

THE CHALLENGES OF JUDICIAL EDUCATION AND TRAINING: A COMPARATIVE PERSPECTIVE

Abstract: Based on the first-hand experience of a French Liaison Judge for the United Kingdom and Ireland and the literature on Judicial Education and Training (JET), it is indubitable that there are challenges involved in establishing and maintaining robust models of JET. This article, adopting a comparative analysis will consider some of the challenges that have surfaced in the French civil law system and the Irish common law jurisdiction regarding JET as well as any lessons that can be learned from the approach to JET currently being adopted by France and Ireland respectively. This article will also examine whether the approach to JET ought to vary depending on the legal system. In conclusion, it will be contended that there is a need for JET that has the potential to foster the development of a holistic approach to judging across both common and civil law jurisdictions, thereby enabling the development of skills beyond legal research, writing and advocacy.

Authors: Estelle Cros, French Liaison Judge for the UK and Ireland since September 2020, and Saoirse Enright, LLB (UL), LLM (UL), Irish Research Council Funded PhD Candidate (UL)¹

Introduction

Livingston Armytage has noted that Judicial Education and Training (JET) has become increasingly recognised as central to the proper functioning of the judiciary in both civil and common law jurisdictions.² From an Irish perspective, in recent times this is certainly true.³ Judges have become more commonly viewed as human, not merely as ‘oracles’⁴ of the law residing in ivory towers but as experts in law subject to an ever-changing world, fallibility, and ‘other forces, the likes and dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the man, whether he be litigant or judge.’⁵ This, in turn, has generated greater engagement around the world with the dialogue on JET models particularly regarding how models might best be renewed and strengthened. Hence Ireland’s recent development of a modern training programme that was brought about as a result of the Judicial Council Act 2019, and the establishment of the Judicial Council. In particular, the establishment of the Judicial Studies Committee in 2020; a committee of the Judicial Council, has proved imperative to the establishment and implementation of JET in Ireland to date. It is useful to compare and contrast the current state of the French civil law system of JET which is long-standing with Ireland’s common law-based model of JET since JET in Ireland is still in its early stages of life, yet it has also

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² Livingston Armytage, *Educating Judges: Towards Improving Justice: A Survey of Global Practice*, (Brill Nijhoff 2015) xv.

³ In Ireland, following Supreme Court judge Seamus Woulfe’s failure to obey COVID-19 travel restrictions to attend a dinner party in 2020 otherwise known as ‘Golfgate’, political, legal and media attention turned to the need for JET and JCE procedures.

⁴ William Blackstone and Robert Malcolm Kerr, *The commentaries on the laws of England of Sir William Blackstone / adapted to the present state of the law by Robert Malcolm Kerr*, vol 1 (4th edn, J Murray 1876) 47.

⁵ Benjamin N Cardozo, *The Nature of the Judicial Process* (Dover Publications 2005) 163.

implemented some pioneering training initiatives some of which have been recommended by cutting-edge researchers in Ireland and international JET programmes.⁶

This paper will accordingly proceed by considering the aims of JET in international law and standards as well as in Ireland and France, what skills the Irish and French JET models strive to enhance and what measures are in place to realise these ends. Recent JET developments in Ireland and France that bear the potential to benefit the JET model of the other and the world at large will also be considered at this juncture. This will give rise to the finding that despite the differences in jurisdiction between Ireland and France, that is, common law versus civil law, when it comes to JET ‘it doesn’t matter whether you are in a civil law or common law jurisdiction - the role of the judge is mostly the same and the skills needed are the same’.⁷ This determination ought to encourage Ireland and France as well as other jurisdictions to continue to grow and learn from one another when it comes to JET.

There are gaps in both the Irish and French systems of JET. This is not surprising, particularly in the case of Ireland as its system of JET is still in its infancy. Moreover, society is continuously evolving. As a result, the judiciary is expected to adapt to new innovations such as technological advancement to ensure that justice is administered as effectively as possible. Therefore, this paper will also identify some such gaps that have emerged and make concomitant recommendations where appropriate in support of closing these gaps and enabling the flourishing of JET models in Ireland, France, and beyond.

