

Towards Best Practice

ICCL press briefing on the Judicial Council Act 2019

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Find the full report here: <https://www.iccl.ie/wp-content/uploads/2022/02/Towards-Best-Practice-Judicial-Council.pdf>

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Key insights

Government is not resourcing the judiciary properly.

The Judicial Council does not have the resources that it needs to deliver training needed to keep up with changes in the law, in Irish society, or best practice internationally.

Ireland has the lowest number of judges per head in the EU.

The Judicial Council Act 2019 obliges the Judicial Council to provide training for judges.

The Act also requires the establishment of a proper process for dealing with complaints against judges, which has been demanded for decades and is due to be established in the coming months.

This report assesses the implementation of the Act two years on and discusses two seminars jointly convened by the Schools of Law at NUI Galway, the University of Limerick, and the Irish Council for Civil Liberties.

Although Ireland has been regarded as having a robustly independent judiciary, it has lagged behind international standards in the development of judicial education and training and judicial conduct.

New training for judges is in place. It's important that it is properly resourced and that enough judges are appointed to enable them to include training as part of their regular workload, rather than trying to fit it in to their already busy schedules.

A procedure for complaints against judges is coming down the line. However, there are potential issues. Judges may consent to a reprimand rather than an investigation but details of reprimands issued in these circumstances will not be published. A complainant may feel that they have not received 'justice'.

The Judicial Appointments Commission Bill should include detail on the ideal qualities and characteristics a good judge should have – this could offset future complaints about judicial misbehaviour.

Recommendations

Recommendations for the Judicial Council

The Judicial Studies Committee should ensure that its training programmes include material on

- interpersonal and communications skills, including the use of clear and plain language;
- the broader social context;
- unconscious bias and diversity for judges;
- specific human rights topics;
- EU, Council of Europe and UN human rights instruments; and
- issues raised by vulnerable witnesses, which has already been identified as a priority.

The Judicial Studies Committee should also consider

- widening the needs based assessments for JET to groups outside of the judiciary, as recommended by the international experience; and
- engaging external reviewers on a regular basis, such as every five years.

The Judicial Complaints Committee should ensure that

- there is clarity on informal resolution and what it entails;
- there is clarity on sanctions and reprimands, particularly admonishments, and what exactly they will involve;
- the names of judges who consent to a reprimand are published in the Council's Annual Report;
- it provides guidance on when the Council will regard misconduct to be so serious as to amount to stated misbehaviour; and

- it provides sample transgressions and potential consequences, in the Guide to Judicial Conduct and Ethics, following the OSCE recommendations;

The Judicial Conduct Committee when finalising the Code of Ethics and Conduct should consider including requirements that judges should:

- be aware of the diversity of society and differences linked with background;
- by words or conduct, a judge should not manifest bias towards persons or groups on the grounds of their racial or other origin;
- carry out their duties with appropriate consideration for all persons such as parties, witnesses, lawyers, court staff and their colleagues, without unjustified differentiation; and
- oppose the manifestation of prejudice by the persons under their direction and by lawyers or their adoption of discriminatory behaviour towards a person or group on the basis of their colour, racial, national, religious or sexual origin, or on other irrelevant grounds.

Recommendations for the Oireachtas

The Oireachtas should

- provide a precise process for when a removal motion is proposed; and
- ensure that the Judicial Appointments Commission Bill gives due weight to the appropriate characteristics of a good judicial candidate in the context of the selection of candidates for the bench, as clarity and detail on the desired personality and temperament may reduce future complaints regarding judicial misconduct.

Recommendations for Government

The government, in its role in resource allocation, should ensure there is

- sufficient time available for judges to attend training courses, by appointing an adequate number to the bench; and
- adequate financial resources for the Judicial Council to staff its training function and to engage external experts as necessary.

About ICCL

The Irish Council for Civil Liberties (ICCL) is Ireland's oldest independent human rights body. It has been at the forefront of every major rights advance in Irish society for over 40 years. ICCL helped legalise homosexuality, divorce, and contraception. We drove police reform, defending suspects' rights during dark times. In recent years, we led successful campaigns for marriage equality and reproductive rights.