



Comhairle na mBreithiúna
The Judicial Council

Annual Report

2020



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



It gives me great pleasure to launch this inaugural report outlining the work of the Judicial Council during the course of and just prior to 2020. It is hoped that this report will highlight the key milestones

in that period and, in informing the public of the positive steps by the Council seek to promote public confidence in the judiciary and the administration of justice.

A Judicial Council in Ireland was in gestation for many years. It has now been 25 years since the 1996 Report of the Constitution Review Group recommended that "...judges themselves should regulate judicial conduct within a legislative framework embracing all courts" and the "Sixth Report of the Working Group on Courts Commission" then recommended that the Chief Justice would establish a Committee "to advise on and prepare the way, if determined appropriate, for the establishment of a judicial body which would contribute to high standards of judicial conduct and establish a system for the handling of complaints of judicial conduct". It was therefore an important and historic occasion when the Minister for Justice and Equality commenced the Judicial Council Act in December 2019. This created for the first time a formal body comprising the entire judiciary of Ireland.

By providing mechanisms to enhance judicial education and training, to promote and enforce judicial ethics, implement measures designed

to increase consistency and, importantly, to provide support for judges in the context of what is often a very challenging role, the Judicial Council can play a vital part in promoting judicial excellence in Ireland.

Central to the Council's functions is the promotion and maintenance of public confidence in the judiciary and the administration of justice in this country. In striving to attain this goal judicial excellence is key. As Chairperson of the Board of the Council, I have witnessed the manner in which the judiciary has embraced the vision of the Judicial Council through engagement with its work programmes and the significant achievements of its committees in their first year. The Board, the committees and indeed innumerable judges individually, were actively involved in supporting the Judicial Council in 2020 and I am grateful for my colleagues' engagement and commitment.

The Council's functions include the provision of guidelines to assist judges in making consistent decisions in relation to personal injuries awards and sentencing. The publication in due course of these guidelines will also serve to inform the public. As regards these areas I established in late 2019 a Personal Injuries Guidelines Committee Designate to commence work on drafting Personal Injuries Guidelines which was brought to a conclusion by the statutory committee in December 2020. In June I nominated the eight judicial members of the Sentencing Guidelines and Information Committee, who were joined by the lay members nominated by Government in July, and the wide ranging and hugely significant work of that committee is underway.

The absence of a system in Ireland for making and dealing with a complaint in relation to the conduct of a judge and for promoting judicial conduct generally has long been identified as a gap in judicial accountability and transparency. Through the work of its Judicial Conduct Committee, the Council is developing a set of guidelines governing judicial conduct and ethics and drafting procedures for making complaints, including managing findings of misconduct. Since the committee was established in July work in this area was advanced in 2020 and those guidelines will be finalised for consideration by the Board of the Council during the first half of 2021 and ultimately adopted by the Council itself.

Perhaps the area in which judges will see the greatest benefit in supporting the performance of their functions is through the various support mechanisms envisaged by the Act. The most significant of these is the creation of a dedicated learning and development facility for the judiciary. We have long looked enviously at the offerings in this area provided in neighbouring jurisdictions and I am delighted to say that Ireland has now planned for, built the foundations of and commenced rolling out an education programme to judges which is fit for purpose. The function is overseen by the Judicial Studies Committee and the operational side is led by a High Court Judge.

The early successes and milestones reached in 2020 could not have been achieved without the administrative support provided to the Council, the Board and the committees and the infrastructure developed for this public body. I would like to take

this opportunity to record the Council's appreciation for this work by the Interim Secretary and his staff. I would also take the opportunity to acknowledge the contributions made by the lay members of the committees and staff of the Courts Service and the Department of Justice.

In looking to 2021 and beyond I am confident that with the continued support of the members of the Judicial Council and its staff, the Council will continue to meet its objectives and develop its capabilities. Public trust and respect is hard earned and once achieved must be maintained. Delivering a successful Judicial Council will promote and maintain public confidence in the judiciary and in the administration of justice in Ireland.



Frank Clarke, Chief Justice

Chairperson of the Judicial Council
June 2021

INTRODUCTION BY THE INTERIM SECRETARY



It is a great privilege to introduce this first, and therefore historic, Annual Report of the Judicial Council for 2020. The advent of the Judicial Council marks the culmination of years of planning

and is an important development both for the Irish judiciary and Ireland. It has been hugely rewarding to have been involved in building many of the foundations for Ireland's Judicial Council and working with the judiciary on its early achievements.

