



III

Comhairle na mBreithiúna  
The Judicial Council

Annual Report  
2021



Promoting judicial excellence  
and independence to ensure public  
confidence in the judiciary and the  
administration of justice in Ireland

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## FOREWORD BY THE CHAIRPERSON

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*Mr Justice  
Donal O'Donnell,  
Chief Justice,  
Chairperson  
of the Judicial  
Council*

I am very pleased to introduce the second Annual Report of the Judicial Council, my first as Chief Justice and Chairperson. The 2020 Annual Report outlined the early achievements of the Council in establishing its committees and the foundations for its supporting infrastructure. This second Annual Report reports on the further developments in 2021 in ensuring that the Council meets the timebound objectives in the Judicial Council Act 2019 as well as advancing its other functions, all centred on promoting and maintaining public confidence in our judiciary.

It is undoubtedly the case that a judiciary with access to a training function of the highest quality is a key feature in any country in instilling public confidence in its judges and their roles in the administration of justice. I am therefore very pleased to see and comment on the significant progress made in the provision of education and training by the Judicial Studies Committee and the Director of Judicial Studies outlined in this report. Judges in Ireland have, prior to appointment, amassed significant experience during the course of their careers as solicitors or barristers, not to mention the practical knowledge and professional training they have acquired in that time. The Judicial Council can now be said to have added to that expertise in a number of areas. The advent of induction training is a very welcome development and every judge appointed in 2021 has undergone that training. For others, new courses delivered during the year in the area known as judgecraft will be of great benefit. In particular, training in areas such as

unconscious bias, avoiding retraumatisation to obtain a deeper awareness of a victim's journey and in judicial conduct and ethics can only serve to assist our judges and positively enhance the experience of those appearing in our courts in any capacity.

A key feature in the administration of justice, as envisaged by the Act, is the provision of guidelines to assist judges, and indeed practitioners, in decision making. The first statutory task to be completed by the Judicial Council was to adopt the draft personal injuries guidelines finalised by the Personal Injuries Guidelines Committee late in 2020. In 2021 we saw those draft guidelines considered by the Board of the Council and come for consideration at the second meeting of the entire Judicial Council, in February 2021. The Judicial Council adopted the guidelines in March several months ahead of schedule.

A second committee charged with developing guidelines of this nature is the Sentencing Guidelines and Information Committee. That committee has given great consideration to its approach to developing sentencing guidelines. Having observed and learned from experiences in neighbouring jurisdictions, a decision was made to carry out research in relation to the data requirements and sources to prepare and monitor sentencing guidelines. That research is ongoing, but it was a positive step to see that, under its function to provide information in relation to sentencing, the committee produced information on sentencing for practitioners and for the general public.

It is certainly the case that an important feature of the Act is the provision of a fit for purpose judicial conduct regime in Ireland. The absence of a system of this nature has for some time presented as a deficiency in judicial accountability. This is now a welcome development, and the Judicial Conduct

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Committee spent 2021 working through the statutory requirements to lead to commencing this function. As Chairman of the Judicial Conduct Committee, as Chairman of the Council and of the Board, and as Chief Justice, I am pleased that 2021 saw the finalisation of the draft guidelines, ready for consideration as to adoption by the Judicial Council in February 2022. In my foreword to the draft guidelines, I refer to the importance that we, the judges in Ireland, adopt the draft guidelines as guidelines for our own conduct. They are designed as a set of principles to enable judges to come to their own decisions on the ethical and conduct issues which they face and to help the public understand the role of the judiciary and their professional standards. Public confidence in the justice system depends on the integrity and authority of the judiciary and the public is entitled to have high expectations in this regard. This places a serious responsibility on the judiciary, willingly accepted by judges.

I wish to express my gratitude to my fellow Board members and to the members of the committees of the Judicial Council for their roles in the ongoing work in building a successful Judicial Council. That amounted to 47 judges formally involved in the Council's work, all in addition to their judicial role. Ireland has the lowest number of judges per capita in Europe and the processing of the work of our courts imposes a substantial burden on an overstretched judiciary. I am very grateful therefore, to my colleagues who serve on the committees of the Council. I also acknowledge the lay members involved, who bring a valuable perspective and expertise to our work. Many colleagues also brought their experience and willingness to become involved in supporting each other. The advent of formal judicial mentoring, and judges being trained to train colleagues is indicative of the unified approach to this project. The strong links Ireland has with

international judicial training institutes was also important in 2021 and the assistance of our close contacts abroad is appreciated. I am also grateful for the support of the Secretary and staff of the Council in supporting our goals and in meeting the many challenges presenting in 2021. During 2021 the staff of the Council – including the Secretary – amounted to just two people. The output of the Council at that time is a remarkable tribute to the hard work, commitment and energy of Kevin O'Neill and Mary Murphy. It is neither reasonable nor feasible to expect an organisation like the Judicial Council to function with only two people required to perform all the administrative and support functions involved but this is a great tribute to both Kevin and Mary that it was able to function so effectively during what in any circumstances would have been a challenging year, and I would like to thank them both for the work they have done.

In 2022 I look forward to the continued progress towards the development of sentencing guidelines, the further development of judicial training and the finalisation of the judicial conduct regime. It is undoubtedly the case that public confidence in any public service context is not easily earned and may be very quickly lost. This is certainly the position in relation to the judiciary and I am heartened by the commitment of my colleagues across the judiciary. The continued implementation of the Council's functions in 2022 will carry us further along the road to continued and I hope enhanced public confidence in the judiciary, guided by the important principles of judicial independence, impartiality, integrity, propriety, competence and diligence.

**Donal O'Donnell, Chief Justice**

Chairperson of the Judicial Council  
June 2022

## INTRODUCTION BY THE SECRETARY TO THE JUDICIAL COUNCIL

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**Kevin O'Neill**  
*Secretary to the  
Judicial Council*

I am very pleased to introduce this second Annual Report of the Judicial Council. In 2021 the Council sustained its steady growth by continuing to meet all of its statutory deadlines. We saw the emergence of some tangible benefits for the members of the Council through the increased pace in delivery of judicial education and training, supported by the Council's staff. Further notable achievements were the finalisation of the draft judicial guidelines in relation to conduct and ethics and the adoption of the personal injuries guidelines. The year was not without significant challenges however, arising from slower than expected development in relation to staffing and supporting infrastructure. While there remain challenges to overcome in 2022, leading the administration of the Council and working closely with the judiciary on multiple projects continues to be a personally rewarding experience.

The Council's functions centre around public confidence in the judiciary and the administration of justice. This is achieved through the creation of a dedicated learning and development function for the judiciary, a mechanism for managing judicial conduct and the provision of guidelines to assist judges in consistent decision making. This year was the first full year for all of the committees, albeit the Personal Injuries Guidelines Committee had started and concluded its work within 2020. The remainder of the Council's business

agenda for 2021 was again driven by statutory deadlines. Progress continued in all of these areas, though developing the personal and jurisdictional support functions for judges envisaged by the Council remains to be progressed.

