal costs, which in turn contributes to a more efficient and effective planning and judicial review system. For businesses, particularly those involved in infrastructure delivery, predictability around potential legal costs is critical. Uncertainty in this area can lead to delays in project timelines, increased financial risk and diminished investor confidence, all of which can have broader implications for economic growth and the timely provision of essential infrastructure.

By providing a well-calibrated scale, the system can ensure that legal costs remain proportionate to the complexity and demands of individual cases, while avoiding situations where costs become excessive or unpredictable. Such a framework can also support fair access to justice, ensuring that applicants with legitimate claims are not deterred by the risk of disproportionate legal expenses. At the same time, it maintains the necessary safeguards for respondents, including businesses and public authorities, by providing a clear expectation of potential financial exposure. In this way, a structured scale of fees balances the interests of all parties, reduces unnecessary litigation costs and supports Ireland's planning system while remaining fully consistent with the State's obligations under EU law and the Aarhus Convention¹.

¹ <https://www.citizensinformation.ie/en/environment/environment-and-the-law/aarhus-convention/>

2. Three levels of complexity have been proposed. Do you agree with this approach? Please explain the reasons for your answer.

The use of defined levels of complexity in environmental judicial review proceedings is essential, provided that these levels are applied in a clear and consistent manner. This recognises that not all cases place the same demands on the courts, legal representatives or other parties involved. Judicial review proceedings can vary widely in terms of legal issues, the number of parties, procedural requirements and the involvement of technical or expert evidence. A tiered system of complexity allows fees to be more closely aligned with the actual effort and resources required for each case, helping to ensure that costs are fair and proportionate.

Experience in England and Wales also highlights the importance of a tiered and proportionate approach to judicial review costs. While statutory court fees for judicial review in England and Wales, such as the fee for permission to apply, set at £169² are relatively modest, available analysis indicates that overall legal costs are frequently substantial, commonly running to tens of thousands of pounds in complex or technical cases. This reflects the reality that judicial review proceedings can place very different demands on the courts and parties involved. A defined system of complexity levels allows fees to be aligned with the actual effort required in individual cases, supporting proportionality, predictability and the efficient administration of the planning and judicial review system.

At the same time, the criteria used to determine complexity must be clearly defined and objective. Without transparency and consistency, there is a risk that cases could be classified inconsistently, challenging the predictability and certainty that a structured scale of fees must provide. Care must be taken to ensure that the system does not inadvertently incentivise unnecessary escalation, where parties might seek to have a case classified at a higher complexity level to justify greater fees. A carefully calibrated tiered approach can help maintain balance, ensuring that applicants are fairly compensated for the work involved, while also protecting businesses and other respondents from disproportionate cost exposure. Overall, a structured and objective

² <https://www.gov.uk/government/news/court-and-tribunal-fees-updates-from-april-2025>

system of complexity levels can support both the efficient administration of justice and the timely delivery of essential infrastructure projects.

3. Do you agree with the proposed criteria that a presiding judge could take into account in determining the level of complexity? Please explain the reasons for your answer.

The presiding judge should have discretion to determine the level of complexity in any given judicial review proceeding. Judges are best placed to assess the specific demands of a case, including the legal issues involved, the number of parties, and any procedural or technical complexities. At the same time, it is crucial that this discretion is exercised within a clear framework. Objective and well-defined criteria should guide the assessment to ensure that decisions are consistent across cases. Providing additional guidance or examples could help reduce uncertainty. A clear framework for judicial discretion ensures that the complexity classification is fair, proportionate and reflective of the work actually required, while supporting efficient and predictable outcomes for both applicants and respondents. It will also be important to include safeguards to reduce the risk of cases being classified as more complex than they truly are. This could involve requiring judges to provide clear reasons for any decisions and allowing for a review if a case turns out to be less demanding than initially anticipated.

4. Do you agree with the trigger points proposed to define where payment of a fee is determined? Please explain the reasons for your answer.

Establishing such trigger points provides certainty for both applicants and respondents, reducing ambiguity and the potential for disputes over fee entitlement. For businesses involved in infrastructure delivery, this predictability is particularly important, as it allows for better planning of project costs and risk management. Aligning fees with procedural milestones also ensures that the fees claimed are proportionate to the stage of the case reached, reflecting the actual work undertaken at that point. In this way, trigger points help to maintain fairness and balance, encouraging timely and efficient resolution of cases while supporting the broader objective of delivering essential infrastructure projects without unnecessary delay.

5. Do you support the proposed level of fees to be paid in the case of a reference to the Court of Justice of the European Union (CJEU)? Please explain the reasons for your answer.

We recognise that references to the Court of Justice of the European Union involve demand greater resources. We support the principle of a distinct fee structure for such cases, provided that it remains proportionate to the work involved. It is important to avoid creating incentives for unnecessary references, which could increase costs and cause delays, particularly in projects of strategic national importance. Fees for CJEU references should reflect the genuine additional effort required while remaining consistent with the overall objectives of predictability, proportionality and fairness. In doing so, the system can safeguard access to justice while ensuring that legal costs do not become a barrier to efficient infrastructure development.

6. A breakdown of the fee that the solicitor and counsel would be entitled to are proposed for the various stages of the proceedings. Do you agree with this approach? Please explain the reasons for your answer.

Providing clarity on how fees are allocated between legal professionals enhances transparency and helps ensure that costs are proportionate to the work undertaken at each stage of the proceedings. For businesses, understanding how costs are distributed is particularly valuable for budgeting and planning purposes, contributing to more predictable financial exposure. A structured allocation also encourages accountability and ensures that both solicitors and counsel are fairly compensated for their work.

7. As an alternative approach to number 6 above, do you support a single payment of the combined fee to the solicitor and for the solicitor to make their own arrangements to pay supporting Counsel? Please explain the reasons for your answer.

At the same time, we can see the value in the alternative of a single combined fee paid to the solicitor, who can then make arrangements with counsel. This approach simplifies administration and provides flexibility for legal teams to organise their work efficiently. From the perspective of businesses and infrastructure delivery, a single combined fee can reduce disputes over allocation and contribute to cost predictability. Overall, while a breakdown of fees offers transparency, a combined fee may be preferable in practice for promoting efficiency and reducing administrative burdens, especially in cases where proportionality and predictability of costs are key.

8. Do you agree on the proposed level of fees proposed to support technical / expert advice? Please explain the reasons for your answer.

Technical and expert advice must be supported within the fee structure. Expert input is often essential in complex cases to inform judicial decision-making. Fees for technical and expert advice must be carefully attuned to remain proportionate to the actual requirements of the case. Overly generous or poorly structured fees risk encouraging unnecessary duplication of expert evidence, which can drive up litigation costs and create additional delays. A balanced approach that supports necessary expert involvement while maintaining proportionality will contribute to a fairer and efficient system of costs, ultimately benefiting both applicants and those responsible for delivering infrastructure.