

## JUDICIAL CONDUCT IN IRELAND: A FRAMEWORK FIT FOR PURPOSE? THE BANGALORE PRINCIPLES AND THE JUDICIAL COUNCIL ACT 2019

*Abstract: This paper examines the international context for the provisions on judicial conduct in the Judicial Council Act 2019. In doing so, reference is made to the Bangalore Principles of Judicial Conduct. The paper provides the background, rationale, and main aims of the Bangalore Principles. It discusses the six Bangalore Principles in the Judicial Council Act 2019 and highlights how the six Bangalore Principles reflect the existing core elements of the judicial function that can be found in the Constitution. Finally, the paper illustrates that, while the Constitution contains reference to the same six principles on judicial conduct, the Bangalore Principles go a step further in envisaging a regulatory framework on judicial conduct.*

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*Author's Note: this paper was originally presented at the Judicial Conduct Online Seminar on 22 October 2021. On 4 February 2022, in accordance with the Judicial Council Act 2019, the Judicial Council adopted Guidelines for the Judiciary on Conduct and Ethics, which are largely based on the text of the Bangalore Principles. This paper has not been revised to take account of the Guidelines adopted on 4 February 2022.*

### Introduction: 2002 Bangalore Principles and 2007 Commentary

This paper looks primarily at the international context for the provisions on judicial conduct in the Judicial Council Act 2019 (2019 Act). The six general principles on judicial conduct in the 2019 Act can be traced to the same six principles in the 2002 Bangalore Principles of Judicial Conduct. This paper focuses on the background to, and rationale for, the Bangalore Principles, in particular that they form the basis for a regulatory system to support excellence in judicial conduct, and are therefore a fundamental pillar to support judicial independence, and confidence in the judiciary.

The Bangalore Principles emerged from a suggestion by two leading members of Transparency International, Prof Nihal Jayawickrama and Dr Jeremy Pope. As a result, following discussions between Transparency International and eight Chief Justices from four African and four Asian countries, in 2000 an informal group of Chief Justices and senior judges, the Judicial Group on Strengthening Judicial Integrity, usually known as the Judicial Integrity Group, was formed.<sup>2</sup> The Chief Justices met in Vienna in 2000 under the auspices of the UN Global Programme Against Corruption and, after that, in a series of meetings held between 2000 and 2002. The rapporteur throughout the development of the Bangalore Principles between 2000 and 2002 was Kirby J, former judge of the High Court of Australia and former inaugural Chair of the Australian Law Reform Commission.

In 2003, in resolution 2003/43, the UN Commission on Human Rights adopted the Bangalore Principles; and, in 2006, in resolution ECOSOC 2006/23, the UN Economic and Social Council ('ECOSOC') also adopted them. This 2006 ECOSOC resolution, with the

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<sup>1</sup> This paper, originally presented at the Judicial Conduct Online Seminar on 22 October 2021, is written in a personal capacity.

<sup>2</sup> The website of the Judicial Integrity Group, <https://www.judicialintegritygroup.org/>, includes a history of the development of the Bangalore Principles as well as contemporary developments in this area.

Bangalore Principles annexed, is in Appendix A of this paper. Significantly, the ECOSOC resolution also invited the UN Office on Drugs and Crime to support the Judicial Integrity Group in preparing a detailed Commentary, and this was completed in 2007.<sup>3</sup> The 2007 Commentary on the Bangalore Principles is similar to Expert Reports and *travaux préparatoires* published with many internationally agreed documents, which are often cited and relied on by courts.<sup>4</sup> We might therefore expect that the 2007 Commentary will influence the content of judicial conduct guidelines to be prepared under the 2019 Act.

### **The six Bangalore Principles in the 2019 Act; and pre-2019 knowledge of their content**

It is clear that the general principles on judicial conduct in the 2019 Act can be traced to the Bangalore Principles. The six Bangalore Principles (see Appendix A) are:

1. independence,
2. impartiality,
3. integrity,
4. propriety,
5. equality and
6. competence and diligence.

In the 2019 Act, judicial misconduct is defined as involving a ‘departure from acknowledged principles of judicial conduct’, and sections 7(1)(b) and 43(2) of the 2019 Act both refer in identical terms 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 to all persons before the courts.’ The 2019 Act reversed the order of the fifth and sixth Bangalore Principle, but otherwise the list is identical.

There is no explicit reference to the Bangalore Principles in the 2019 Act, although there were occasional references to them during the Oireachtas debates.<sup>5</sup> There is, however, extensive reference to the Bangalore Principles in the Department of Justice’s 2017 Regulatory Impact Analysis (‘RIA’) for the Judicial Council Bill 2017.<sup>6</sup> The RIA contains an informative account of the domestic context for the enactment of the 2019 Act, as well as the international context, including not only the Bangalore Principles but also the very poor rating that Ireland received from the Council of Europe’s Group of States against

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<sup>3</sup> Judicial Integrity Group, *Commentary on the Bangalore Principles of Judicial Conduct* (United Nations Office on Drugs and Crime, 2007)

<[https://www.unodc.org/documents/nigeria/publications/Otherpublications/Commentary\\_on\\_the\\_Bangalore\\_principles\\_of\\_Judicial\\_Conduct.pdf](https://www.unodc.org/documents/nigeria/publications/Otherpublications/Commentary_on_the_Bangalore_principles_of_Judicial_Conduct.pdf)> accessed 11 February 2022.

<sup>4</sup> See, for example, Law Reform Commission, *Discussion Paper on Domestic Implementation of International Obligations* (LRC 124-2020), at paras 3.114-3.121.

<sup>5</sup> See the Second Stage Seanad Éireann speech of the then Minister for Justice and Equality on the Judicial Council Bill 2017, and the Minister’s reply to the Second Stage debate (Seanad Deb 22 November 2017, vol 254) <<https://www.oireachtas.ie/en/debates/debate/seanad/2017-11-22/12/>> accessed 11 February 2022; and the Second Stage Dáil Éireann speech of the then Minister for Justice and Equality on the Judicial Council Bill 2017, and the reference to the Bangalore Principles during the Second Stage debate by Deputy Broughan TD (Dáil Deb 4 July 2018, vol 985) <<https://www.oireachtas.ie/en/debates/debate/dail/2019-07-04/19/>> accessed 11 February 2022.

<sup>6</sup> Department of Justice, *Regulatory Impact Analysis for the Judicial Council Bill 2017* (May 2017) <[http://www.justice.ie/en/JELR/Judicial\\_Council\\_Bill\\_2017\\_RIA.pdf/Files/Judicial\\_Council\\_Bill\\_2017\\_RIA.pdf](http://www.justice.ie/en/JELR/Judicial_Council_Bill_2017_RIA.pdf/Files/Judicial_Council_Bill_2017_RIA.pdf)> accessed 11 February 2022.

Corruption, GRECO (the acronym for *Groupe d'Etats contre la Corruption*). Appendix B contains two extracts from the RIA, and the paper returns to the GRECO context below.

Of course, the Bangalore Principles did not emerge from nowhere between 2000 and 2002. They are an agreed compilation, based on previous work on judicial conduct from many jurisdictions. The 2007 Commentary lists 24 'national codes' representing all legal system 'families' globally. Some national codes dated from the 1970s, and the 8 'regional and international instruments' that informed the development of the Bangalore Principles were also listed.<sup>7</sup> This is indicative of the wide-ranging membership of the Judicial Integrity Group.