In delivering on the objectives, many responsibilities rest solely with judges under the Act and it is important to note that their core daily role of administering justice in the courts has not diminished with the establishment of the Council. Consequently, much of their work on Council business must be done after "the day job". It is therefore important that the Council's administrative staff support to the greatest extent possible the future development of the various committees' workstreams. That could not be achieved without the enormous support and dedication of our two staff members, who display the capacity to deliver regardless of the task and whose commitment and dedication to the Judicial Council I am very grateful for.

Oversight of the administration of a public body, all of whose members are independent under the separation of powers has been an interesting if challenging experience. While the Council is a public body, subject to the same oversight as any other, the principles of judicial independence enshrined in our Constitution are paramount and cannot be derogated from or diminished. This has resulted in a unique confluence of governance principles applicable to this body which may not always be compatible.

The administrative challenges aside, having been personally involved with the Judicial Council since establishment and working with all of its committees, it is now apparent that there are a number of challenges

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which will require to be overcome if this body's ambitions are to be realised. The Judicial Studies Committee's aspirations are somewhat constrained in the delivery of training because of judges' court sitting commitments and consequent difficulties in attending training courses. In that regard the Council made a submission to the Judicial Planning Working Group outlining the additional judicial resources required to deliver at least five training days per judge per year. A further key issue is in relation to the development of sentencing guidelines. At the end of 2021 the Sentencing Data Research Project had not yet concluded but it was already evident that there is a significant data deficit, particularly at District Court level, which will inhibit the capacity to develop guidelines. It is hoped that we can work constructively with other justice agencies in an effort to overcome this problem.

I am again particularly grateful for the level of cooperation from other bodies and individuals, including this year from a number of academics, which was generously forthcoming in 2021. In particular, cooperation with judges and staff from the judicial training bodies in the UK jurisdictions was invaluable as was that from the SSR in The Netherlands. We hosted two significant international conferences in 2021. The first was the United Kingdom and Ireland Judicial Studies Conference with participation by judges and officials from all four jurisdictions. The second was the Anglophone Germanophone Conference which involved participants from eight European countries. Further engagement with French judges and the European Court of Justice provided opportunities for judges to engage with or learn from international experts. In addition to training, colleagues at the Scottish Sentencing Council gave very generously of

their time and experience, which included a presentation to the Sentencing Guidelines and Information Committee members.

The Council has a committed and supportive Board, who met seven times in 2021. The Council's judges who chair, serve and otherwise contribute to its committees all ensure that the Council's key functions continue to be carried out. The lay members, nominated by Government, of the Judicial Conduct Committee and Sentencing Guidelines and Information Committee have provided invaluable assistance throughout 2021. Both their judicial committee colleagues and I am appreciative of their expertise and support.

The Judicial Council is undoubtedly a long term project which will support many generations of judges, but in order to provide first class support for its current members it is essential that we find the capacity to fully develop our supports and policies in 2022. The statutory priorities in the year ahead include developing a system for judicial complaints, driving judicial training and the work on sentencing guidelines. It is however essential to simultaneously make significant progress on the development of governance structures, staff recruitment, fit for purpose accommodation and an independent ICT function. These continue to present challenges, but I am optimistic that by the end of 2022 we will have created a much more solid base from which to progress.

**Kevin O'Neill**

Secretary to the Judicial Council  
June 2022

## OVERVIEW OF 2021



WEBSITE  
judicialcouncil.ie  
**6235**  
VISITORS



**27**  
STATUTORY  
MEETINGS  
HELD



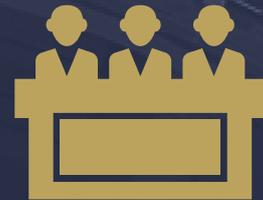
**SENTENCING**  
ACADEMIC RESEARCH  
SENTENCING  
INFORMATION PUBLISHED  
RESEARCH REGISTER



JUDICIAL CONDUCT  
AND ETHICS  
GUIDELINES DRAFTED



**JUDICIAL TRAINING**  
INDUCTION  
MENTORING  
UNCONSCIOUS BIAS  
CONDUCT & ETHICS  
VULNERABLE  
WITNESSES & VICTIMS



**47**  
JUDGES AS BOARD  
OR COMMITTEE  
MEMBERS



PERSONAL INJURIES  
GUIDELINES  
ADOPTED



OUR JUDGES  
ASSISTING JUDGES  
ACROSS THE WORLD



HOSTING  
INTERNATIONAL  
TRAINING  
CONFERENCES



OUR STATUTORY  
DEADLINES MET

# ABOUT THE JUDICIAL COUNCIL

## ABOUT THE JUDICIAL COUNCIL

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The Judicial Council was established pursuant to the Judicial Council Act 2019 (“the Act”) on the 17th of December 2019 pursuant to Section 5 of the Act. It is an independent body whose members are all of the judges in Ireland. The full range of the Council’s functions is set out in Section 7 of the Act. Many of the functions of the Council are carried out by a Board on its behalf and more information on the Board is available on pages 12 and 13.

The functions of the Council may be summarised in four key pillars as follows:

1. Building an independent, progressive body for an independent judiciary
2. Delivering excellence through dedicated judicial training and support functions, including guidance provided by personal injuries and sentencing guidelines
3. Creating a function to oversee high standards of judicial conduct
4. Achieving public confidence in the judiciary and the administration of justice

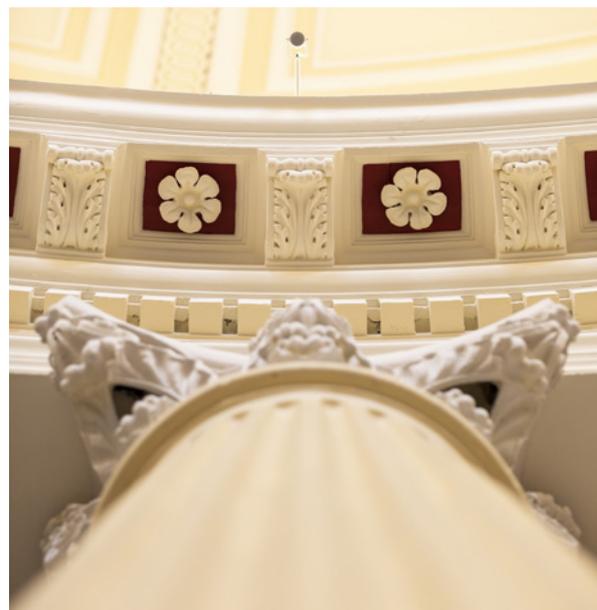
Central to the values of the Judicial Council are the core judicial values of:

- Independence
- Impartiality
- Integrity
- Propriety (including the appearance of propriety)
- Competence and diligence
- Equality of treatment of all persons before the courts.