Setting the Standard for Judging: Frameworks and Procedures

What is JET? An International Insight

JET has been expounded accordingly: ‘Judicial education is a primarily applied field, not a philosophical one, and it is appropriate for those involved to focus on concrete questions. Yet, without a grasp of the underlying purpose and core principles of judicial education, there is no framework to answer these questions.’⁸ In a recent report (‘the Report’) addressing the integration of judicial training and conduct in Ireland with international best practice, the invaluable nature of JET and more specifically the prominence of the international standard of promoting judicial independence and impartiality through JET was foregrounded.⁹ The Report accordingly emphasised that judicial independence and impartiality ought to be promoted during JET because these principles are intrinsic to the realisation of the right to a fair trial.¹⁰ The Report pointed out that impartiality has been described by the European Courts for Human Rights as ‘an absence of prejudice or bias’¹¹ which intersects with judicial independence, a concept indicating that judges are expected to be independent not only of

⁶ For example, in response to the Victims Directive and the Criminal Law (Victims of Crime) Act 2017 which implements the Directive as well as the O’Malley Review of Protections for Vulnerable Witnesses in the Investigation and Protection of Sexual Offences which recommended that judges receive training in sexual offence cases the JSC established a course, ‘Avoiding Re-traumatisation’ for the judiciary that sets out to provide the judiciary with a better understanding of the victims’ experience in court during sexual offence cases.

⁷ Mr Justice Gerard Tangenberg in Laura Cahillane and others, *Towards Best Practice: A report on the new Judicial Council in Ireland* (Irish Council for Civil Liberties 2022) 51.

⁸ Diane E Cowdrey, ‘Educating into the Future: Creating an Effective System of Judicial Education’ (2010) 51 *South Texas Law Review* 885, 889.

⁹ *Towards Best Practice* (n 7) 8.

¹⁰ Article 40.1, 40.3 Constitution of Ireland, Article 6 European Convention on Human Rights, Article 14 International Covenant on Civil and Political Rights.

¹¹ *Piersack v Belgium* (1983) 5 EHRR 169 para 30.

the other branches of government and their colleagues but also from their own predispositions.¹²

The significance of JET and the need to stave off judicial bias has also been recognised by international instruments addressing JET. The Bangalore Principles of Judicial Conduct (‘the Bangalore Principles’), endorsed JET in 2002, stipulating that:

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 this purpose of the training and other facilities which should be made available, under judicial control, to judges.¹³

These principles also necessitate that the judiciary ‘keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.’¹⁴ These two principles, amongst others,¹⁵ imply that judges are expected to engage in JET which should encompass topics beyond doctrinal legal issues thereby denoting the significant and wide-ranging role JET has in maintaining a properly functioning judiciary. Support for judicial neutrality was expressed in the Measures for Implementation of Bangalore Principles (‘the Measures for Implementation’) wherein it is enshrined that: ‘The training of judicial officers should be pluralist in outlook in order to guarantee and strengthen the open-mindedness of the judge and the impartiality of the judiciary.’¹⁶ The Measures for Implementation outline the seriousness attributed to a situation which sees a judge fail to demonstrate independence and impartiality as it is stated that for such behaviour he or she ‘may be removed from office’.¹⁷ Similarly, the Commonwealth (Latimer House) Principles also recognised the need for JET that promotes judicial neutrality and other skills beyond legal research, writing and advocacy: ‘Judicial training should include the teaching of the law, judicial skills and the social context, including ethnic and gender issues.’¹⁸ The importance of promoting judicial impartiality in JET was again recognised in the European Charter on the Statute for Judges wherein it was noted that JET should promote: ‘open-mindedness, competence and impartiality’.¹⁹ The European Commission’s publication on Ensuring justice in the EU — a European judicial

¹² See Shimon Shetreet, ‘Creating a Culture of Judicial Independence: The Practical Challenge and the Conceptual and Constitutional Infrastructure’ in Shimon Shetreet and Christopher Forsyth (eds), *The Culture of Judicial Independence: Conceptual Foundations and Practical Challenges* (Martinus Nijhoff 2012).

¹³ Value 6.3.

¹⁴ Value 6.4.

¹⁵ For example, value 5.1 states: ‘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”).’ Value 5.2, also on the topic of equality, calls for judges to engage in JET that counters judicial bias: ‘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.’

¹⁶ *Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct* (2010), 10 <<https://www.ici.org/wp-content/uploads/2015/08/JIG-Measures-effective-implementation-Bangalore-Principles-2010.pdf>> accessed 21 February 2023.

¹⁷ *ibid*, section 16.1.

