

Dear Rule of Law Report Team (DG JUST),

I am submitting additional case-based evidence relevant to the practical functioning of oversight, accountability, and judicial processes in Ireland. This submission documents a procedural irregularity in my High Court appeal (*Maurice D. Landers v. The Information Commissioner*, 24 February 2022), specifically the judicial alteration of my pleaded point of law during the hearing.

The attached report, *Submission to DG JUST – Rule of Law Concerns Arising from Judicial Alteration of Point of Law in High Court Appeal*, provides transcript-based evidence showing that the presiding judge substituted an invented legal ground (“irrationality”) in place of the statutory point of law I submitted under Section 23 and Section 45 of the Freedom of Information Act. The transcript excerpts included demonstrate mischaracterisation of submissions, denial of clarification, judicial steering of opposing counsel, and a contradiction between the hearing record and the judgment.

This submission is intended to accompany my original July 2026 submission and its subsequent addendum. Together, these documents present a coherent, evidence-based account of systemic issues affecting Ireland’s oversight and judicial processes, directly relevant to the EU Rule of Law Report’s methodology.

All referenced documents — including the full transcript, affidavits, correspondence, and procedural records — are publicly available in the “Case Study” section of my website, Failte32.org. I am available to provide direct PDF copies of any document upon request.

I respectfully request that this submission be reviewed as part of the Commission’s ongoing assessment of Ireland’s rule-of-law environment.

Kind regards,
Maurice D. Landers
Failte32
xxxxx, 3rd Floor
xxxxx, New York xxxxx
mauricelanders@yahoo.com

I kindly request that this submission be routed to the Rule of Law Report Team within DG JUST.

Submission to DG JUST – Rule of Law Concerns Arising from Judicial Alteration of Point of Law in High Court Appeal

1. Executive Summary

This submission concerns a procedural irregularity in my High Court appeal (Maurice D. Landers v. The Information Commissioner, 24 February 2022). The presiding judge altered my point of law, prevented clarification, and substituted an invented legal ground (“irrationality”) in place of the actual statutory point of law I submitted under Section 23(1)(a) and Section 45 of the Freedom of Information Act.

The [transcript](#) demonstrates that:

- I clearly stated the correct statutory basis (Section 23) early in the hearing, including quoting the Commissioner’s own description of his Section 23 powers.
- I explicitly declared that Section 23 was my point of law multiple times.
- When I attempted to correct opposing counsel’s misstatement, the judge cut off that single clarification.
- The judge then fed an alternative legal ground (“irrationality”) to opposing counsel.
- Opposing counsel only adopted the irrationality framing after lunch, following the judge’s intervention.
- The judge subsequently dismissed my appeal on the basis of a point of law I never made.

This constitutes a breach of procedural fairness, mischaracterisation of submissions, and alteration of the legal basis of the case, contrary to fundamental rule-of-law standards.

2. Background

My appeal concerned the Information Commissioner’s refusal to allow my FOI appeal against the NTMA’s final review. My point of law was clearly set out in my affidavit (See [Book of Pleadings](#), Case Study section of Failte32.org, p.3):

- Section 23(1)(a) — failure to exercise mandatory investigative powers
- Section 45 — failure to compel evidence or use statutory powers
- Section 15(1)(a) — adequacy of searches
- Failure to verify contradictory evidence
- Failure to investigate contradictions in NTMA material

At no point did I submit “irrationality” as a point of law. The only mentions of irrationality in the transcript were rhetorical, not legal grounds.

Despite this, the judge reframed my case as an “irrationality” appeal, blocked my correction, and directed opposing counsel toward that framing.

3. Transcript Evidence of Judicial Alteration of Point of Law

3.1. Early, explicit references to Section 23 as my point of law (Pages 10, 15, 17)

Before any judicial intervention, I clearly established Section 23 as my statutory basis.

Page 10: I quoted the Information Commissioner’s own description of his Section 23 powers:

“The FOI Act of 2014 provides the Information Commissioner with **significant powers** ... If he considers a decision to be inadequate, he may **under Section 23**, require that a new one be issued.”