In Ireland, the discussion on establishing a Judicial Council goes back into the last century, demonstrating that the discussion of judicial conduct principles long precedes the Bangalore Principles. An indication of the quite settled nature of the underlying principles in this area, on which the Bangalore Principles built, is illustrated by the discussion in the 1998 *Sixth Report of the Working Group on a Courts Commission*, which noted:

The 1990 U.S. Model Code of Judicial Conduct drew up five canons of conduct. These are:

1. A Judge shall uphold the integrity and independence of the judiciary.
2. A Judge shall avoid impropriety and the appearance of impropriety in all of the judge's activity.
3. A Judge shall perform the duties of judicial office impartially and diligently.
4. A Judge shall so conduct the Judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.
5. A Judge or judicial candidate shall refrain from inappropriate political activity.<sup>8</sup>

The 1998 Report referred to the Model Code of Judicial Conduct adopted in 1990 by the House of Delegates of the American Bar Association ('ABA'). This was a fully revised version of the ABA's 1972 Model Code, which was one of the 24 'national codes' to which the 2007 Commentary on the Bangalore Principles referred. The 1990 Code has, in turn, been revised, and the 2020 edition sets out the following list of 4 'Canons':<sup>9</sup>

CANON 1

A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

CANON 2

A judge shall perform the duties of judicial office impartially, competently, and diligently.

CANON 3

A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

CANON 4

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<sup>7</sup> Judicial Integrity Group, *Commentary on the Bangalore Principles of Judicial Conduct* (United Nations Office on Drugs and Crime 2007), 10-12

<[https://www.unodc.org/documents/nigeria/publications/Otherpublications/Commentary\\_on\\_the\\_Bangalore\\_principles\\_of\\_Judicial\\_Conduct.pdf](https://www.unodc.org/documents/nigeria/publications/Otherpublications/Commentary_on_the_Bangalore_principles_of_Judicial_Conduct.pdf)> accessed 11 February 2022.

<sup>8</sup> *Sixth Report of the Working Group on a Courts Commission* (Houses of the Oireachtas 1998), 16  
<<https://opac.oireachtas.ie/AWData/Library3/Library2/DL047655.pdf>> accessed 11 February 2022.

<sup>9</sup> *ABA Model Code of Judicial Conduct* (2020 Edition)  
<[https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct/](https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/)> accessed 11 February 2022.

A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

The content of the 2020 ABA Model Code does not differ in substance from the predecessor 1990 Code, even if it has reduced the list of ‘Canons’ to four.

Returning to the Irish position, the 1998 Report also recommended that it would be advisable to establish a Judicial Council, and that the Chief Justice should establish a specific committee to address the detail involved. The 2000 *Report of the Committee on Judicial Conduct and Ethics* carried out this important role and set out the essential framework for the Judicial Council, including its key committees, which are largely reflected in the 2019 Act.<sup>10</sup>

Using the same kind of comparative analysis applied by the Judicial Integrity Group that drafted the Bangalore Principles, the 2000 Report noted that comparable arrangements for judicial councils were already in place at that point in Australia, Canada, New Zealand and the US. In the time lag between 2000 and the enactment of the 2019 Act, Ireland fell further behind other jurisdictions. The causes of that delay are no doubt shared between the executive and the judiciary. In any event, by 2010 the Government had published the General Scheme of the Judicial Council Bill;<sup>11</sup> and in 2011 the judiciary, at its annual meeting, agreed to establish the Association of Judges in Ireland (‘AJI’),<sup>12</sup> as well as an interim Judicial Council.<sup>13</sup>

In the time immediately before the Judicial Council Bill 2017 was published, the AJI noted on its website that one of the objectives of its Constitution is the promotion of the highest standards of judicial conduct amongst its members. It added:

The essential principles to which judges’ conduct must conform are:

Independence

Impartiality and Equality

Integrity

Propriety

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<sup>10</sup> I could not find an online version of the 2000 Report, which is a great pity, given its importance in setting out the essential framework that was ultimately enacted in the 2019 Act. Perhaps this ‘analogue anomaly’ could be addressed by the Judicial Council by publishing a digital version on its website.

<sup>11</sup> General Scheme of the Judicial Council Bill 2010, <<http://www.justice.ie/en/JELR/General%20Scheme%20Judicial%20Bill.pdf/Files/General%20Scheme%20Judicial%20Bill.pdf>> accessed 11 February 2022. The General Scheme (or ‘Heads of the Bill’) was published on 23 August 2010. See Department of Justice, ‘Minister Ahern publishes scheme of the Judicial Council Bill 2010’

<<http://www.justice.ie/en/JELR/Pages/Minister%20Ahern%20publishes%20scheme%20of%20the%20Judicial%20Council%20Bill%202010>> accessed 11 February 2022.

<sup>12</sup> The AJI was formed on 18 November 2011 as a representative body of judges. Although it does not represent the judiciary as such, the AJI’s membership comprises the vast majority of the judges in the Supreme Court, the Court of Appeal, the High Court, the Circuit Court and the District Court. Its website is [www.aji.ie](http://www.aji.ie). The AJI has issued at least one press release since the establishment of the Judicial Council under the 2019 Act, in June 2020. On this point, see Association of Judges of Ireland, ‘Statement by the Association of Judges of Ireland in Response to the Recent Comments by Ms Brid Smith TD’ (22 June 2020) <<https://aji.ie/communications/statement-by-the-association-of-judges-of-ireland-in-response-to-recent-comments-by-ms-brid-smith-td/>> accessed 11 February 2022.

<sup>13</sup> The only online information available on the work of the interim Judicial Council after its establishment appears to be on the AJI’s website: <https://aji.ie/supports/the-interim-judicial-council/>.

Competence and diligence.<sup>14</sup>

The AJI listed impartiality and equality on the same line, and it is difficult to understand the basis for doing this; but assuming that it was not intended to equate the two, the AJI list is clearly the same as the six Bangalore Principles. I mention this as just another example of the well-established pre-2019 knowledge of the Bangalore Principles.

Appendix C contains that extract from the AJI's website, as well as some other extracts relevant to the development of guidance on judicial conduct. Of these other extracts, it is worth noting that the AJI commented:

The interim Judicial Council is understood to be preparing a guidance document which will address, under each of these [Bangalore-derived] headings, required and acceptable judicial conduct, unacceptable judicial conduct and the striking of an appropriate balance.

The AJI hopes to be in a position in due course, subject to receipt of permission from the interim Judicial Council, to publish this guidance document in this section of our website.

As noted, the interim Judicial Council had been established in 2011 in the wake of the publication in 2010 of the Scheme of the Judicial Council Bill. Unfortunately, it seems that the interim Judicial Council did not publish the guidance document referred to by the AJI. This document would no doubt assist in terms of the transparency of the process leading to the ultimate development of the codes being prepared under the 2019 Act. Transparency is worth mentioning given the influence of Transparency International in the development of the Bangalore Principles themselves. In any event, it is likely that the 2007 Commentary on the Bangalore Principles will provide useful background information for the development of the codes to be prepared and published under the 2019 Act.

## **The Bangalore Principles reflect current constitutional provisions on the judiciary**

It is also worth noting that the six Bangalore Principles reflect the existing core elements of the judicial function that can be found in the Constitution, although the sequence in the Constitution is slightly different. The six Bangalore Principles, and their constitutional analogue, are:

- *Independence*: Article 35.2 provides that all judges are independent in the exercise of their judicial functions, subject only to the Constitution and the law;
- *Impartiality and integrity*: Article 34.6.1<sup>o</sup> provides that all judges must make a declaration that they will carry out their role 'without fear or favour, affection or ill-will towards any man [sic].'<sup>15</sup>
- *Propriety*: Article 40.3 includes the unenumerated/derived right to fair procedures, which includes two core elements: that both sides to a dispute must be heard on an

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<sup>14</sup> Association of Judges Ireland, 'Judicial Conduct' <<https://aji.ie/the-judiciary/the-judicial-role/judicial-conduct/>> accessed 11 February 2022.

<sup>15</sup> Article 34.6 was originally numbered Article 34.5. It was renumbered Article 34.6 in the wake of the amendments to the Constitution in 2013 to provide for the creation of the Court of Appeal, which occupies 'new' Article 34.4, and the consequential amendments to the provisions on the Supreme Court, which occupy 'new' Article 34.5.

even-handed basis; and that the decision-maker must ensure that he or she is unbiased, that is, does not have any conflict of interest (actual or objectively perceived);

- *Equality*: Article 40.1 provides that all persons are equal before the law; and
- *Competence and diligence*: as to competence, Article 36.iii provides that the ‘constitution’ of the courts is to be regulated by law, and that this includes an obligation to provide in legislation for the qualifications required to be appointed as a judge.<sup>16</sup> In terms of diligence, Article 34.6.1° also provides that the judicial declaration includes that each judge will ‘duly and faithfully and to the best of my knowledge and power’ carry out their judicial functions.