This exciting opportunity to support the judiciary in developing a body created to enhance their capabilities brings with it significant responsibility and challenges. This is an important national project greatly dependent on solid administrative support. For judges, their core daily role of administering justice in the courts has not diminished with the establishment of the Council, so there rests with the Council's administrative staff the significant responsibility to facilitate the future development of these workstreams.

The provision of the support and development opportunities to which all of us working in the civil and public service have become accustomed are accepted and expected as an integral part of our professional and personal development. A similar approach and structure has been largely unavailable for judges until now. Those supports, personal and technical, are now being provided by the

Judicial Council and will continue to be rolled out, enhancing both judicial performance and consequently public confidence in the administration of justice in Ireland. The means of achieving this are provided by a dedicated learning and development function, a mechanism for making a complaint about a judge's conduct and the provision of guidelines to assist judges in consistent decision making.

Facilitating this, by building a new public body from the ground up, presented various challenges. The experience shared by others who have followed a similar path has been invaluable. Having reached out to leaders in other bodies in the public and legal sectors I am very appreciative of their extraordinary willingness to share their own insights. An overriding memory in the first year of the Council was the wisdom they generously shared to assist in overcoming the many hurdles which presented. I am also grateful to colleagues in the Courts Service and the Department of Justice. During the three months prior to establishment on 17th December 2019, significant work was carried out by officials in both bodies to assist in establishing the Council. That cooperation continues and it is important to acknowledge the assistance from those involved. I also extend my gratitude to judges and officials across the U.K. jurisdictions and European judicial bodies who have made themselves available to discuss their own structures and approaches, in particular their judicial training functions.

The Council's business agenda for 2020 was very much dictated by the challenges which manifested once the Council was established

in December 2019. The Commencement Order initiated a succession of statutory timeframes, running across the entire year. The key challenge from an administrative perspective was the need to support the work of all of the statutory committees of the Council so as to adhere to those deadlines, simultaneously building the infrastructure to develop the long term functions of the Council, whilst adapting quickly to the online work environment necessitated by the COVID pandemic. It is apparent that many start-up public bodies encounter unanticipated challenges and that experience was no different for the Council. While there remains significant work to do, that is not to say that in its first full year the Council has not already seen success.

The greatest administrative success was in meeting that challenging agenda in the new world of remote working and with one staff member, and whose commitment and dedication to the Judicial Council I am very grateful for. All of our statutory goals were met and many of the building blocks were put in place, including through the development of the website, procurement of services and the identification and agreement of staffing structures and requirements. In particular, supporting the emergence of a new approach to judicial training and the finalisation of the draft Personal Injuries Guidelines represented important visible milestones in 2020.

The Council benefits from a hugely supportive and wholly engaged and active Board, as well as valuable input from the judges who chair and serve on each of the committees. Indeed every Council member who has contributed individually to the Council's work to date has added to its development. A shared sense

of purpose coupled with a drive to make the Judicial Council a success has delivered a visibly cohesive approach to delivering the Council's objectives by judges across all jurisdictions working together. The expertise, experience and engagement offered by the lay members nominated by Government to two of the committees has positively enhanced and supplemented this. It is hoped that in 2021 we will finally meet those lay members in person for the first time.

In looking to 2021, the extent of the remaining challenges may appear daunting but in reflecting on the breadth of what has already been delivered there is a real sense that the foundation blocks put in place in 2020 will lead to greater benefits. The recruitment of staff, securing of premises and creation of an independent ICT function in 2021 will mark the beginning of the next chapter for the Judicial Council.