The Council has specific functions which include adopting and publishing:

- Guidelines concerning judicial conduct and ethics prepared by the Judicial Conduct Committee,
- Draft Personal Injuries Guidelines and amendments prepared by the Personal Injuries Guidelines Committee and promoting amongst judges an understanding of the principles governing the assessment and award of damages for personal injuries,
- Sentencing Guidelines prepared by the Sentencing Guidelines and Information Committee and promoting an understanding of sentencing principles.

In addition to these functions, the Council has a more general role to establish, maintain and improve communication with bodies representing judges appointed to courts outside Ireland and international bodies representing judges.



Many of the functions may be performed by the Board of the Council or the Council's committees, though adopting the guidelines previously referred to is reserved to the Council alone. The Judicial Council is required to meet once per annum. The Chief Justice is the chairperson of the Council. Administrative support for the Council is managed by the Secretary to the Judicial Council, who reports to the Board in relation to the performance of his functions and who accounts to the Public Accounts Committee and other Oireachtas committees as regards the accounts and general administration of the Council. The Council is funded from the Vote of the Department of Justice.



### **The Judicial Council in 2021**

The work carried out in developing the learning and development function and the sentencing and personal injuries guidelines in 2021 is set out in detail in this Annual Report under the relevant committees' reports, as is the development of the judicial conduct regime.

The development of the Judicial Council's basic administrative structure continued throughout 2021 with an emphasis on planning its core requirements of IT, accommodation and staffing.

A contractor was procured to source and facilitate an independent IT function with plans to progress to an independent platform, migrated from the Courts Service IT network, well advanced by year end. The Council's website continues to be expanded and updated to reflect ongoing priorities.

The Council's current location is in the historically significant Green Street Courthouse building. A plan for refurbishment work which is required to accommodate the Council's current and future staff was agreed and confirmed in October with the Courts Service. Building work is expected to commence in the first half of 2022.

The Council utilised professional legal and accountancy services in 2021 to support it in its work in establishing and complying with its public sector governance requirements.

The second, and indeed third and fourth meetings of the Judicial Council took place remotely in February and March. The Judicial Council Act 2019 requires one such meeting annually, though the complexities around the personal injuries guidelines required two additional meetings.

## THE BOARD

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The Board of the Judicial Council comprises 11 judges and the Act sets out the basis for their appointment:

- The Chief Justice and the four Court Presidents are ex officio members
- One judge from each of the five jurisdictions is elected by their colleagues
- One judge is co-opted in accordance with the Act (from the Supreme Court until 2024)
- draft amendments to Sentencing Guidelines prepared by that Committee,
- draft Guidelines concerning judicial conduct and ethics prepared and submitted by the Judicial Conduct Committee, and
- draft amendments to Guidelines concerning judicial conduct and ethics prepared by that Committee.

Each elected and co-opted term of membership is for a period of four years. A full list of Board members for 2021 is set out on the following page.

### Board functions

The functions of the Board are set out in Section 11 of the Act.

The functions of the Council are performed by the Board on behalf of the Council in accordance with directions (if any) as the Council may give to the Board.

Broadly, the Board considers and determines policy in relation to the performance of the Council's functions and oversees the implementation of that policy by the Secretary.

It also has an important statutory role in reviewing:

- draft Personal Injuries Guidelines prepared and submitted by the Personal Injuries Guidelines Committee,
- draft amendments to Personal Injuries Guidelines prepared by that Committee,
- draft Sentencing Guidelines prepared and submitted by the Sentencing Guidelines and Information Committee,

The Board may also make such modifications to those draft Guidelines, or draft amendments to such Guidelines, as it considers appropriate.

The Board is required to meet four times per annum. In 2021 it met seven times. This included approval of draft Personal Injuries Guidelines in January and consideration of draft Guidelines on judicial conduct and ethics in July. The Board membership saw some turnover during the year, with three of its original members' terms concluding.

## THE MEMBERS OF THE BOARD



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1. Mr Justice Donal O'Donnell  
Chief Justice,  
Chairperson\*

2. Mr Justice George Birmingham  
President of the  
Court of Appeal

3. Ms Justice Mary Irvine  
President of the  
High Court

4. Ms Justice Patricia Ryan  
President of the  
Circuit Court

5. Judge Paul Kelly  
President of the  
District Court<sup>^</sup>

6. Ms Justice Aileen Donnelly  
Court of Appeal

7. Mr Justice Michael MacGrath  
High Court

8. Judge John Aylmer  
Circuit Court

9. Judge Elizabeth MacGrath  
District Court

10. Ms Justice Iseult O'Malley  
Supreme Court<sup>+</sup>

The Secretary to the  
Judicial Council is  
Mr Kevin O'Neill

The secretary to the  
Board is Ms Mary  
Murphy

### Notes

\*In October 2021 Mr. Justice Donal O'Donnell, already a Board member, was appointed Chief Justice and assumed the role of Chairperson

on the retirement of Mr Justice Frank Clarke. This in turn led to a vacancy as at 31st December 2021 in respect of his position as elected Supreme Court member.

<sup>^</sup>Judge Colin Daly was a Board member up until his appointment to the Circuit Court in March 2021.

<sup>+</sup> Mr Justice William McKechnie was a Board member until his retirement in April 2021.



# JUDICIAL COUNCIL COMMITTEES

## JUDICIAL STUDIES COMMITTEE

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### Background

Section 17 of the Act provides for the establishment of the Judicial Studies Committee, whose function is to oversee the continuing education and training of judges.

The provision of a modern training programme is central to ensuring that the members of any profession deliver to their full potential. Prior to the establishment of this committee, judicial training was offered by hosting annual conferences, regular seminars and by courses provided externally. To a large extent, the premise was that a judge was sufficiently expert, on appointment, to carry out all judicial functions until retirement. This approach has not prevented any Irish judges from carrying out their functions and they have been recognised internationally as experts in their profession, but undoubtedly the approach to continuing professional development has evolved.

Since 1995, an applicant for any judicial office must undertake to the Judicial Appointments Advisory Board that, if appointed, she will take such courses of training or education as may be required by the Chief Justice or President of the relevant court. The Judicial Studies Committee now creates a new environment for the provision of judicial training and education.