Before commenting on how the Bangalore Principles differ from these constitutional provisions, two, arguably churlish, comments will be made regarding the text of the judicial declaration in Article 34.6 of the Constitution to carry out the judicial role. First, Article 34.6 provides that every judge must declare that they will carry out the judicial role:

‘without fear or favour, affection or ill-will towards any man [sic]’.

This declaration is virtually identical to the judicial declaration in section 99 of the Courts of Justice Act 1924, which applied to judges appointed between 1924 and 1961. It is worth noting that the pre-1924 judicial oath, in the Promissory Oaths Act 1868 (see Appendix D, where the relevant judicial declarations and oaths are set out), was worded:

‘I will do Right to all Manner of People [!] after the Laws and Usages of this Realm, without Fear or Favour, Affection or Illwill.’

Apparently, it proved difficult to follow this 1868 gender-neutral precedent in 1924, and in 1937.

Second, the judicial declaration in section 99 of the 1924 Act refers to the declaration being made ‘before God’, while Article 34.6 of the Constitution reprises ‘before God’ and adds at the end: ‘May God Direct and Sustain Me’. The comparable pre-1924 declaration in the 1868 Act, while providing that it should include the words ‘So help me God’, also provided that any person taking an oath under the 1868 Act could, instead of swearing the oath, make an affirmation, and could therefore omit the religious reference. That was 121 years before the All-Party Oireachtas Committee on the Constitution recommended in 1999 that the following could be added to what is now Article 34.6: ‘A judge may omit the religious references.’<sup>17</sup>

## **The Bangalore Principles envisage a regulatory framework on judicial conduct formulated by the judiciary**

A third, more significant, comment to make on the relationship between the constitutional provisions and the Bangalore Principles is that while the Constitution contains some reference to the same six principles on judicial conduct, the Bangalore Principles go an important stage further; they envisage a regulatory framework on judicial conduct.

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<sup>16</sup> See *The State (Walsbe) v Murphy* [1981] IR 275, at 286-287 (Divisional High Court, Finlay P, Gannon and Hamilton JJ).

<sup>17</sup> All-Party Oireachtas Committee on the Constitution, *Fourth Progress Report: The Courts and the Judiciary* (November 1999) <<https://opac.oireachtas.ie/AWData/Library3/Library2/DI.025240.pdf>> accessed 11 February 2022.

The preliminary recitals to the Bangalore Principles (see Appendix A) acknowledge that many existing global and regional human rights instruments, and national constitutional arrangements, already include recognition of the importance of an independent judiciary, and of the ethical dimension to judicial conduct.

The final recital notes the following significant added dimensions that the Bangalore Principles bring:

- they are intended to establish standards for ethical conduct of judges;
- they are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct;
- they are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary;
- they presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct that bind the judge.

In summary, the Bangalore Principles are not only a statement of values to guide ethical judicial conduct, they also envisage a regulatory framework of accountability.

In answer to the age-old question ‘who judges the judges’, the answer appears to be ‘the judges’. This is set out in one of the recitals, which provides that:

‘the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.’

The rationale for this is well set out in the Commentary prepared by the Judicial Integrity Group in 2007:

16. It is desirable that any code of conduct or like expression of principles for the judiciary should be formulated by the judiciary itself. That would be consistent with the principle of judicial independence and with the separation of powers. For instance, in many countries, the legislature and the executive regulate how their members are expected to behave and what their ethical duties are. It would be appropriate for the judiciary to do the same. If the judiciary fails or neglects to assume responsibility for ensuring that its members maintain the high standards of judicial conduct expected of them, public opinion and political expediency may lead the other two branches of government to intervene. When that happens, the principle of judicial independence upon which the judiciary is founded and by which it is sustained, is likely to be undermined to some degree, perhaps seriously.<sup>18</sup>

This involves two important, and related, points:

- judicial control over judicial conduct is consistent with the principle of judicial independence and with the separation of powers; and

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<sup>18</sup> Judicial Integrity Group, *Commentary on the Bangalore Principles of Judicial Conduct* (United Nations Office on Drugs and Crime 2007), para 16  
<[https://www.unodc.org/documents/nigeria/publications/Otherpublications/Commentry\\_on\\_the\\_Bangalore\\_principles\\_of\\_Judicial\\_Conduct.pdf](https://www.unodc.org/documents/nigeria/publications/Otherpublications/Commentry_on_the_Bangalore_principles_of_Judicial_Conduct.pdf)> accessed 11 February 2022.

- if the judiciary fails or neglects to assume responsibility for ensuring that its members maintain the high standards of judicial conduct expected of them, public opinion and political expediency may lead the other two branches of government to intervene, which would undermine the principle of judicial independence on which the judiciary is founded and by which it is sustained.

Thus, while the Bangalore Principles clearly envisage the need for a regulatory system, it is also, primarily, a regulatory system within the judiciary. This is, of course, the system provided for in the 2019 Act.

Colin Scott made an important additional point about the need to have in place within this framework a version of the well-known ‘enforcement pyramid’.<sup>19</sup> This is, in effect, an enforcement framework that envisages responses that are commensurate to the nature of the breach of ethical behaviour; a sensible application of the constitutional proportionality principle.

Indeed, in Ireland before 2019, the absence of a framework that includes proportionate responses to lower-level misconduct was one of the main driving forces in favour of the enactment of a Judicial Council Act. It was clear that the stark ‘all or nothing’ of impeachment did not provide the kind of confidence-building framework that the 2019 Act now promises.

### **The Twin Aims of the Bangalore Principles: Promote Transparency and Prevent Corruption**

In examining the content of the Bangalore Principles, which are now embedded in the 2019 Act, it is useful to reiterate their origins as a way to provide a good insight into their overall purpose, their twin aims.

As already noted, the Bangalore Principles emerged from an initiative by Transparency International. Their purpose is therefore, in part, to set out a regulatory framework to promote high standards of ethical behaviour – they are not merely aiming to provide for after-the-event sanctions for falling below standards. Section 7 of the 2019 Act fully reflects this by providing that the first and second stated functions of the Judicial Council are to promote and maintain:

(a) excellence in the exercise by judges of their judicial functions, [and]

(b) 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 to all persons before the courts...

These positively stated duties, rather than a negatively stated ‘prohibit and punish low standards of conduct’, reflect another aspect of a regulatory regime that Colin Scott has written about, a standard-setting role for the regulatory body, in this instance, the Judicial

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<sup>19</sup> Colin Scott, ‘Regulating Judicial Conduct Effectively’, in Eoin Carolan (ed) *The Judicial Power in Ireland* (Dublin, Institute of Public Administration 2018). On the enforcement pyramid, see also Law Reform Commission, [Report on Regulatory Powers and Corporate Offences](#) (LRC 119-2018), Vol 1, paras 2.10-2.11.

Council as a self-regulatory body. The quality of the codes that emerge from the Judicial Council, and how they will be maintained, will become a defining test of the 2019 Act.

However, a good regulatory framework also needs some sanctioning stick to accompany the positively encouraging carrot. In that respect, it is important to note that Transparency International, the initiator of the Bangalore Principles, is also a leading global anti-corruption body. The obverse of upholding excellence in judicial conduct is preventing corruption, defined in its widest sense.

The delay in enacting the Judicial Council Act 2019 means that Ireland has scored very poorly in the external reviews of its approach to anti-corruption in general. As previously mentioned, the Department of Justice's RIA for the Judicial Council Bill 2017 pointed out in particular that the Council of Europe's Group of States against Corruption, GRECO, had been highly critical in this respect.