Kevin O'Neill

Interim Secretary to the Judicial Council
June 2021

OVERVIEW OF 2020



**PERSONAL
INJURIES
GUIDELINES
DRAFTED**



**FIRST
COUNCIL
MEETING OF
145
JUDGES**



**SENTENCING
COMMITTEE
ESTABLISHED**



**WEBSITE
judicialcouncil.ie**



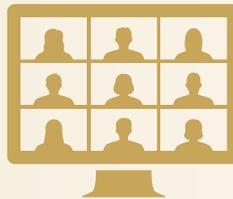
**JUDICIAL
TRAINING AND
DIRECTOR
OF JUDICIAL
STUDIES**



**JUDICIAL
ELECTIONS**



**CONDUCT
COMMITTEE
ESTABLISHED**



**REMOTE
JUDICIAL
TRAINING
COMMENCES**



**EXPANDED
INTERNATIONAL
JUDICIAL
NETWORKS**



**JUDICIAL
SUPPORT AND
WELFARE**

**CROSS-
JURISDICTIONAL
INDUCTION
FOR ALL NEW
JUDGES**



**OUR
STATUTORY
DEADLINES
MET**

TIMETABLE OF KEY STATUTORY EVENTS

DECEMBER 2019	● Establishment of The Judicial Council
FEBRUARY 2020	● 1st Council Meeting
	● Elections to the Board and the Jurisdictional Support Committees
	● Establishment of the Judicial Studies Committee
	● Establishment of the five Judicial Support Committees
MARCH 2020	● 1st Board Meeting
APRIL 2020	● Establishment of the Personal Injuries Guidelines Committee
MAY 2020	● 1st Personal Injuries Guidelines Committee Meeting
JUNE 2020	● Elections to the Judicial Conduct Committee
	● Establishment of the Sentencing Guidelines and Information Committee
	● Establishment of the Judicial Conduct Committee
JULY 2020	● 1st Sentencing Guidelines and Information Committee Meeting
	● 1st Judicial Conduct Committee Meeting
DECEMBER 2020	● Draft Personal Injuries Guidelines sent to the Board of the Council

ABOUT THE JUDICIAL COUNCIL

The Judicial Council was established pursuant to the Judicial Council Act 2019 (“the Act”) on the 17th of December 2019 by the Minister for Justice and Equality 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 14 and 15.

The Judicial Council’s vision is derived from Section 7 and is founded in the delivery of the components of each of its four pillars. The statutory remit of the Council may be summarised 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 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 or her 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 2020

2020 saw the infrastructure underpinning the Council emerge to support many of the functions outlined, and in the case of the draft Personal Injuries Guidelines, this work is scheduled to be finalised in 2021.

Essential to the building of an independent, progressive body for an independent progressive judiciary, the first goal was in creating this infrastructure. These areas include staffing, ICT and accommodation. During the year the Courts Service provided the two staff members of the Council and supported their ICT and accommodation requirements. In relation to expanding the staffing complement, the Department of Justice, supported the Council's business case to the Department of Public Expenditure and Reform for sanction for a total of eight staff and the Secretary to the Council.

The identification of the necessary ICT requirements for the Council was progressed through the services of a contractor and the Council expects to move to an independent managed service in 2021. A website was developed as an urgent priority in early 2020 to provide an immediate interface for the public to access information on the work of the Council.

The Council's accommodation requirements can be met in its current location in Green Street Courthouse and it is hoped that an agreement on a shared use of the building will be finalised in 2021.

A primary objective of the Council is to deliver public confidence in the judiciary and the administration of justice. A key vehicle for success in this area is in the ongoing development of a focussed communications strategy to inform the public of the progress of the Council's functions generally and to also provide an insight into the role of judges.

Underpinning all of the Council's work is a commitment to good governance. The Council in 2020 procured the services of professional legal and accountancy services to guide it in these areas and to assist in identifying the several work programmes required to provide the appropriate levels of assurance.

The work carried out in developing the learning and development and judicial support functions and the Sentencing and Personal Injuries Guidelines in 2020 is set out in detail in this Annual Report under the relevant committees' Reports, as is the development of the judicial conduct regime.



ESTABLISHMENT OF THE JUDICIAL COUNCIL

The first significant step after the passing of the Judicial Council Act in July 2019 was the nomination of a date for the establishment of the Council. Officials from the Council, the Department of Justice and Equality and the Courts Service carried out the preparatory work, and in conjunction with the Chief Justice, the 17th of December 2020 was nominated as the establishment date for the Judicial Council.



The Minister for Justice and Equality signs the Commencement Order in the presence of the Chief Justice

At a ceremony in the Four Courts attended by the Court Presidents, the Attorney General and officials from the Council, the Courts Service and the Department of Justice and Equality, the Minister for Justice and Equality, Mr Charlie Flanagan T.D. signed the Commencement Order in the presence of the Chief Justice. This marked the establishment of the Council, and an historic moment for the judiciary in Ireland as well as for the State.

The Minister noted at the establishment event that *“the establishment of the Judicial Council is a landmark moment in the history of our State”*.