The Terms of Reference for the Judicial Studies Committee, which were adopted by the Council at its first meeting in February 2020 are to:

- (a) identify and continue to update the needs of the judiciary for education and training;
- (b) develop courses to meet the needs of the judiciary for induction, continuing professional education and development;
- (c) provide, or assist in the provision of, induction, education and training on matters relevant to the exercise by judges of their functions, including but not limited to:
  - (i) dealing with persons in respect of whom it is alleged an offence has been committed,
  - (ii) the conduct of trials by jury in criminal proceedings,
  - (iii) the conduct of trials by judges in civil and criminal proceedings,
  - (iv) European Union law and international law,
  - (v) human rights and equality law,
  - (vi) information technology, and
  - (vii) the assessment of damages in respect of personal injuries,

- (d) prepare and distribute relevant materials to judges;
- (e) publish material relevant to its functions;
- (f) promote, explain and protect the core value of judicial independence in judicial training and education; and
- (g) establish, maintain and improve communication with -
  - (i) bodies representing judges appointed to courts of places other than the State; and
  - (ii) international bodies representing judges.



### Report of the Judicial Studies Committee in 2021

The broad function of this Committee is to provide for the continuing education of judges. This is further particularised in Sections 7 and 17 of the Act and in the Terms of Reference. This committee met on nine occasions in 2021.

A key approach to judicial training internationally, is that judges (insofar as is possible) train judges. The Board appointed Ms. Justice Mary Rose Gearty of the High Court as the Director of Judicial Studies, following a competitive interview process in July 2020. Judge Gearty devoted 50% of her working time in 2021 to the planning and delivery of judicial training and education.

The Director and the Committee renewed and strengthened their engagement with international judicial training bodies and will continue to foster these networks and develop new allies across the world to facilitate co-operation at a global level in the coming years.

The workplan for the future delivery of judicial training prepared in 2020, with a focus on a number of urgent issues, was implemented in full. Those ambitions included the following:

1. A focus on newly appointed judges has been provided with dedicated induction training, emphasising conduct and ethics.
2. Commencement of 'judge-led' mentoring training, including training judges from every first instance jurisdiction in this process.
3. Implementing the recommendations of Mr Tom O'Malley in his 'Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences'.
4. Addressing the challenges of transforming court practices to enable virtual hearings.

In 2021 these objectives were not only fulfilled but were surpassed. An outline of those and other judicial training courses and events during 2021 follows:

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## Judicial Conduct and Ethics Workshops

Judicial conduct and ethics are recognised internationally as central to the judicial function. The Director developed and facilitated regular workshops on this topic since early 2021 and delivered over 20 courses during the year. Central to these interactive workshops are the Bangalore Principles.

Judges attending the regular workshops are in groups of between three and seven participants and the session takes place online. There is a structured discussion on each of the following: Independence, Impartiality, Integrity, Propriety, Equality, Competence and Diligence. In each section, judges are invited to reflect on relevant

cases and to exchange information about experiences and hypothetical examples relevant to each of the principles. The materials discussed are updated regularly in line with case law and with suggestions from participating judges and judges from other jurisdictions, having been originally adapted from materials used by the Judicial College in England and Wales.

## Avoiding Re-traumatisation

This course is a workshop for trial judges which ensures that they develop a deeper awareness of the victim's experience in court in sexual offence cases. This was considered an early priority for the Director in response to the Victims Directive and the Criminal Law (Victims of Crime) Act of 2017 which



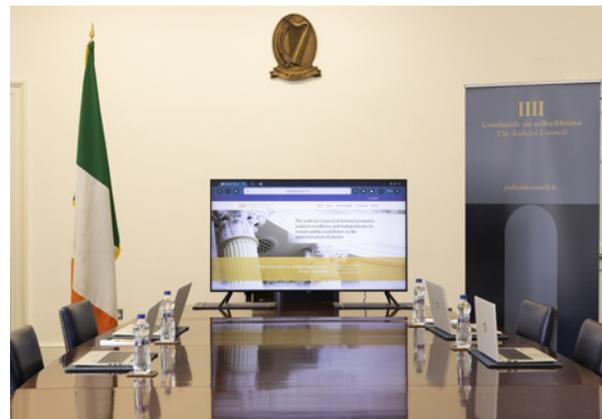
implements the Directive. It was also a timely response to the O'Malley Report. In July of 2020, the O'Malley Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences was published. This Working Group, chaired by Mr Tom O'Malley, recommended that vulnerable witnesses receive better protection in court, including that training for judges in sexual offence cases be prioritised.

The Avoiding Re-traumatisation programme was devised in collaboration with the SSR, the Dutch Judicial Training Institute. That body has extensive experience in judicial training and in particular, in training under the Victims Directive. The SSR team first trained a group of nine experienced Irish trial judges. The focus of this training was to give judges a deeper and more realistic understanding of victims' experiences in such cases and to explore ways in which the trauma, which re-emerges for victims during a trial, can be reduced. The training included consultation with, and direct input from, victims' rights organisations. That pilot group of Irish judges undertook training aimed at reducing the trauma for victims, and they also received training in judicial training methods so as to enable them to offer the training to other colleagues. The programme was delivered by Irish judges to their colleagues in November of 2021. It continues in 2022 and is open to all judges who sit in criminal courts.

### **Unconscious Bias and Vulnerable Witnesses**

This course begins with a presentation and discussion about unconscious bias; the way in which our brains develop to take mental

shortcuts and how this can lead to bias in decision-making and in assessing people or evidence. The online presentation and discussion on the first day is followed by practical work in the courtroom on day two. The judges participate in hypothetical cases, designed in collaboration with the King's Inns, and intended to test the judges' skills in identifying and reducing biases in court, however they may arise. The practical examples include cases involving witnesses with various vulnerabilities in order to explore ways in which these might be identified and accommodated. The aim of the training is not only to inform judges but to enable witnesses to give their best evidence by helping judges to identify potential areas of bias, to question and contradict stereotypes and to offer the judges a deeper understanding of people whose experiences are different from their own.



### **Induction Training**

Induction training was commenced by the Director as a priority in September 2020 and carried on throughout 2021. This course provides practical training to judges before sitting in court for the first time. Experienced judges join their new colleagues and address

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typical applications in various jurisdictions. The new judges hear at least two different applications, with actors playing the parts of litigants and lawyers, and discuss with their colleagues how best to address issues, deal with participants in the court process and manage court time fairly, courteously and efficiently. Every judge appointed since September 2020 has taken this course.

### **Mentor Training**

Each newly appointed judge is assigned a more experienced judicial mentor. Judicial Mentors are trained to listen actively, to create formal meeting opportunities throughout the judge's first year and to enable the new judge to reach her own solutions to problems arising, while being supported by the mentor. The support is a formal, but individualised response to the needs of the new judges, both personal and professional, as they experience significant changes when they are first appointed. The system has sufficient informality in terms of how it is implemented that it can be adapted to the needs of the individual new judge.

### **Training of Judicial Trainers**

In September and November 2021 Irish judges were formally trained, in separate workshops, in andragogical methods in order to train their own colleagues and peers. This training in the education of experts was provided by experienced judicial trainers from England and Wales and from the SSR in The Netherlands, who have designed the courses, in collaboration with the Director, specifically for the Irish judiciary.