Ireland was a founding member of the Council of Europe in 1949. The Council of Europe is a leading regional international organisation that has engaged in the active promotion of human rights, notably through its 1950 Convention on Human Rights and Fundamental Freedoms ('ECHR'). The Council of Europe has also promoted many other Conventions in the justice area, including the 1999 Criminal Convention on Corruption. Ireland originally implemented that 1999 Convention in the Prevention of Corruption (Amendment) Act 2001, which has since been replaced by the Criminal Justice (Corruption Offences) Act 2018 (2018 Act). In 1999, in parallel with the 1999 Convention, the Council of Europe also established GRECO, which monitors Member States' compliance with the Council of Europe's own anti-corruption standards, notably those in the 1999 Convention.

In the early evaluation reports on Ireland's initial implementation of the 1999 Convention on Corruption through the enactment of the 2001 Act, GRECO concluded that this did not meet Council of Europe standards. It was only with the enactment of the 2018 Act that a satisfactory mark was given (subject to some reservations, for example that the 2018 Act does not address the potential for corruption through unincorporated associations, an issue that the Law Reform Commission may address in its project on unincorporated associations).<sup>20</sup>

GRECO has also published a number of Evaluation Reports on Ireland's implementation of Council of Europe standards on anti-corruption in respect of members of parliament, judges and prosecutors. The Department of Justice's RIA for the Judicial Council Bill 2017 had expressly acknowledged that the enactment of the 2017 Bill was required to comply with the State's obligations as a Member State of the Council of Europe, and of GRECO. The RIA noted that, in March 2017, GRECO had published a Compliance Report which pointed out that Ireland had not implemented the majority of recommendations GRECO had made in 2014 concerning anti-corruption measures in respect of judges.<sup>21</sup> This included the need to establish an independent statutory council for the judiciary which would be provided with adequate resources and funding for its organisation and operations. Related

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<sup>20</sup> Project 12 in the Law Reform Commission's *Fifth Programme of Law Reform* (LRC 120-2019) involves an examination of the liability of unincorporated bodies, such as clubs. It is expected that the Commission will publish a Consultation Paper on this project in 2022.

<sup>21</sup> This refers to *Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors: Compliance Report: Ireland* (GrecoRC4(2017)7), adopted by GRECO at its 75th Plenary Meeting (Strasbourg, 20-24 March 2017) <<https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/168072bebb>> accessed 11 February 2022.

recommendations concerned the establishment of a code of conduct for judges which would be connected to an accountability mechanism, and the institutionalisation of dedicated induction and in-service training for judges. The RIA noted that the March 2017 Compliance Report had concluded that Ireland's 'very low level of compliance with these recommendations was "globally unsatisfactory" and has resulted in a situation whereby Ireland must report again on the progress in implementing the recommendations by 31 March 2018.'

The 'globally unsatisfactory' rating for Ireland was clearly a very low grade and had the effect of placing Ireland on probation in this respect. In the most recent Compliance Report adopted in September 2020 and published in November 2020,<sup>22</sup> GRECO removed the 'globally unsatisfactory' rating for Ireland, but this marginal improvement in the State's rating did not include a satisfactory rating concerning standards of judicial conduct. The Compliance Report noted that it had made the following recommendation in 2014:

'GRECO recommended (i) that a code of conduct for judges be formally established, including guidance and confidential counselling in respect of conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and (ii) connect such an instrument to an accountability mechanism.'

The Compliance Report welcomed the setting up of a Judicial Conduct Committee and that the work on developing codes of conduct for judges had begun so swiftly following the establishment of this Committee. The Compliance Report nonetheless concluded: 'However, this work is still at an early stage and GRECO therefore cannot conclude that this recommendation has been implemented, not even partly.'<sup>23</sup>

GRECO therefore concluded that its recommendation on standards for judicial conduct remains 'not implemented.' When the codes of conduct are published by the Judicial Council, which is expected in 2022, they will no doubt be communicated to GRECO for its consideration at the next Compliance Report. The benefit of such GRECO oversight is that the regulatory system under the 2019 Act will be tested in an international review and against international standards of excellence.

### **A "case study" from the 2007 Commentary on the Bangalore Principles**

In developing the codes of conduct under the 2019 Act, the Judicial Council also has the benefit of the detailed analysis in the 2007 Commentary on the Bangalore Principles. It is not possible in this paper to address the breadth of analysis in the 2007 Commentary, but a case study of one aspect of the six Values or Principles may be helpful.

In respect of each principle, or value, in the Bangalore Principles, there is a statement of principle followed by text on its application. For example, for Value 3, Integrity, the Bangalore Principles read as follows:

#### Value 3

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<sup>22</sup> This refers to *Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors: Second Interim Compliance Report: Ireland* (GrecoRC4(2020)8), adopted by GRECO at its 85th Plenary Meeting (Strasbourg, 21-25 September 2020), < <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a06655> > accessed 11 February 2022.

<sup>23</sup> *Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors: Second Interim Compliance Report: Ireland* (GrecoRC4(2020)8), para 43.

Integrity

*Principle*

Integrity is essential to the proper discharge of the judicial office.

*Application*

3.1. A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

3.2. The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

The last sentence in this 'application' section of the Bangalore Principles is worth noting because it clearly reflects the strong common law influence on their development. Indeed, not only had Kirby J, a leading Australian jurist with strong Irish roots, been *rapporteur* to the Judicial Integrity Group between 2000 and 2002, but other common law jurists had also been involved. This included Lord Mance, former Deputy President of the UK Supreme Court, who had also been a leading member of the Group at that time. The sentence echoes the much-quoted comment of Lord Hewart LCJ in the English case *R v Sussex Justices, ex parte McCarthy* that: 'it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.'<sup>24</sup>

In the 2007 Commentary on the Bangalore Principles, the following comment is made on the phrase that justice must be seen to be done:

110. Because appearance is as important as reality in the performance of judicial functions, a judge must be beyond suspicion. The judge must not only be honest, but also appear to be so. A judge has the duty not only to render a fair and impartial decision, but also to render it in such a manner as to be free from any suspicion as to its fairness and impartiality, and also as to the judge's integrity. Therefore, while a judge should possess proficiency in law in order competently to interpret and apply the law, it is equally important that the judge act and behave in such a manner that the parties before the court are confident in his or her impartiality.

This is an important observation because it stresses that the ethical requirement for a judge goes beyond proficiency in the law, which would of course mean that 'justice is done'; but also that there should be no suspicion as to impartiality, and that the parties involved are confident about the judge's impartiality, so that 'justice is seen to be done' in that important sense.

## Concluding comments

I am not a fan of quotes for their own sake, but in preparing this paper I came across three that are mentioned in the literature on judicial conduct and ethics, which I think are worth mentioning.

First, what Socrates may have said about judging, perhaps anticipating Ronald Dworkin's idealised Judge Homer:

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<sup>24</sup> [1923] EWHC KB 1, [1924] 1 KB 256.

‘Four things belong to a judge: to hear courteously; to answer wisely; to consider soberly; and to decide impartially.’<sup>25</sup>

Second, what Lord Macmillan, a member of the UK House of Lords, said about, perhaps, the reality of judging, and the need for public confidence in the judiciary:

‘Courtesy and patience must be more difficult virtues to practise on the Bench than might be imagined, seeing how many otherwise admirable judges have failed to exhibit them; yet they are essential if our courts are to enjoy public confidence.’<sup>26</sup>

Finally, what Lord Denning MR said on judging and the need for public confidence:

‘Justice must be rooted in confidence and confidence is destroyed when right-minded people go away thinking: “The judge was biased.”’<sup>27</sup>

In conclusion, we know from contemporary events in Europe, and in the United States, that an independent judiciary is crucial in maintaining what sometimes appears to be an elusive idea, the rule of law.

The judiciary may not hold the budget purse strings and may be ‘the least dangerous branch’ of the three branches that make up a liberal democratic state, but they provide an important check on the other branches (at least when you can get access to the inside of the courts).

At present, quite a few opinion polls place the judiciary high up the list of trusted institutions. But, we also live in a society in which institutions that previously were held in high regard have dropped like stones: trust can be lost. And we must acknowledge that the judiciary has not been immune from scandal. That is also why the Bangalore Principles, and the procedures in the 2019 Act for promoting excellence in judicial conduct, not just reacting to judicial misconduct, are so important to support continued confidence in our independent judiciary.