The Chief Justice set out the mission of the Council stating that

“the overriding function of the Judicial Council is to promote and maintain public confidence in the judiciary and the administration of justice: this is interdependent with the delivery of all of the other functions of the Council”

In addition to the historical significance of 17th December 2019, this date was also notable having regard to commencing a countdown to several statutory deadlines. The Judicial Council Act provides for a series of mandatory timeframes to begin once the Commencement Order was signed by the Minister. That timeframe would direct the rigorous work programme of the Council for most of 2020.



(left to right:) Mr. Justice Peter Kelly, President of the High Court, Ms. Justice Patricia Ryan, President of the Circuit Court, Mr. Justice Frank Clarke, Chief Justice, Minister for Justice and Equality Mr. Charlie Flanagan T.D., Mr. Justice George Birmingham, President of the Court of Appeal, Judge Colin Daly, President of the District Court

THE FIRST MEETING OF THE JUDICIAL COUNCIL

The historic first meeting of the Judicial Council took place on the 7th of February 2020 in Dublin at the King's Inns, within the three month timeframe provided for in the Act. The meeting was attended by 145 of the country's judges.



The Chief Justice addresses the Judicial Council.

The Chief Justice opened the meeting and having addressed the Council in relation to the new body's role in asserting judicial independence, described the importance of the Council's remit:

"... public respect for the judiciary is an equally important component in maintaining the rule of law. By providing mechanisms to enhance judicial education and training, to promote and enforce judicial ethics, to encourage measures designed to increase consistency and, importantly, to provide support for judges in the context of what is often a very challenging role, this Judicial Council can play a vital role in promoting the excellence for which we all strive".



The Judicial Council at its first meeting.

The Act provided for a number of proceedings which were to take place at the meeting. Elections were held for appointment to the Board and certain of the Council's Committees. Of particular importance was that at the meeting, the members of the Council nominated the dates on which each of its committees would stand established and the date for the first meeting of the Board of the Council. The importance of these dates was that the statutory time limits for meeting several of the Council's functions commenced at this time, signalling a significant workplan for 2020 and beyond.

THE BOARD

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)

Each elected and co-opted term of membership is for a period of 4 years. A full list of Board members for 2020 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 by and submitted by the Personal Injuries Guidelines Committee, and

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

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. It met for the first time at its only corporeal meeting in 2020 on the 2nd of March before the requirement for remote meetings commenced shortly afterwards. However, in pursuing an ambitious and challenging schedule, the Board met remotely on a further eight occasions during the year.

THE MEMBERS OF THE BOARD



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1. Mr Justice Frank Clarke
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 Colin Daly
President of the District Court

6. Mr Justice Donal O'Donnell
Supreme Court
7. Ms Justice Aileen Donnelly
Court of Appeal
8. Mr Justice Michael MacGrath
High Court
9. Judge John Aylmer
Circuit Court
10. Judge Elizabeth MacGrath
District Court
11. Mr Justice William McKechnie
Supreme Court

12. Mr Justice Peter Kelly
President of the High Court up to 17th June 2020

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

The secretary to the Board is Ms Mary Murphy

JUDICIAL STUDIES COMMITTEE



*1. Mr. Justice John MacMenamin,
Chairperson until December
2020*

*2. Ms. Justice Aileen Donnelly,
Chairperson*

*3. Ms. Justice Mary Rose Gearty,
Director of Judicial Studies*

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 and 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 served to inhibit the ability of Irish judges to carry out their functions, nor to be recognised internationally as expert in their professions, but undoubtedly the approach to continuing professional development has evolved.

Since 1995, an applicant for any judicial office must undertake to the Judicial Appointments 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.

A Judicial Studies Transition Group, chaired

by Ms Justice Donnelly, met prior to the establishment of the Committee and produced draft Terms of Reference for the Judicial Studies Committee, which were adopted by the Council at its first meeting in February, 2020. These 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 2020

This Committee was established on the 10th of February 2020 and had met 9 times by the end of 2020. 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 the Terms of Reference, set out above.

A key approach to judicial training internationally is that judges (insofar as is possible) train judges. The Council considered it so important that they specified that the appointed Director be a sitting judge who would devote 50% of the working year to judicial studies. In July, the Board appointed Ms. Justice Mary Rose Gearty of the High Court following a competitive interview

process. In addition to the drive provided by a highly active committee, representative of each jurisdiction, this appointment has already proved to be a key step in identifying and meeting judicial training needs.