This is a formal statutory citation, not rhetorical language. It demonstrates that Section 23 was the legal foundation of my appeal.

Immediately afterwards, I referenced Section 45:

“... I believe I prove that **Section 45** allows the Information Commissioner to seek a relevant document from third parties...”

I then explicitly declared Section 23 as my point of law:

“I may not have to refer to it, your honour, but **I will refer to Section 23**, the inadequacy of the Information Commissioner’s response.”

Page 15, lines 22–27: I again summarised my point of law clearly:

“So, your honour, to summarise here, **I believe under Section 23**, the Information Commissioner’s decision was completely inadequate.”

This is a direct and unambiguous statement of my Section 23 point of law. The judge acknowledges this with “Yes?” before I continue:

“He knew it existed. The NTMA knew it existed. In fact, the Information Commissioner, I believe, knew that the NTMA knew it existed.”

This shows that my Section 23 argument was tied to the Commissioner’s failure to verify contradictory evidence — a core statutory duty under Section 23.

Page 17, lines 28–31: I reinforce Section 23 again:

"So while I do argue that he can use his significant powers under section 45, I do argue that in my case, in this case I don't even think I have to refer to them to be honest with you, your honour, **I think under section 23 it's clear, his decision was completely inadequate.**"

This is the third explicit declaration of Section 23 as my point of law, and it directly contradicts the judge’s later claim that “irrationality” was the only issue before him.

These repeated, early, explicit references to Section 23 demonstrate that:

- Section 23 was my actual point of law.
- I stated it clearly, repeatedly, and before any judicial misframing.
- The judge’s later substitution of “irrationality” was not a misunderstanding — it was a replacement of the legal ground.

3.2. Rhetorical mentions of “irrationality” later weaponised

These are the only two places where I used the word “irrationality,” and neither was intended as a legal ground:

- Page 20, line 24 – rhetorical comment
- Page 22, line 24 – rhetorical comment

These were later used by the judge to claim irrationality was my point of law.

3.3. Judge incorrectly states my point of law

Page 23, lines 6–10:

JUDGE: “...you contend it was irrational of the Information Commissioner... That’s the only issue in front of me.”

This is factually incorrect. My point of law was Section 23 and Section 45, as stated in my affidavit and oral submissions.

3.4. I clearly restate Section 23 — judge cuts off my single clarification

This is the most direct procedural irregularity.

Page 24, lines 23–34:

MR LANDERS: “No, **Section 23**, I referred to in the significant powers, your honour.” JUDGE: “Mr Landers, you’ll get a chance to reply now...”

This was my only attempt to correct opposing counsel’s misstatement. The judge immediately interrupted and prevented clarification of the correct statutory basis.

This is a breach of:

- right to be heard
- right to clarify submissions
- right to correct the record

3.5. Judge steers counsel toward Section 22 instead of Section 23

Page 25, lines 1–18:

The judge repeatedly pushes Section 22 (“general jurisdiction”), despite my correction.

This constitutes:

- misdirection of the legal basis
- disregard of affidavit evidence
- substitution of an incorrect statutory section

3.6. Judge explicitly feeds “irrationality” to opposing counsel

Page 26, lines 28–30:

JUDGE: “Because obviously Mr Landers’s key point is that it was **irrational** of the Commissioner...”

This is the judge:

- inventing a point of law
- feeding it to counsel
- overriding my actual submissions

This is the core procedural breach.

3.7. Counsel initially rejects irrationality framing

Page 27, lines 4–5:

MR BROWNE: “Exactly Judge. And I suppose the real legal issue is did the Commissioner err...”

Counsel still sees the issue as error, not irrationality.

This proves:

- irrationality did not originate from counsel
- the judge’s framing was unilateral

3.8. After lunch, counsel adopts judge’s irrationality framing

Page 28, lines 7–34:

“...the issues that Mr Landers is raising really do boil down to... did the Commissioner act **irrationally**...”

This is the first time counsel adopts irrationality — and only after the judge’s intervention.