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<sup>25</sup> This aphorism is attributed to Socrates, although the precise source may be difficult to identify: see Justice Steven H David, ‘Four Things: Socrates and the Indiana Judiciary’ (2013) 46(4) *Indiana Law Review* 871.

<sup>26</sup> Lord Macmillan, *Law and Other Things* (Cambridge UP 1937), 218-219.

<sup>27</sup> *Metropolitan Properties Co (FGC) Ltd v Lannon* [1969] 1 QB 577.

## Appendix A

### UN ECOSOC 2006/23: 2006 Resolution of Approval of Annexed Bangalore Principles

(note: footnotes 28-36 below are footnotes 1-9 in ECOSOC 2006/23)

ECOSOC 2006/23

#### STRENGTHENING BASIC PRINCIPLES OF JUDICIAL CONDUCT

*The Economic and Social Council,*

*Recalling* the Charter of the United Nations, in which Member States affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

*Recalling also* the Universal Declaration of Human Rights, which enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

*Recalling further* the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights,<sup>28</sup> which both guarantee the exercise of those rights, and that the International Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

*Recalling* the United Nations Convention against Corruption,<sup>29</sup> which in its article 11 obliges States parties, in accordance with the fundamental principles of their legal systems and without prejudice to judicial independence, to take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary, including rules with respect to the conduct of members of the judiciary,

*Convinced* that corruption of members of the judiciary undermines the rule of law and affects public confidence in the judicial system,

*Convinced also* that the integrity, independence and impartiality of the judiciary are essential prerequisites for the effective protection of human rights and economic development,

*Recalling* General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, in which the Assembly endorsed the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from 26 August to 6 September 1985,<sup>30</sup>

*Recalling also* the recommendations adopted by the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Cairo from 29 April to 8 May 1995,<sup>31</sup> concerning the independence and impartiality of the judiciary and the proper functioning of prosecutorial and legal services in the field of criminal justice,

<sup>28</sup> General Assembly resolution 2200 A (XXI), annex.

<sup>29</sup> General Assembly resolution 58/4, annex.

<sup>30</sup> See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

<sup>31</sup> See A/CONF.169/16/Rev.1, chap. I, resolution 1, sect. III.

*Recalling further* that in 2000 the Centre for International Crime Prevention of the Secretariat invited a group of chief justices of the common law tradition to develop a concept of judicial integrity, consistent with the principle of judicial independence, which would have the potential to have a positive impact on the standard of judicial conduct and to raise the level of public confidence in the rule of law,

*Recalling* the second meeting of the Judicial Group on Strengthening Judicial Integrity, held in 2001 in Bangalore, India, at which the chief justices recognized the need for universally acceptable standards of judicial integrity and drafted the Bangalore Principles of Judicial Conduct,<sup>32</sup>

*Recalling also* that the Judicial Group on Strengthening Judicial Integrity thereafter conducted extensive consultations with judiciaries of more than eighty countries of all legal traditions, leading to the endorsement of the Bangalore Principles of Judicial Conduct by various judicial forums, including a Round Table Meeting of Chief Justices, held in The Hague on 25 and 26 November 2002, which was attended by senior judges of the civil law tradition as well as judges of the International Court of Justice,

*Recalling further* Commission on Human Rights resolution 2003/43, on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, in which the Commission took note of the Bangalore Principles of Judicial Conduct and brought those principles to the attention of Member States, relevant United Nations organs and intergovernmental and non-governmental organizations for their consideration,

*Recalling* Commission on Human Rights resolution 2003/39 on the integrity of the judicial system, in which the Commission emphasized the integrity of the judicial system as an essential prerequisite for the protection of human rights and for ensuring that there was no discrimination in the administration of justice,

1. *Invites* Member States, consistent with their domestic legal systems, to encourage their judiciaries to take into consideration the Bangalore Principles of Judicial Conduct, annexed to the present resolution, when reviewing or developing rules with respect to the professional and ethical conduct of members of the judiciary;
2. *Emphasizes* that the Bangalore Principles of Judicial Conduct represent a further development and are complementary to the Basic Principles on the Independence of the Judiciary, endorsed by the General Assembly in its resolutions 40/32 and 40/146;
3. *Acknowledges* the important work carried out by the Judicial Group on Strengthening Judicial Integrity under the auspices of the United Nations Office on Drugs and Crime, as well as other international and regional judicial forums that contribute to the development and dissemination of standards and measures to strengthen judicial independence, impartiality and integrity;
4. *Requests* the United Nations Office on Drugs and Crime, within available extrabudgetary resources, not excluding the use of existing resources from the regular budget

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<sup>32</sup> E/CN.4/2003/65, annex.

of the Office<sup>33</sup> and in particular through its Global Programme against Corruption, to continue to support the work of the Judicial Group on Strengthening Judicial Integrity;

5. *Expresses* appreciation to Member States that have made voluntary contributions to the United Nations Office on Drugs and Crime in support of the work of the Judicial Group on Strengthening Judicial Integrity;

6. *Invites* Member States to make voluntary contributions, as appropriate, to the United Nations Crime Prevention and Criminal Justice Fund to support the Judicial Group on Strengthening Judicial Integrity, and to continue to provide, through the Global Programme against Corruption, technical assistance to developing countries and countries with economies in transition, upon request, to strengthen the integrity and capacity of their judiciaries;

7. *Also invites* Member States to submit to the Secretary-General their views regarding the Bangalore Principles of Judicial Conduct and to suggest revisions, as appropriate;

8. *Requests* the United Nations Office on Drugs and Crime, within available extrabudgetary resources, not excluding the use of existing resources from the regular budget of the Office,<sup>34</sup> to convene an open-ended intergovernmental expert group, in cooperation with the Judicial Group on Strengthening Judicial Integrity and other international and regional judicial forums, to develop a technical guide to be used in providing technical assistance aimed at strengthening judicial integrity and capacity, as well as a commentary on the Bangalore Principles of Judicial Conduct, taking into account the views expressed and the revisions suggested by Member States;

9. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its sixteenth session on the implementation of the present resolution.

## **ANNEX [TO ECOSOC 2006/23] Bangalore Principles of Judicial Conduct**

WHEREAS the Universal Declaration of Human Rights recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge,

WHEREAS the International Covenant on Civil and Political Rights<sup>35</sup> guarantees that all persons shall be equal before the courts and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law,

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<sup>33</sup> This language does not provide a basis for an increase in the regular budget or requests for supplemental increases.

<sup>34</sup> This language does not provide a basis for an increase in the regular budget or requests for supplemental increases.

<sup>35</sup> General Assembly resolution 2200 A (XXI), annex.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions,

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice,

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law,

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society,

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system,

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country,

AND WHEREAS the Basic Principles on the Independence of the Judiciary<sup>36</sup> are designed to secure and promote the independence of the judiciary and are addressed primarily to States,

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct that bind the judge.

#### Value 1

### **Independence**

#### *Principle*

Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

#### *Application*

1.1. A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

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<sup>36</sup> See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

- 1.2. A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute that the judge has to adjudicate.
- 1.3. A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
- 1.4. In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions that the judge is obliged to make independently.
- 1.5. A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 1.6. A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.

## Value 2

### **Impartiality**

#### *Principle*

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

#### *Application*

- 2.1. A judge shall perform his or her judicial duties without favour, bias or prejudice.
- 2.2. A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.
- 2.3. A judge shall, as far as is reasonable, so conduct himself or herself as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 2.4. A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process, nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.
- 2.5. A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where:
  - (a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
  - (b) The judge previously served as a lawyer or was a material witness in the matter in controversy; or
  - (c) The judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy;provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

## Value 3

### **Integrity**

*Principle*

Integrity is essential to the proper discharge of the judicial office.