The Director and the Committee renewed and strengthened their engagement with international judicial training facilities 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 Director is developing a workplan for the future delivery of judicial training and now has regular contact with judicial colleges in Northern Ireland, England & Wales and Scotland, together with the European Judicial Training Network. In her first year, she focused on urgent issues including the following:

1. The Committee carried out an analysis of the training needs of the judiciary. A survey of the entire judiciary was responded to by the vast majority of judges, many of whom responded in great detail as to the preferred content of training programmes and the method of delivery. Most judges indicated a willingness not only to be trained but to undergo additional training (whether within or outside of working hours) in order to facilitate and develop the training of others. The survey results will inform future training and the needs analysis will be reviewed and updated regularly.
2. Every newly appointed judge has been provided with dedicated induction training, emphasising conduct and

ethics, delivered by the Director. This was done in online workshops both individually and with groups of other judges. The delivery of similar workshop style conduct and ethics training will be extended to serving judges throughout 2021.

3. A provider for mentoring training was identified after a procurement process. Mentoring training has commenced and judges from every first instance jurisdiction have taken part in this process. This will facilitate the delivery of 'judge led' mentoring and training, from 2021, to newly appointed judges. The programme will reinforce the contents of the judicial conduct and ethics workshops.
4. The recommendations of Prof. Tom O'Malley in his "Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences" are a priority for the Director and the Committee. The training recommended therein for the judiciary will be provided to pilot groups by the end of 2021. In

this regard, the Director has engaged in consultations with the CEO of the Dublin Rape Crisis Centre and intends to design the training in consultation with international judicial colleges.

5. The Director has attended specific courses on the digitisation of training for the judiciary and she and the Committee have been in regular contact with judges in Northern Ireland, England and Scotland as each jurisdiction addressed the challenges of transforming our court practices to enable virtual hearings.

The members of the Committee are as follows:

- Mr Justice John MacMenamin, (Chairperson until 9th December)
- Ms Justice Aileen Donnelly, Chairperson
- Ms Justice Mary Rose Gearty, Director of Judicial Studies
- Ms Justice Niamh Hyland
- Judge Mary O Malley Costello
- Judge Marie Quirke



THE PERSONAL INJURIES GUIDELINES COMMITTEE



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

Once established, the principal function of the Personal Injuries Guidelines Committee was to prepare and submit to the Board of the Judicial Council, for its review, draft Personal Injuries Guidelines. Once reviewed by the Board, adopted by the Judicial Council and commenced under the terms of the Act, a court is obliged to have regard to the Guidelines when assessing damages for personal injuries. The Guidelines therefore replace the Book of Quantum. The Act sets out various dates which had to be met by the Committee, the Board and the Council, as regards the drafting, approval and adoption of the Guidelines.

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.

Report of the Personal Injuries Guidelines Committee in 2020

The Judicial Council at its first meeting nominated the 28th April 2020 as the date for the establishment of the Personal Injuries Guidelines Committee and the 9th of December was, pursuant to the Act, the deadline for submitting the draft Guidelines to the Board.

In recognition of the extent of the project which lay ahead for the Committee and the relatively short statutory timeframe, in December 2019 the Chief Justice, having consulted with the four Court Presidents, indicated the names of the judges which he intended to nominate to the Committee. This enabled those judges to plan for and commence to some extent the work of the Committee in advance of its establishment in April 2020.

The Committee designate met on a number of occasions and once established, the statutory Committee met on nine occasions between establishment and furnishing of the draft Guidelines to the Board. The Committee engaged with insurers and indemnifiers in

Ireland, the Personal Injuries Assessment Board and with the judiciary across Europe. It also benefitted from contracted legal research, legal advice and economic and statistical analysis. 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) of the Act as amended, concluding its work on this draft.



The draft Guidelines were accompanied by an extensive report outlining the Committee's activities and the methodology and processes followed in deciding on the appropriate level of awards in Ireland. That report, which includes details of the Committee's annual activities as required by the Act for its annual reporting, is available at judicialcouncil.ie/news (6th March 2021). For the purpose of this Annual Report, there follows a summary of those activities.

The Committee undertook research into the law on damages and the levels of damages awarded in respect of personal injuries in a significant number of jurisdictions. In particular the Committee had regard to the level of awards in Guidelines used by judges in other jurisdictions. On foot of this research, the Committee unanimously agreed the

form and content of the Guidelines which it proposed.