This demonstrates:

- judicial influence on counsel
- contamination of submissions
- alteration of the legal basis mid-hearing

3.9. Counsel repeats judge’s framing again

Page 31, lines 3–12:

“...whether... the Commissioner acted **irrationally**...”

This shows the judge's invented framing became the operative legal basis.

4. Additional Irregularities Identified

4.1. Judge refuses to return to Section 23

After cutting me off, the judge never revisits Section 23, despite its centrality in my affidavit and early oral submissions.

4.2. Judgment dismisses case on “no error of law”

Despite reframing the case as irrationality — which is not error of law — the judge dismisses the appeal on the basis of “no error of law.”

This is a logical contradiction and a misapplication of legal standards. The judge spent the hearing steering the case toward irrationality, prevented clarification of the correct statutory basis (Section 23), and fed the irrationality framing to opposing counsel. However, because irrationality was not pleaded by the applicant, the judge could not lawfully dismiss the appeal on that basis. He therefore dismissed the case on “no error of law,” even though the applicant's actual point of law was Section 23 and Section 45. This creates a contradiction between the framing used during the hearing and the legal basis used in the judgment, and constitutes a procedural irregularity.

5. Rule-of-Law Implications

The conduct documented above constitutes:

- Mischaracterisation of submissions
- Alteration of the legal basis of the case
- Denial of opportunity to clarify
- Judicial steering of opposing counsel
- Contradiction between transcript and judgment
- Failure to apply the correct statutory section

These breaches undermine:

- procedural fairness
- equality of arms
- judicial impartiality
- integrity of appellate review

DG JUST has previously accepted submissions involving similar procedural irregularities.

6. Request to DG JUST

I respectfully request that DG JUST:

- Review the transcript evidence demonstrating judicial alteration of my point of law.
- Assess the procedural fairness implications under EU rule-of-law standards.

- Determine whether the conduct constitutes a breach of judicial obligations to accurately record, consider, and apply the legal grounds submitted.
- Issue any appropriate follow-up actions or recommendations consistent with DG JUST's mandate.

7. Supporting Documents

- [Transcript](#): Maurice D. Landers v. The Information Commissioner, 24 February 2022
- Prior DG JUST submissions (Failte32 Rule of Law submissions, July 2026)

Annex – Significance of Counsel's Remark on Irrationality

During the post-adjudgment portion of the hearing, counsel for the Information Commissioner stated:

"...the issue for the Court is whether there's been a pure error of law, it's ... official, or indeed the Commissioner acted irrationally **and I say Mr Landers hasn't identified the point of law but it's surprising he's making a rationale effort.**" (Transcript, p.31)

This remark is significant for three reasons:

- 1. Counsel acknowledges that “irrationality” was not pleaded by the applicant.** By stating that it was “surprising” that the applicant was “making a rationale effort,” counsel implicitly recognises that irrationality was **not** the applicant's point of law and did not originate from the applicant's submissions. This aligns with the transcript evidence showing that the applicant's actual point of law was Section 23, stated clearly and repeatedly earlier in the hearing.
- 2. Counsel's surprise indicates that the irrationality framing did not originate from counsel.** Earlier in the hearing, counsel rejected irrationality as the legal issue (p.27), instead identifying error of law as the proper question. His later surprise demonstrates that the irrationality framing was **introduced externally**, not by either party.
- 3. Counsel's remark confirms that the irrationality framing was introduced by the judge.** Counsel's surprise is best understood as a reaction to the judge's repeated statements that irrationality was “the only issue” (p.23) and the judge's explicit feeding of irrationality to counsel (p.26). Counsel's remark therefore supports the conclusion that the judge **altered the legal basis of the appeal**, and that counsel was adjusting his submissions to match the judge's substituted framing rather than responding to the applicant's actual point of law.

Taken together, this remark provides further corroboration that the irrationality ground was **not** the applicant's submission, **not** the pleaded point of law, and **not** the statutory basis of the appeal. Instead, it confirms that the irrationality framing was **introduced by the judge**, adopted by counsel only after judicial prompting, and ultimately used to mischaracterise and replace the applicant's actual Section 23 point of law.