*Application*

- 3.1. A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2. The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

## Value 4

**Propriety***Principle*

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

*Application*

- 4.1. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations that might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 4.4. A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 4.5. A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
- 4.6. A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but, in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- 4.7. A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
- 4.8. A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgement as a judge.
- 4.9. A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- 4.10. Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
- 4.11. Subject to the proper performance of judicial duties, a judge may:
  - (a) Write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
  - (b) Appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;

(c) Serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or

(d) Engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

4.12. A judge shall not practise law while the holder of judicial office.

4.13. A judge may form or join associations of judges or participate in other organizations representing the interests of judges.

4.14. A judge and members of the judge's family shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to any- thing done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

4.15. A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.

4.16. Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

## Value 5

### **Equality**

#### *Principle*

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

#### *Application*

5.1. A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").

5.2. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

5.3. A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

5.4. A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.

5.5. A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

## Value 6

### **Competence and diligence**

#### *Principle*

Competence and diligence are prerequisites to the due performance of judicial office.

*Application*

- 6.1. The judicial duties of a judge take precedence over all other activities.
- 6.2. A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
- 6.3. A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for that purpose of the training and other facilities that should be made available, under judicial control, to judges.
- 6.4. A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- 6.5. A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- 6.6. A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
- 6.7. A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

**Implementation**

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

**Definitions**

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

“Court staff” includes the personal staff of the judge, including law clerks;

“Judge” means any person exercising judicial power, however designated;

“Judge's family” includes a judge's spouse, son, daughter, son-in-law, daughter-in-law and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household;

“Judge's spouse” includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

## Appendix B: Two Extracts from Regulatory Impact Analysis for Judicial Council Bill 2017

The following are two extracts from the Department of Justice's *Regulatory Impact Analysis for the Judicial Council Bill 2017* (May 2017), pp.4-7, and pp.9-13, available at [http://www.justice.ie/en/JELR/Judicial\\_Council\\_Bill\\_2017\\_RIA.pdf/Files/Judicial\\_Council\\_Bill\\_2017\\_RIA.pdf](http://www.justice.ie/en/JELR/Judicial_Council_Bill_2017_RIA.pdf/Files/Judicial_Council_Bill_2017_RIA.pdf).

### Extract 1: from pp.4-7 of the Regulatory Impact Analysis (RIA)

#### Policy Context

##### Domestic Background

Against the background of what is generally considered to be best practice internationally, successive Governments have committed to the introduction of a Judicial Council Bill. Typically, such Councils are independent bodies that seek to safeguard the independence of the judiciary and of individual judges in order to promote the efficient functioning of the judiciary in dealing with matters such as education and discipline. A key impetus for the development of the legislation relates to the absence within our legal system of a disciplinary regime which will address complaints about judicial misconduct which is not at a level to warrant the invocation of Article 35.4.1 of the Constitution. That Article states that:

“A judge of the Supreme Court, the Court of Appeal, or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his removal.”

This parliamentary process is known as impeachment. It is effected by an order made by the President having been notified by the Taoiseach that the Houses of the Oireachtas have passed a resolution calling for the removal from office of the judge in question. To date no judge of the High Court, the Court of Appeal or the Supreme Court has been impeached.

The Constitutional process has been extended by statute to the question of removal and dismissal of Circuit and District Court Judges by Section 24 of the Courts of Justice Act 1924 and Section 20 of the Courts of Justice (District Court) Act 1946 respectively.

With the exception of statutory provisions dealing with investigating and reprimanding Judges of the District Court there are no other means of investigating and dealing with allegation of less serious breaches of Judicial conduct and ethics. Judges of the District Court are subject to some statutory disciplinary procedures contained in the Courts (Supplemental Provisions) Act 1961. Section 10(4) of that Act provides that, where the Chief Justice forms the opinion that a District Court's judge's conduct is “such as to bring the administration of justice into disrepute”, he may interview the judge privately and inform him of such opinion. The Act does not provide any means of ensuring the judge changes the behaviour in question. Section 36(2) provides for the President of the District Court to investigate matters if it appears to him or her that the behaviour of a judge of that Court is prejudicial to the prompt and efficient discharge of the business of the Court. If the President finds that this is so, having consulted the judge in question, he or she may report their findings to the Minister for Justice and Equality. Section 21 of the Courts of Justice (District Court) Act 1946 also provides for a judicial inquiry into the condition of health or conduct of a District Judge upon the request of the Minister of the day.

These procedures are not replicated for judges of any other court where behaviour can only be investigated in respect of the most serious of breaches of conduct or ethics. There is currently no process for investigating Judges of the other Courts for alleged behaviours which, while serious and worthy of examination, do not warrant impeachment.

In 1999 the Working Group on a Courts Commission, which was responsible for the establishment of the Courts Service, reported to the then Chief Justice, Liam Hamilton on the question of judicial conduct and ethics. Subsequently, the Chief Justice established a committee to examine this general issue and it produced its report in December 2000 (known colloquially as the Keane Report after the successor Chief Justice, who brought the Committee's work to finality). The report found that the existing structures for dealing with concerns as to judicial misconduct were inadequate as they only provided for impeachment for stated misbehaviour or incapacity. The Report concluded that there are circumstances which would justify the invocation of this process but there are also instances of judicial misconduct which may be less serious but nonetheless merit some form of investigation.

The Report contained reasonably detailed proposals for legislation which were subsequently (in 2002) fleshed out in the form of a draft Bill prepared by Mrs Justice Denham (now Chief Justice), who had chaired the Working Group on a Courts Commission and had been a member of the Committee that had produced the 2000 Report.

In 2001, in response to the Report of the Committee on Judicial Conduct and Ethics, the Government published the Twenty-Second Amendment to the Constitution Bill which aimed to establish a Judicial Council and amend the impeachment process. The Bill was withdrawn due to a lack of cross-party support in the Dáil. Since then work has been ongoing in the Department of Justice and Equality to develop legislative proposals to establish a Judicial Council. This work has progressed in full consultation with the judiciary.

### **International Background**

Any legislative proposals must be mindful of the requirement of Article 35.2 of Bunreacht na hÉireann, which declares that judges shall be independent in the exercise of their functions. This is reinforced in international best practice, e.g., Article 10 of the Universal Declaration of Human Rights states that

‘Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.’

The right to a hearing before a competent, independent and impartial tribunal is also acknowledged in Article 6.1 of the European Convention on Human Rights and Article 14 paragraph 1 of the International Covenant on Civil and Political Rights.

In 2000 the United Nations Centre for Crime Prevention invited a group of Chief Justices from common law jurisdictions, known as the Judicial Integrity Group, to address the loss, in many countries, of confidence in judicial systems.

The Judicial Integrity Group recognised that the principle of accountability demanded that the national judiciary should assume an active role in strengthening judicial integrity by effecting such systematic reforms as are within the judiciary's competence and capacity. The Group also recognised the need for a universally acceptable statement of judicial standards

which, consistent with the principle of judicial independence, would be capable of being respected and ultimately enforced at the national level without the intervention of either the executive or legislative branches of government.

Following extensive consultations with other common and civil law jurisdictions the 'Bangalore Principles of Judicial Conduct' emerged. These principles recognise fundamentals which are widely accepted in regional human rights instruments, in domestic, constitutional, statutory and common law and in judicial conventions and traditions. The core values recognised are –

- independence;
- impartiality;
- integrity;
- propriety;
- equality;
- competence, and
- diligence.

Each value is accompanied by a statement of the principle which relates to it and by more detailed statements as to its application.

The Bangalore Principles of Judicial Conduct use these values to ensure public confidence in the judicial system and in the moral authority and integrity of the judiciary which is of the utmost importance in a modern democratic society. They aim to ensure that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system. They are designed to provide guidance to judges and to afford the judiciary with a framework for regulating judicial conduct.

Within the international framework, it is also widely acknowledged that the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary themselves as this will ensure that the appropriate level of judicial independence is maintained.