Judges from all jurisdictions are offered places on these programmes in consultation with the Presidents of the relevant courts. During each of these courses, judicial trainers from other countries pass on their experience, techniques and skills to their Irish colleagues so that Irish judges can design, offer and deliver their own training programmes.

### **Other Events**

The annual United Kingdom and Ireland Judicial Studies Conference was hosted online by Ireland in 2021. This event shared the knowledge and experiences of the four jurisdictions, particularly in the light of the COVID pandemic, and discussed and agreed co-operation for the following year.

The Anglophone-Germanophone Judicial Conference was also hosted by Ireland. Over 45 family law judges and family law experts from Ireland, Austria, Germany, Switzerland and the United Kingdom attended over the two-day bilingual conference in October 2021. The delegates agreed a number of resolutions which are published on the Council's website.

A number of judges have taken part in Irish language training during 2021, which includes regular events to improve capacity to conduct cases in the language.

The Director of Judicial Training and the Chairperson of the Judicial Studies Committee have attended numerous training courses and meetings with judges and judicial trainers from around the world. These included judges from Britain, France, Tanzania, Trinidad, Jamaica and in particular events arranged by the EJTN.

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## Looking to 2022 and beyond

The further expansion of the judicial training function in 2022 is very much dependent upon two key factors, being the appointment of the necessary staff to support this area and extending the number of judges being available to attend courses organised by the committee.

In the case of support, it is understood that the appointment of a senior civil servant as Associate Director of Judicial Studies will take place in early 2022 and that supporting staff will follow.

The availability of judges to attend training courses in the light of significant court-sitting commitments is of some concern.

If resources are provided, we will build upon the progress made in judgecraft training by continuing and expanding our induction course, delivering updated unconscious bias and avoiding re-traumatisation workshops and adding courses on human trafficking, insolvency and practical information technology for serving judges. A key objective for 2022 will be judicial training in the area of Assisted Decision-Making, in anticipation of major legislative change to this area of law. Medium term priorities for the Judicial Studies Committee are to establish a leadership course for judges and to focus on resilience and judgment writing.

The members of the Committee are as follows:

Mr Justice John MacMenamin,

Ms Justice Aileen Donnelly, Chairperson

Ms Justice Mary Rose Gearty, Director of Judicial Studies

Ms Justice Niamh Hyland

Judge Mary O Malley Costello

Judge Paul Kelly, President of the District Court

Judge Marie Quirke, Vice Chairperson



## THE PERSONAL INJURIES GUIDELINES COMMITTEE



**Ms. Justice Mary Irvine,**  
**President of the High Court**  
**Chairperson of the Personal Injuries Guidelines Committee**

The Personal Injuries Guidelines Committee is required under Section 18 (11) of the Act to submit a report of its activities to the Council for inclusion in its Annual Report. This is the report prepared in order to comply with that obligation.

The initial function of the Personal Injuries Guidelines Committee was to draft Personal Injuries Guidelines pursuant to Section 90 for submission to the Board of the Judicial Council. The Committee submitted the draft Personal Injuries Guidelines to the Board of the Judicial Council on the 9th December 2020 pursuant to Section 18 (4) as amended, concluding its work on this draft.

The Committee was required under Section 90 of the Act to have regard to a number of matters when preparing the Guidelines, including:

- the level of damages awarded for personal injuries by courts in Ireland and such places outside Ireland as the Committee considers relevant
- principles for the assessment and award of damages for personal injuries determined by the High Court, the Court of Appeal and the Supreme Court
- guidelines relating to the classification of personal injuries

- the need to promote consistency in the level of damages awarded for personal injuries

A key consideration for the Committee in preparing the guidelines was to propose categories of damages which would be fair to both the plaintiff (as the injured party) and to the defendant. The Committee, consisting of seven judges, carried out its role in strict compliance with its statutory obligations and did so free from the influence of any interest groups.

During 2021 the draft guidelines were before meetings of both the Board and the Judicial Council, and were adopted by the Council on the 6th of March 2021. In submitting its draft guidelines and a report to the Board the committee prepared a comprehensive report outlining how it went about its business.

Prior to the commencement of the relevant legislative provisions giving effect to the guidelines, judges were required to have regard to the Book of Quantum when awarding general damages in personal injury cases. Pursuant to Section 22 of the Civil Liability and Courts Act 2004 (as amended by Section 99 of the Act), the courts will be obliged to have



regard to the guidelines instead of the Book of Quantum. It will be noted that the categories of injuries in the guidelines are much more detailed and manifold than those which were provided for in the Book of Quantum and brackets of damages have been proposed for each such category. The Committee's intention was that this should make it much easier for presiding judges to assess the sum which would represent a fair and just award in every case.

Further, the committee had hoped that the improved guidance provided by the guidelines will have a number of secondary benefits. With greater certainty as to what would be likely to be awarded for general damages if an action was to proceed to trial, more cases should settle early, a significant benefit to all claimants. And, the increased numbers of early settlements should reduce the legal costs of both claimants and defendants.

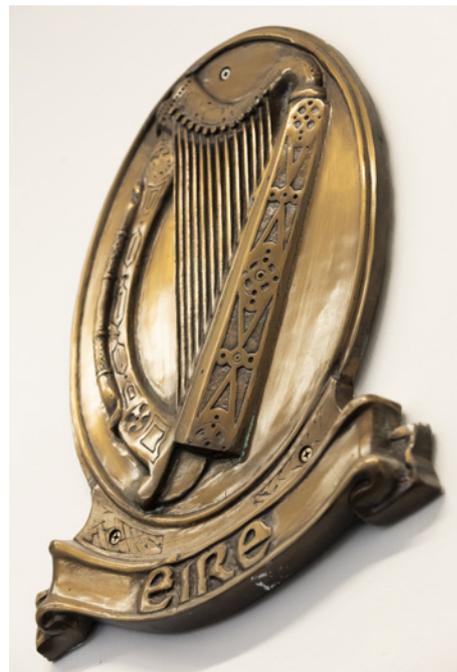
### **Report of the Personal Injuries Guidelines Committee in 2021**

By reason of the timing of the conclusion of its first task of preparing the draft guidelines in 2020, the committee had no function to carry out during 2021. It is required to review the Guidelines from time to time in accordance with Section 18 (5) of the Act, which having regard to that section, must take place by March 2024.