It was decided that a catalogue of injuries was the most accessible and appropriate form for the Guidelines to take. The catalogue proposed comprises a list of injuries, ranging from the major to the minor, each of which has assigned to it a range or bracket within which an award should ordinarily fall. In individual cases, where the facts are exceptional and warrant a departure from the guided bracket, the court may depart from the guided bracket, provided that a justification is given for doing so as set out in section 22 of the Civil Liability and Courts Act 2004.

In an effort to provide good guidance to presiding judges and produce consistent awards the Committee tried to ensure that brackets of damages would not be overly broad and that the injuries in each bracket would be defined as precisely as possible as to nature, severity and duration. Furthermore, in compiling the Guidelines, the Committee sought to devise award brackets which are not only fair to both the claimant and the defendant but also fair and appropriate in light of awards made in other cases, in particular the sum awarded to those claimants who have suffered catastrophic injury.

The Guidelines represent not only a shift in the manner in which general damages are awarded in personal injury cases but also in the level of those damages. In reaching its conclusions, the committee was very much influenced by its research into the manner in which damages were awarded for personal injuries in Northern Ireland and England and

Wales. And, as a result of the Guidelines it is probably fair to say that for cases to which the Guidelines will apply, there will be a reduction in awards of general damages for lesser and middling injuries, while those suffering catastrophic injuries will receive a modest uplift in their entitlement.

Heretofore, 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 once section 99 is commenced. 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. This should make it much easier for presiding judges to assess the sum which would represent a fair and just award in every case.

Of additional importance is the fact that the Guidelines set out in clear and unambiguous terms how a trial judge should approach the making of an award of damages in a case involving multiple injuries.

The Committee hopes 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.

The Act requires the Board, following receipt of the draft Guidelines, to consider the draft Guidelines and send them forward, with or without modifications, for proposed adoption by the Judicial Council.

Finally, the Committee is required to review the Guidelines from time to time in accordance with Section 18 (5) of the Act and is required under Section 18 (11) to submit a report to the Council for inclusion in its annual report. This is the report prepared in order to comply with that obligation.

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
- Judge Seán Ó Donnabháin
- 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 2 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 24.

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 2020

After the appointment of its members in July 2020, the Committee met on four occasions before the end of the year.



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. At its initial meetings the Committee considered the scope and extent of its statutory remit, and identified priorities for its work. It was agreed that, 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.

Accordingly, it was agreed that as a preliminary step research needed to be undertaken into methodologies for such data collection. A subcommittee comprising Judge Murphy, Dr Ring and Dr Griffin was created to identify the terms of a request for tender and the Council sought to procure and contract a research team and advertised for researchers in December 2020. The subcommittee tendered 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. In addition the research project sought recommendations for data collection and analysis informed by methodological best practice. It is envisaged that this project would be completed within 6 months from the date the tender is formally awarded.

The Committee placed significant importance on planning its work projects for the short to medium term and it considered focussing on a number of discrete topics in its initial programme for the year ahead, which could be carried out while the contracted research was taking place.

Different approaches to carrying out its functions were also considered including the collation of existing jurisprudence on sentencing.

The Committee decided to commence engagement with individual members of the judiciary in 2021 and seek their views on a number of issues relevant to preparing sentencing guidelines.

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 easy access to this information by the general public.

The members of the Committee are as follows:

- Mr Justice Peter Charleton
- Ms Justice Iseult O'Malley (Chairperson)
- Mr Justice John Edwards
- Mr Justice Paul Coffey
- Ms Justice Tara Burns
- Judge Rory MacCabe
- Judge Melanie Grealley
- Judge Paula Murphy
- Mr Vivian Geiran
- Dr Diarmuid Griffin
- Mr Michael O'Sullivan
- Ms Marianne O'Kane
- Dr Sinéad Ring



JUDICIAL CONDUCT COMMITTEE



*Mr. Justice Frank Clarke,
Chief Justice,
Chairperson of the
Judicial Conduct
Committee*

The function of the Judicial Conduct Committee 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.

The Judicial Conduct Committee will:

- not later than 12 months after its establishment, 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.

The Committee comprises 13 members and the Act sets out the basis for their appointment:

- The Chief Justice and four Court Presidents are *ex officio* members,
- Three judges were elected by the judiciary from the membership of the Council in June 2020,
- Five lay members were nominated by Government to the Committee in July 2020.