In 2006 the draft Commentary on the Bangalore Principles of Judicial Conduct, intended to contribute to a better understanding of the Principles, was agreed by a joint meeting of the Judicial Integrity Group and the United Nations Office on Drugs and Crime. In the same year, a resolution of the United Nations Economic and Social Council invited Member States to encourage their judiciaries to take into consideration, in ways consistent with their domestic legal systems, the Bangalore Principles when reviewing or developing rules with respect to the professional and ethical conduct of members of the judiciary.

The United Nations Office on Drugs and Crimes has actively supported the Bangalore Principles, which have also been recognised by bodies such as the American Bar Association and the International Commission of Jurists. The Judges of the member States of the Council of Europe, of which Ireland is a member, have also given the Bangalore Principles their favourable consideration. The draft Commentary and the Bangalore Principles have been given added weight and authority by their adoption by both the Intergovernmental Expert Group on Strengthening Basic Principles of Judicial Conduct and by the Judicial Integrity Group.

It is against this domestic and international backdrop that the proposals for a Judicial Council Bill have been drafted.

## **Extract 2: from pp.9-13 of the Regulatory Impact Analysis (RIA)**

### **Identification of Options**

The options identified are:

- Option 1: do nothing.
- Option 2: establish a Judicial Council on a non-statutory basis
- Option 3: establish a Judicial Council on a statutory basis as recommended in the Report of the Committee on Judicial Conduct and Ethics and by GRECO.

### **Identification of Costs and Benefits**

#### **Option 1 - Do Nothing**

The “do nothing” option is included for benchmarking purposes. There are no benefits arising from maintaining the status quo and, while adhering to this option would mean that no additional financial costs would be incurred by the exchequer, costs of a non-financial nature, both reputational and otherwise, would undoubtedly arise.

To do nothing at all would mean the continuation of the present unsatisfactory situation, where there is no formal way of dealing with allegations of judicial misconduct other than impeachment for Supreme Court, Court of Appeal and High Court Judges and where there are only limited statutory procedures for dealing with misconduct issues in relation to District Court Judges. Given the importance now placed upon accountability in relation to all sectors of society, such a course of action runs the risk of undermining confidence in the judicial system and would not be in keeping with best international thinking and practice.

Furthermore, taking this option would mean that we would continue to be in breach of our GRECO obligations which recommend that, with due expedition, an independent statutory council be established for the judiciary which will be provided with adequate resources and funding for its organisation and operations. Related recommendations concern the establishment of a code of conduct for judges which will be connected to an accountability mechanism, and the institutionalisation of a dedicated induction and in-service training for judges. The Compliance Report<sup>37</sup> adopted at the Plenary meeting of GRECO, which was held in March 2017, concluded that Ireland’s very low level of compliance with these recommendations was “globally unsatisfactory” and has resulted in a situation whereby Ireland must report again on the progress in implementing the recommendations by 31 March 2018.

#### **Option 2 - Establish a Judicial Council on a non-statutory basis**

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<sup>37</sup> This refers to *Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors: Compliance Report: Ireland* (GrecoRC4(2017)7), adopted by GRECO at its 75th Plenary Meeting (Strasbourg, 20 -24 March 2017), available at <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/168072bebb>. GRECO is the acronym for *Groupe d’Etats contre la Corruption*, the Group of States against Corruption, which was established in 1999 by the Council of Europe to monitor Member States’ compliance with the Council of Europe’s own anti-corruption standards. Ireland was a founding member of the Council of Europe in 1949.

This option would share many of the disadvantages of the “do nothing” option which is addressed above and, in reality, would only mean the establishment of a body not dissimilar to the interim Judicial Council which has been set up by the judges themselves pending the establishment of the anticipated statutory Council. The interim body does not attract specific exchequer funding. This option would not facilitate our compliance with the GRECO obligations.

Furthermore, it would not facilitate the introduction of a system for the investigation of complaints alleging judicial misconduct which falls short of the standard required if impeachment is to be invoked, as such a system requires statutory underpinning if it is to function in an effective and transparent way.

The resourcing of a non-statutory Council would entail some additional costs since such a body would need additional funding if the intention were that it should have added capacity to deliver in relation to matters such as the training of judges and the provisions of sentencing information.

It is estimated that the funding requirements for a non-statutory Council would amount to around €1 million per annum...

### **Option 3 – establish a Judicial Council on a statutory basis**

This option will enable us to be fully compliant with our GRECO obligations and it is the only option available which enables us to achieve the objectives which have been set.

The establishment of an independent Judicial Council, with clear statutory functions, will align our regime in relation to this matter with that prevailing in many other countries, particularly those which are members of the Council of Europe. The establishment of a statutory committee in relation to judicial studies will also provide a structured approach to the continued education and professional training of judges which, consistent with judicial independence, should build public confidence in the administration of justice. The establishment of a statutory committee in relation to sentencing information should be of benefit in promoting consistency in sentencing and, again, build public confidence in the administration of justice.

In relation to judicial conduct, the establishment of a Judicial Conduct Committee will give rise to a statutory body which will have responsibility for investigating and dealing with allegations of judicial misconduct where the initiation of the impeachment process is not warranted. The proposed legislative framework will achieve this without interfering with the existing Constitutional provisions relating to impeachment, while ensuring that the Constitutional independence of the judiciary is maintained. It will provide a mechanism, consistent with the recommendations of the Committee on Judicial Conduct and Ethics and international best practice, for investigating a broad range of complaints in relation to judicial misconduct and provide for remedies outside of the impeachment process where appropriate. It will also facilitate the drawing up and adoption of guidelines in relation to judicial conduct and ethics.

It is estimated that the ongoing funding requirements for a statutory Council would amount to just over €1.6 million per annum (a net €1.3 million taking account of funding which is already provided for judicial training purposes)...

### **Impacts**

The Bill is not expected to have any appreciable impact on north-south and east-west relations, socially excluded or vulnerable groups, the economic market (including an impact on consumers and competition), national competitiveness and the environment. Nor will there be any new significant compliance burden. However, the Bill may have a positive impact upon the rights of citizens in that it should foster increased public confidence in the administration of justice by providing for a mechanism which addresses legitimate complaints in relation to judicial conduct and ethics.

### **Consultation**

Consultations on the details of the Bill have taken place with the Office of the Attorney General. Given the nature of the Bill, extensive consultations were also undertaken with the judiciary. In addition the Department has had the benefit of the extensive consultative work undertaken by the Committee on Judicial Conduct and Ethics which studied 8 modern systems of judicial accountability, held an international conference and received many submissions in response to a public invitation for submissions from interested groups and individuals.

### **Enforcement and Compliance**

The proposed Judicial Council will be responsible for ensuring compliance with the procedures contained in the proposed legislation. The Judicial Council will be comprised of all judges and will be chaired by the Chief Justice.

The Council will be required to produce an annual report to the Minister which will be laid before the Houses and will be required to produce end of year accounts for audit. The Judicial Conduct Committee will prepare an annual report on its activities which will be laid before the Houses of the Oireachtas.

The Secretary to the Council shall, when requested by the Public Accounts Committee give evidence to that Committee on the accounts and accounting of the Council, and shall, on request, give account to any other Oireachtas Committee for the general administration of the Council.

### **Review**

The system of annual reports which is foreseen in the Bill will provide a useful tool in relation to assessing how the Judicial Council is carrying out its functions. As with all legislation under its remit, the operation of the Bill will be kept under review by the Department of Justice and Equality.

## Appendix C: Extracts from website of Association of Judges in Ireland

The following pieces of text are available on the website of the Association of Judges in Ireland (AJI), <https://aji.ie/>. The content is not dated, but appears to have been written before the publication of the Judicial Council Act 2017, and may first have been posted in 2016.

### On Judicial Conduct

The following text is available at <https://aji.ie/the-judiciary/the-judicial-role/judicial-conduct/>:

#### Judicial Conduct

One of the objectives of the AJI as expressed in our Constitution is the promotion of the highest standards of judicial conduct amongst its members. In this respect the AJI shares a common objective with the interim Judicial Council.

The essential principles to which judges' conduct must conform are:

Independence

Impartiality and Equality

Integrity

Propriety

Competence and diligence

The interim Judicial Council is understood to be preparing a guidance document which will address, under each of these headings, required and acceptable judicial conduct, unacceptable judicial conduct and the striking of an appropriate balance.