### **The membership of the Personal Injuries Guidelines Committee is as follows:**

- Ms Justice Mary Irvine, Chairperson
- Mr Justice Seamus Noonan

- Mr Justice Michael MacGrath
- Mr Justice Senan Allen
- Judge Jacqueline Linnane (retired on 15th April 2021)
- Judge Seán Ó Donnabháin (retired on 26th October 2021)
- Judge Brian O'Shea



## SENTENCING GUIDELINES AND INFORMATION COMMITTEE



**Ms. Justice  
Iseult O'Malley,  
Chairperson of the  
Sentencing Guidelines  
and Information  
Committee**

The Sentencing Guidelines and Information Committee was established on the 30th of June 2020 which was the date nominated by the Judicial Council. It is made up of 13 members in total, from two categories; eight judges nominated by the Chief Justice who are representative of each jurisdiction and five lay members appointed by the Government who each serve for a term of four years. Full details of the membership of the Sentencing Guidelines and Information Committee is set out on page 27.

The Committee's functions pursuant to Section 23 of the Act are to:

- prepare and submit to the Board of the Council for its review draft Sentencing Guidelines,
- prepare and submit to the Board for its review draft amendments to Sentencing Guidelines adopted by the Council,
- monitor the operation of Sentencing Guidelines,
- collate, in such manner as it considers appropriate, information on sentences imposed by the courts, and
- disseminate that information from time to time to judges and persons other than judges.

Once sentencing guidelines are adopted by the Judicial Council, a court must have regard to any relevant guidelines when imposing a sentence unless it is satisfied that to do so would be contrary to the interests of justice. In such a case, the court must give its reasons.

The factors to be considered by the committee are wide-ranging and include:

- sentences currently imposed by the courts,
- the need to promote consistency in sentences,
- the impact of decisions of the courts relating to sentences on the victims of the offences concerned,
- the need to promote public confidence in the system of criminal justice,
- the financial costs involved in the execution of different types of sentence and the relative effectiveness of them in the prevention of re-offending.

The judges nominated to the Committee have particular interest and expertise in sentencing. Their expertise is enhanced by the lay members who were appointed by the Government in July 2020 following recommendations made by the Public Appointments Service. In appointing a person to be a Sentencing Guidelines and Information Committee member, the Government had to be satisfied that amongst the members, there is experience and knowledge of:

- the prosecution of criminal proceedings,
- the defence of criminal proceedings,
- policing,
- the administration of justice,
- sentencing policy,

- the promotion of the welfare of the victims of crime,
- academic study or research relating to criminal law or criminology,
- the use of statistics, and
- the rehabilitation of offenders.



### Report of the Sentencing Guidelines and Information Committee in 2021

The Sentencing Guidelines and Information Committee is obliged pursuant to Section 23(8) to submit this report of its activities annually for inclusion in the Judicial Council's Annual Report.

The Committee met on five occasions in 2021 and a number of topic-specific sub-committees also met on several occasions.

The task of a sentencing guidelines body, as evidenced by the extensive resources allocated to such bodies in comparable

jurisdictions, is significant and will require ongoing research. Given the relative lack of systematic information about sentencing in Ireland, one of the first priorities would be the selection of an appropriate system or systems to be used for data collection on an ongoing basis.

The Judicial Council tendered in late 2020 to commission original research to provide an analysis of existing methodologies for sentencing data collection in Ireland, as well as an evaluation of the utility of methodologies employed in other jurisdictions. The University of Strathclyde was contracted to carry out the research and, at the end of 2021, the first Interim Report had been completed and work commenced on the next stage.

The members of the Strathclyde research team are

- Dr Jay Gormley (Centre for Law, Crime & Justice, Law School, University of Strathclyde, Scotland)
- Mr Tom O'Malley SC (Member of the Inner Bar of Ireland and Associate Professor of Law, NUI Galway)
- Professor Julian Roberts (Centre for Criminological Research, Law Faculty, University of Oxford, England)
- Professor Cassia Spohn (School of Criminology & Criminal Justice, University of Arizona State University, USA)
- Professor Cyrus Tata (Centre for Law, Crime & Justice, Law School, University of Strathclyde, Scotland)

The team's first report highlights the most significant issue which the Committee will have to overcome, being the absence of

data to support its work. This was not an unexpected finding given that it is a problem encountered in many other countries, and indeed has been highlighted in other reports in Ireland as an issue, but there is a stark reality highlighted. The key findings were that:

- Data relevant to sentencing is available in Ireland, but it is not currently sufficiently detailed or comprehensive to provide an accurate portrait of current sentencing practices,
- There are notable information deficits with regard to the sentencing practices in the District Courts, which hear the overwhelming majority of cases that proceed to court, and
- Criminal justice agencies collect administrative data as part of fulfilling their functions, and it is from this administrative data that official statistics are derived. Yet, while undoubtedly useful for some purposes, the available official statistical data are inadequate for the specific purpose of elucidating a meaningful or accurate picture of actual judicial sentencing practices. The kind of reliable, comprehensive and up-to-date data needed to identify, for example, sentencing patterns for particular offences is absent.

Best international practice and experience would indicate that these data-related foundations must be created before developing guidelines. Therefore the completion of the Strathclyde project is necessary before embarking on significant work on sentencing guidelines, though the committee did identify a number of areas which could be progressed pending that.

The committee decided in 2021 to create a

register of researchers to assist the committee into 2022 on an ongoing basis. Those roles were advertised and a register is in place from which researchers will be invited to tender for research projects. The first such project to commence in 2022, is a study of District Court Judges' views and experience of sentencing and relationship violence.

The availability of information in relation to sentencing by the Court of Appeal enabled the Committee to publish details of over 600 cases heard on appeal, which will assist both judges and legal practitioners. The Committee also published two information documents which summarise the existing case law in relation to sentencing. Both outline by offence type the factors which, having regard to that offence, the level of seriousness and any aggravating factors, the sentence which the offence may attract. The document entitled 'Sentencing Judgments Guidance for the General Public' is intended to provide information and a greater understanding of sentencing for a number of more serious offences.



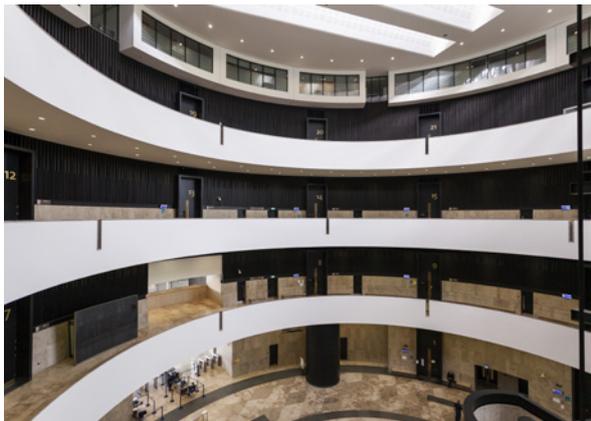
The entire Committee also met in June with the senior management team of the Scottish Sentencing Council, whose work is a number

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of years in progress, to hear about their own experience. Dr Ian Marder and Dr Kevin Guilfoyle also gave generously of their time to assist the committee.

It is envisaged that as the Committee's work progresses it will publish updates on its work and provide access to its research. For this purpose, the Judicial Council's website will be adapted to provide the general public with easy access to this information.