Each elected and lay member term is for a period of 4 years. A full list of Committee members is set out on page 27. 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.

Report of the Judicial Conduct Committee in 2020

This Committee was established on the 30th of June 2020 and met for the first time in July 2020. Following its second meeting in September, three subcommittees were formed, each focussed on dealing with a distinct element of the conduct regime once implemented. The intention was that a draft document emanate from each subcommittee for consideration by the entire committee.

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

The third subcommittee considered and drafted complaints procedures. Mr. Justice Meenan, Judge Daly, Mr. Coughlan and Dr. McCartan are carrying out the work in this area.

All three workstreams were well advanced by year end with plans for the full Committee to re-convene by Quarter 1 of 2021 to review each subcommittee's work at that point.

It is envisaged that draft Guidelines on Judicial Ethics and Conduct will be submitted to the Board of the Judicial Council within the statutory timeframe

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,
- (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 are finalised and adopted by the Judicial Council and the Minister for Justice can then commence the relevant sections of the Act. In those circumstances, there is no data falling under the categories (a) to (j) above for 2020.

The members of the Committee are as follows:

- Mr. Justice Frank Clarke, Chairperson
- Mr. Justice George Birmingham
- Ms. Justice Mary Irvine
- Ms. Justice Patricia Ryan
- Judge Colin Daly
- 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

JUDICIAL SUPPORT COMMITTEES

Support and Welfare

A key element of any profession is the availability and provision of professional and personal support functions for both individuals and groups. In that regard the 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.

In order to supplement that support function and provide for a specific emphasis upon welfare, a cross-jurisdictional Welfare and Support Committee was established by the Council at its first meeting. The 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.

The 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 and
Judge Marie Keane

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
5. **District Court**
Judge John Brennan

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

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 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 5 judges nominated by the Chief Justice as follows:

LOOKING FORWARD TO 2021

As the Judicial Council moves into 2021, the key achievements of 2020 will provide a sound base for moving forward. As regards the Council's statutory obligations, the Personal Injuries Guidelines, once approved by the Board, come before the members of the Council for the first time for consideration at its February 2021 meeting. The latest date for adopting those guidelines is the 31st July 2021.

The Guidelines in respect of Judicial Conduct and Ethics, the drafting of which were commenced in 2020, will be finalised by the Judicial Conduct Committee and provided to the Board for consideration by the end of June 2021. The necessary supports for the complaints system to commence will be progressed, including the development of a case management system, as will the processes and procedures required to be developed under the Act. This will ultimately facilitate the operation of the complaints regime by the Registrar, the Complaints Review Committee, panels of inquiry and the Judicial Conduct Committee itself, as well as providing for the informal resolution of any complaints.

Significant progress is expected in 2021 on the ambitious programme being developed by the Judicial Studies Committee and the Director. In brief: an education and training specialist will be recruited by the Council to support the Director in delivering the programme; the first Irish judges will be trained to educate and train their colleagues and peers, which training will be provided by experienced judicial trainers; the Committee will implement the recommendations of the O'Malley Review; the Committee and Director will develop their collaboration with international colleagues and with judicial training bodies worldwide;

the first Irish-led judge-craft training will be provided to Irish judges; induction courses, with a focus on ethics, will continue and judicial conduct training will be extended to judges across all jurisdictions; judges continue to mentor colleagues and emphasise the ethical standards required of those in office; the Committee will revise guidelines whereby judges receive funding for education, both at home and internationally.

The Sentencing Committee will benefit from the conclusion of a tendering process for research which commenced in 2020 and the receipt of interim reports during the year. This research project is centred on methods of data collection relating to sentences imposed by the courts and is key to the progression of the work of the Committee. It will greatly assist in its planning and provide a sound direction for the methodology it follows over the coming years. The Committee will also develop its first workplan and identify pilot projects which can, in advance of completion of the research project, commence in 2021.

The Council's support functions will see the recruitment of staff, the development of an independent ICT function and finalisation of arrangements for accommodation for staff and judicial training. A particular focus on strong governance and compliance will be central to the objectives for 2021.

Finally, it is undoubtedly the case that the Council and the Courts Service will have a close working relationship into the future having regard to the functions of both. The Council looks forward to mapping out a shared way forward so as to optimise the resources of both bodies in supporting the delivery of judicial excellence.