The AJI hopes to be in a position in due course, subject to receipt of permission from the interim Judicial Council, to publish this guidance document in this section of our website.

### On impartiality

The following text is available at <https://aji.ie/the-judiciary/the-judicial-role/impartiality/>:

#### Impartiality

The promise and declaration made by a judge on his or her appointment is that he or she will execute their office “without fear or favour, affection or ill-will towards any man” and that he or she “will uphold the Constitution and the laws”. These are not empty words, or something to which mere lip-service is to be paid. It is fundamental to the maintenance of confidence in the judiciary that judges should not only be independent, but that they should also be impartial.

Moreover, not only must judges actually be impartial but they must do everything they can to ensure that they are perceived as such. According to the old adage, “justice must not only be done but be seen to be done”. It is for this reason that judges are expected, in their personal lives, to avoid words, actions or situations that might make them appear to be biased or disrespectful of the laws they are sworn to uphold. They must treat lawyers, clients and witnesses with respect and must refrain from comments that suggest they have made up their minds in advance. Outside of court a judge should not socialise with a lawyer or client involved in a case before him or her. Moreover, it is in general undesirable for a judge to socialise or associate with lawyers appearing regularly before him or her, or with other persons connected with the cases they hear, as to do so might leave them open to the accusation of favouritism.

In general, a judge will recuse himself from any case to which he has a personal connection, e.g. a case that involves relatives or friends, or former client, or a member of the judge's former law firm, or a former business associate, or some other circumstance that might create a risk of his impartiality being called into question.

Judges often choose to avoid most forms of community involvement. A judge may undertake community or charitable work but cannot offer legal or investment advice. Judges cannot take part in politics, either as a party member, fundraiser or donor. While Article 35.3 of the Constitution of Ireland states that “[n]o judge shall be eligible to be a member of either House of the Oireachtas” the long established convention is that judges cannot hold any political office at all or participate in politics in any way.

While judges have been somewhat more willing in recent years to make public speeches, or agree to media interviews, the traditional rule which continues to be respected and observed is one of judicial reticence. The judiciary recognises that almost anything a judge says will be controversial – either because it relates to some decision or conduct by the judiciary which is a matter of temporary public or media concern, or more likely, because it may be perceived as being critical of the Government.

## Appendix D: Judicial Oaths and Declarations in Ireland and Northern Ireland since 1868

### 1. Judicial Oath in Ireland from 1868 to 1924 and in Northern Ireland from 1868 to 2002

#### Promissory Oaths Act 1868 (c.72)

##### Form of Judicial Oath.

4. The Oath in this Act referred to as the Judicial Oath shall be in the Form following; that is to say,

“I, \_\_\_\_\_, do swear that I will well and truly serve our Sovereign Lady Queen Victoria in the Office of \_\_\_\_\_, and I will do Right to all Manner of People after the Laws and Usages of this Realm, without Fear or Favour, Affection or Illwill. \_\_\_\_\_ So help me GOD.”

##### Persons to take the Oath of Allegiance and Judicial Oath.

6. The Oath of Allegiance and Judicial Oath shall be taken by each of the Officers named in the Second Part of the said Schedule hereto [see below] as soon as maybe after his Acceptance of Office, and such Oaths shall be tendered and taken in manner in which the Oaths required to be taken by such Officer previously to the passing of this Act on entering his Office would have been tendered and taken.

##### Penalty on not taking required Oath.

7. If any Officer specified in the Schedule hereto declines or neglects, when any Oath required to be taken by him under this Act is duly tendered, to take such Oath, he shall, if he has already entered on his Office, vacate the same, and if he has not entered on the same be disqualified from entering on the same; but no Person shall be compelled, in respect of the same Appointment to the same Office, to take such Oath or make such Affirmation more Times than One.

##### The Name of the Sovereign for the Time being to be used in the Oath.

10. Where in any Oath under this Act the Name of Her present Majesty is expressed, the Name of the Sovereign of this Kingdom for the Time being shall be substituted from Time to Time.

##### Provision in favour of Persons permitted to make Affirmations.

11. When an Oath is required to be taken under this Act, every Person for the Time being by Law permitted to make a solemn Affirmation or Declaration instead of taking an Oath may, instead of taking such Oath, make a solemn Affirmation in the Form of the Oath hereby appointed, substituting the Words “solemnly, sincerely, and truly declare and affirm” for the Word “swear,” and omitting the Words “So help me God.”

#### SCHEDULE [TO 1868 ACT]: SECOND PART: IRELAND.

The Lord Chancellor of Ireland.

The Lord Chief Justice.

The Master of the Rolls.

The Chief Justice of the Common Pleas.

The Chief Baron of the Exchequer.

The Lord Justice of the Court of Appeal in Chancery.

The Vice Chancellor. The Puisne Justices of the Queen's Bench.

The Puisne Justices of the Common Pleas.  
The Puisne Barons of the Exchequer.  
The Judges of the Landed Estates Court.  
The Judge; of the Admiralty Court.  
The Judges of the Court of Bankruptcy and Insolvency.  
The Recorder of Dublin.  
Justices of the Peace for Counties and Boroughs.

## **2. Judicial Declaration in Ireland from 1924 to 1937**

### **Courts of Justice Act 1924, section 99**

#### **Declaration to be taken by judges and justices on appointment.**

**99.**—The Declaration to be taken on appointment by every Judge of the Supreme Court, the High Court, and the Circuit Court and by every Justice of the District Court shall be as follows:—

I do solemnly and sincerely before God promise and declare that I will duly and faithfully and to the best of my skill and power execute the office of Chief Justice of the Supreme Court (*or* President of the High Court, *or* Judge of the Supreme Court *or* of the High Court or of the Circuit Court *or* Justice of the District Court *as the case may be*) of Saorstát Eireann without fear or favour, affection, or ill-will towards any man, and that I will uphold the Constitution of Saorstát Eireann as by law established.

Such declaration shall be made and subscribed by the Chief Justice in the presence of the Governor-General and by each of the other judges and justices aforesaid in the presence of the Chief Justice in open court.

Any judge or justice who declines or neglects to take the declaration aforesaid in the manner aforesaid shall be disqualified from entering on and shall be deemed to have vacated his office of judge or justice (as the case may be).

## **3. Judicial Declaration in Ireland since 1937**

### **Article 34.6 of the Constitution**

6.1° Every person appointed a judge under this Constitution shall make and subscribe the following declaration:

“In the presence of Almighty God I do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my knowledge and power execute the office of Chief Justice (or as the case may be) without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws. May God direct and sustain me.”

2° This declaration shall be made and subscribed by the Chief Justice in the presence of the President, and by each of the other judges of the Supreme Court, the judges of the Court of Appeal, the judges of the High Court and the judges of every other Court in the presence of the Chief Justice or the senior available judge of the Supreme Court in open court.

3° The declaration shall be made and subscribed by every judge before entering upon his duties as such judge, and in any case not later than ten days after the date of his appointment or such later date as may be determined by the President.

4° Any judge who declines or neglects to make such declaration as aforesaid shall be deemed to have vacated his office.

## **4. Judicial Oath or Affirmation in Northern Ireland since 2002**

### **Justice (Northern Ireland) Act 2002 (c.26), section 19**

**19. Judicial oath or affirmation**

(1) Every person appointed to an office specified in Schedule 6 must, before undertaking any functions of the office, either—

- (a) take the oath specified in subsection (2), or
- (b) make the affirmation and declaration specified in subsection (3).

(2) The oath is—

“I..... do swear that I will well and faithfully serve in the office of..... and that I will do right to all manner of people without fear or favour, affection or ill-will according to the laws and usages of this realm.”

(3) The affirmation and declaration is—

“I..... do solemnly and sincerely and truly affirm and declare that I will well and faithfully serve in the office of..... and that I will do right to all manner of people without fear or favour, affection or ill-will according to the laws and usages of this realm.”