- Mr Vivian Geiran
- Dr Diarmuid Griffin
- Mr Michael O'Sullivan
- Ms Marianne O'Kane
- Dr Sinéad Ring



**The members of the Committee are as follows:**

- Ms Justice Iseult O'Malley (Chairperson)
- Mr Justice John Edwards
- Mr Justice Tony Hunt
- Mr Justice Paul Coffey
- Ms Justice Tara Burns
- Judge Rory MacCabe
- Judge Melanie Grealley  
(up to 6th October 2021)
- Judge Paula Murphy

## JUDICIAL CONDUCT COMMITTEE



*Mr. Justice Donal O'Donnell,  
Chief Justice,  
Chairperson of the  
Judicial Conduct  
Committee*

### Background

The Judicial Conduct Committee was established on the 30th of June 2020 and met for the first time in July 2020. Its principal function is to promote and maintain high standards of conduct among judges, having regard to the principles of judicial conduct requiring judges to uphold and exemplify judicial independence, impartiality, integrity, propriety (including the appearance of propriety), competence and diligence and to ensure equality of treatment of all persons before the courts. It is required to:

- prepare and submit to the Board for its review draft guidelines concerning judicial conduct and ethics, including guidance as when a judge should consider recusing himself or herself from presiding over legal proceedings, for adoption by the Council,
- consider complaints and refer them for resolution by informal means or undertake investigations into the conduct of individual judges in accordance with Part 5 of the Act,
- take such action, if any, in accordance with that Part as it considers necessary for the purposes of safeguarding the administration of justice whether as a result of its consideration of a complaint and its referral for resolution by informal means or the undertaking of an investigation under Part 5 or otherwise,

- prepare and publish guidelines providing for the resolution by informal means of complaints that are determined to be admissible under this Part.

It may also:

- of its own volition or, shall, on the request of the Board or the Council, prepare and submit to the Board for its review draft amendments to guidelines concerning judicial conduct and ethics adopted by the Council, and
- provide such advice and recommendations to an individual judge or to judges generally on judicial conduct and ethics as it sees fit.

### Membership

The Committee is made up of 13 members:

- The Chief Justice and four Court Presidents who are ex officio members,
- Three judges elected by the judiciary from the membership of the Council,
- Five lay members nominated by the Government.

Each elected and lay member term is for a period of four years. The lay members were appointed by the Government following recommendations made by the Public Appointments Service. In appointing a person to be a member of the Judicial Conduct Committee, the Government had to be satisfied that amongst the members there is experience and knowledge of:

- the maintenance of standards in professions regulated by a statutory or other body,
- dealing with complaints made against such professionals,

- mediation or other alternative dispute resolution mechanisms,
- the administration of justice, and
- the management and provision of services to the public.

### **The members of the Committee are as follows:**

- Mr Justice Donal O'Donnell, Chairperson\*
- Mr Justice George Birmingham
- Ms Justice Mary Irvine
- Ms Justice Patricia Ryan
- Judge Paul Kelly<sup>^</sup>
- Mr Justice Charles Meenan
- Judge Martin E. Nolan
- Judge Alan Mitchell
- Mr Kieran Coughlan
- Ms Claire Archbold
- Prof. Maeve Conrick
- Mr Patrick Doyle
- Dr Bernard McCartan

*\* In October 2021 Mr. Justice Frank Clarke retired as Chief Justice and was succeeded by Mr Justice Donal O'Donnell.*

*<sup>^</sup>In March 2021 Judge Colin Daly was appointed to the Circuit Court and was succeeded by Judge Paul Kelly.*

## **Report of the Judicial Conduct Committee in 2021**

Following its workplan from 2020, the preparatory work of this Committee in early 2021 was divided into three subcommittees, each dealing with a specific area of work within the Committee's regulatory remit. These were the preparation of draft Guidelines on judicial conduct and ethics, the drafting of procedures to be followed which will underpin the new conduct regime once commenced and the drafting of procedures dealing with the resolution of complaints informally, where appropriate.

The Committee's primary focus within the first half of the year was as required under the Act, the drafting and completion of guidelines on judicial conduct and ethics to include guidelines on issues for consideration regarding recusal.



The Committee met on three occasions in the first half of 2021 where the draft Guidelines were considered in detail. Following this, draft Guidelines were finalised and submitted by the Committee to the Board of the Council in accordance with Section 43 (3)(d) of the Judicial Council Act 2019 in June 2021. The next step in this process involves the Board of the Council reviewing the draft Guidelines and if required, amending them. The Act provides for a period of 12 months from the submission of the draft Guidelines to the Board within which the Council adopt the Guidelines, being 28th June 2022.

The draft Guidelines were prepared having regard to the principles envisaged in the Act of judicial independence, impartiality, integrity, propriety, competence, diligence and equality, and modelled on the internationally accepted ethical standards of judicial conduct adopted by the United Nations and known as the “Bangalore Principles”.

The Committee held a workshop later in the year focusing on aspects of the complaint procedures which it is required to prepare under the Act.

### **Subcommittee members**

A subcommittee comprising Ms. Justice Ryan, Judge Mitchell, Ms. Archbold and Prof. Conrick dealt with drafting Guidelines on Judicial Conduct and Ethics including guidance on recusal.

A subcommittee comprising Mr. Justice Birmingham, Judge Nolan and Mr. Doyle prepared procedures for resolution of complaints by informal means.

The third subcommittee comprising Mr. Justice Meenan, Judge Daly, Mr. Coughlan and Dr. McCartan drafted complaints procedures.



### **The Committee’s role in relation to judicial conduct**

Once the relevant sections of Part 5 of the Act are commenced, the Committee will begin a new role in relation to judicial conduct and complaints.

The Committee will consider matters alleging judicial misconduct after a complaint is deemed admissible by the Registrar to the Judicial Conduct Committee or the Complaints

Review Committee. Complaints must be made within three months from the date of the conduct complained of, though the committee has power to extend that period in certain circumstances.

The committee may upon receipt of a complaint consider whether the complaint is suitable for resolution by an informal means. This will only arise where the complainant and the judge consent to this process. As the name suggests, it involves a process to ascertain whether the matter can be resolved without having to follow the formal statutory process to carry out an investigation.

If a complaint is not suitable to be resolved informally the committee will convene a panel of inquiry to carry out an investigation. That panel will comprise a judge from the same court as the judge complained of, a judge from a different jurisdiction and a lay member of the panel of inquiry appointed by the Government.

The Committee may also, in the absence of a complaint about a judge's conduct, but where it considers it necessary to safeguard the administration of justice, refer a matter for investigation by a panel.

The panel of inquiry has various powers under the Act and the procedures developed by the committee. Those powers include conducting a hearing in relation to the matter. There are a number of options available to the panel in the course of the investigation but ultimately it will lead to the panel preparing a report for the committee. That report will include matters such as cooperation by the parties with the process, whether the complaint is proven, if so the reprimand which should be applied, and whether there is a concern in relation to the health of the judge arising which has

become apparent. In the case of a reprimand the panel can recommend advice to the judge, a specific course of action or admonishment, as well as any further matter to safeguard the administration of justice.

The Committee, having considered the report, has further powers which may result in the complaint being referred back to the panel or leading it to a determination as to whether the complaint has been substantiated. It may decide that no action is required, adopt the recommendation of the panel or refer the matter to the Minister for Justice for the purpose of Article 35.4 of the Constitution. Where the judge is required to follow a course of action decided upon by the committee, the committee will monitor compliance. Failure to comply by that judge may also result in a referral to the Minister.

### **Section 87 Report**

The Judicial Conduct Committee is obliged pursuant to Section 87 to submit this report of its activities annually. The report is required to include in respect of the relevant period the following information:

- (a) the number of complaints received,
- (b) the number of complaints determined to be admissible by the Registrar,
- (c) the number of complaints considered, and the number of complaints determined to be admissible, by the Complaints Review Committee,
- (d) the number of complaints resolved by informal means in accordance with Chapter 4,

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- (e) the number of investigations initiated pursuant to a referral under Section 59,
  - (f) the number of investigations conducted by a panel of inquiry under this Part of complaints or consequent on a referral under Section 59,
  - (g) the number of complaints considered by the Judicial Conduct Committee that were not substantiated,
  - (h) the number of determinations made by the Judicial Conduct Committee under Section 71 (5) or 79,
  - (i) the number of judges who consented to the issuing of reprimands to them in accordance with Section 58 or 73, and
  - (j) the number of complaints that were withdrawn in the circumstances referred to in Section 57 or 74.

The judicial conduct regime cannot commence until such time as the Judicial Conduct and Ethics Guidelines have been adopted by the Judicial Council, which will be completed by the end of June 2022. The Minister for Justice may then commence the relevant sections of the Act. In those circumstances, there is no data falling under the categories (a) to (j) above for 2021.

## JUDICIAL SUPPORT COMMITTEES

### Support and Welfare

The Judicial Council Act provides for the establishment of five statutory Judicial Support Committees, one for each jurisdiction. It is envisaged that each committee, which includes a judge elected by his or her colleagues, will advise and assist the Council from the perspective of their respective court jurisdiction.

Related to this, and with a particular focus on welfare, a cross-jurisdictional Welfare and Support Committee was established by the Council at its first meeting. This Committee is comprised of a judge from each of the five jurisdictions and will work to provide for and assist in relation to judicial welfare.

These committees have not yet commenced meeting.



### Judicial Support Committees

Section 30 (3) of the Act states that the function of a Judicial Support Committee shall be to advise and assist the Council in the performance of its functions under this Act insofar as matters relevant to the Court to which the Committee relates are concerned.

Date of establishment of all five committees:  
31st March 2020

Membership of each jurisdictional committee is made up of (i) the jurisdictional President plus (ii) the elected member(s) from that jurisdiction. Further to elections taking place, the following judges were elected for a term of four years:

- (i) **Supreme Court**  
Ms Justice Elizabeth Dunne
- (ii) **Court of Appeal**  
Mr Justice Maurice Collins
- (iii) **High Court**  
Mr Justice Robert Eagar and  
Ms Justice Niamh Hyland
- (iv) **Circuit Court**  
Judge Tom O'Donnell and  
Judge Eoin Garavan
- (v) **District Court**  
Judge John Coghlan (now retired)  
Judge Marie Keane

### Judicial Welfare and Support Committee – established pursuant to Section 7 (3) (a)

The Judicial Council may establish committees for the purpose of assisting in the carrying out of its functions. The Terms of Reference of the Judicial Welfare and Support Committee

as adopted at the first meeting of the Judicial Council on the 7th February 2020, are to assist and advise the Judicial Council in the performance of its function set out in Section 7 (2) (l) of the Act to assist with the provision of support to judges generally.

The Committee is comprised of five judges nominated by the Chief Justice as follows:

1. **Supreme Court**  
Ms Justice Marie Baker
2. **Court of Appeal**  
Ms Justice Caroline Costello
3. **High Court**  
Mr Justice Garrett Simons

4. **Circuit Court**  
Judge Karen O'Connor (up to December 2021)
5. **District Court**  
Judge John Brennan

The term of office of a member of the Support and Welfare Committee is four years.



# LOOKING FORWARD TO 2022

## LOOKING FORWARD TO 2022

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The Judicial Council's agenda for 2022 is again driven by meeting the statutory milestones set out in the Judicial Council Act 2019 and the ongoing development of the supports necessary to deliver on its expanding functions.



The year will see the conclusion of another significant statutory project, being the advent of a system for the oversight of judicial conduct. In January the Board is scheduled to consider the draft guidelines in relation to judicial conduct and ethics before they are proposed for adoption at the annual meeting of the Judicial Council on the 4th of February. This follows the process set out in the Act, and which will conclude this component by the 28th of June 2022. The procedures for making complaints in respect of allegations of judicial misconduct required to be drafted by the

Judicial Conduct Committee will also reach a conclusion and facilitate the commencement of the remaining sections of Part 5 of the Act. In enabling the commencement of this function, it is expected that staff will have been recruited to manage the system and the appropriate IT requirements identified and in place.

The functions of the Judicial Studies Committee will, it is expected, see further education and training offerings made available to judges. In supporting the complaint function, further workshops in relation to ethics and conduct will continue to be provided as well as continuation of those courses in place during 2021. Of importance to the capacity of the Director to continue to provide and expand on the number of courses required is the recruitment of the Associate Director of Judicial Studies, who will be a civil servant with the necessary expertise in adult education and training to assist in driving this area.

The Sentencing Guidelines Committee's work will build on the research carried out by the University of Strathclyde on its behalf and commence projects, including with District Court Judges in relation to their experiences in dealing with certain offence types.

Essential to the support of the judiciary under the Act are the jurisdictional support committees, which provides a mechanism for the judges of each jurisdiction to advise the Council of matters in relation to their court. A non-statutory committee, established by the Council, is the Welfare and Support committee. Each of these committees have come behind the priorities of the work already referred to and it is expected that progress be made in these areas in 2022.

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At administrative level, there remain a number of priorities not completed in 2021 which are important and urgent. The introduction of an independent IT function is imminent, which will be an essential and welcome development. An agreement in relation to establishing a permanent headquarters for staff accommodation and judicial training facilities in Green Street Courthouse will see the commencement of refurbishment of a wing of that building. Finally, and most importantly, the staffing levels sanctioned can now be realised further to the required HR and payroll requirements being put in place in late 2021.

## CONTACT DETAILS

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