¹⁸ The Commonwealth Secretariat, the Commonwealth Parliamentary Association, the Commonwealth Legal Education Association, the Commonwealth Magistrates’ and Judges’ Association and the Commonwealth Lawyers’ Association: *Commonwealth (Latimer House) Principles on the Three Branches of Government* (February 2009) 18.

¹⁹ Council of Europe, *The Explanatory Memorandum to the European Charter on the Statute for Judges* (1998), 2.3 <<https://rm.coe.int/16807473ef>> accessed 21 February 2023.

training strategy for 2021-2024 (‘the European strategy’) succinctly captured the comprehensive level of craft required to effectively exercise the role of the judge: ‘The law and legal principles do not function in a vacuum, so justice practitioners need to acquire multidisciplinary competences’ in the form of JET that addresses ‘judicial conduct, resilience, unconscious bias, case and courtroom management, and leadership.’²⁰ The foregoing point was further implicated by the European strategy as it also recognised the need for judicial ‘training on the protection of individuals’ rights in the digital space ... and the rights of specific groups (e.g. children, persons with disabilities, victims of gender-based violence, racism and discrimination)’.²¹

The European Judicial Training Network (‘EJTN’), established in the year 2000 to promote the JET of the European judiciary, ‘prosecutors, judicial trainers and court staff across Europe’,²² set out nine principles that ‘serve as common foundation and framework for Europe’s judicial training institutions.’²³ The principles are as follows:

1. Judicial training is a multidisciplinary and practical type of training, essentially intended for the transmission of professional techniques and values complementary to legal education;
2. All judges and prosecutors should receive initial training before or on their appointment;
3. All judges and prosecutors should have the right to regular continuous training after appointment and throughout their careers and it is their responsibility to undertake it. Every Member State should put in place systems that ensure judges and prosecutors are able to exercise this right and responsibility;
4. Training is part of the normal working life of a judge and a prosecutor. All judges and prosecutors should have time to undertake training as part of the normal working time, unless it exceptionally jeopardises the service of justice;
5. In accordance with the principles of judicial independence the design, content and delivery of judicial training are exclusively for national institutions responsible for judicial training to determine;
6. Training should primarily be delivered by judges and prosecutors who have been previously trained for this purpose;
7. Active and modern educational techniques should be given primacy in judicial training;
8. Member States should provide national institutions responsible for judicial training with sufficient funding and other resources to achieve their aims and objectives;
9. The highest judicial authorities should support judicial training.

These values, analogous to the JET principles, were adopted a year later by the International Organisation for Judicial Training (‘IOJT’), which was established in 2002 ‘to promote the rule of law by supporting the work of judicial education institutions around the world’.²⁴

²⁰ European Commission, *Ensuring justice in the EU — a European judicial training strategy for 2021-2024* (2020) Part 3.

²¹ *ibid* Part 2.

²² EJTN, ‘About us’ <<https://ejtn.eu/about-us/>> accessed 8 February 2023.

²³ EJTN <<https://ejtn.eu/>> accessed 8 February 2023.

²⁴ IOJT, ‘About us’ <<https://www.iojt.org/about-us>> accessed 8 February 2023.

They have informed the JET workshops organised by the EJTN for members of the judiciary across Europe. On 10-11 November 2022, the EJTN offered a Judicial Training Methods workshop on Communication and Vulnerability in Bulgaria that addressed ‘the key judicial skill of communication and the importance of recognising vulnerability in others and ourselves in the court context.’²⁵ On 1-2 December 2022, the EJTN organised training for ‘judicial professionals (judges, prosecutors and court staff) on Victims’ Rights in the EU in practice’ which took place in Stockholm. This training workshop ‘focused on those vulnerable victims such as victims of domestic violence, child sexual abuse and gender-based violence who require a targeted and integrated support and special protection.’²⁶ Also, in December 2022, the EJTN addressed the live humanitarian crisis taking place in Ukraine as a result of the Russia-Ukraine war by organising a training scheme that offers support and insight to the Ukrainian judiciary on how best to address war-based legal issues.²⁷ For this year, 2023, the EJTN has scheduled JET which is acclimatised to the administration of justice in the age of digitisation and technology that we now occupy. Some examples of EJTN-coordinated workshops that strive to enhance digital skills within legal systems across Europe include Freedom of Speech in the Digital Era; Cybercrime and Digital Evidence; Law and Digital Technologies: Challenges and Prospects.²⁸ The EJTN has also signalled its practical-led innovative ability to cater for the times by launching a new Digital Learning Hub which provides its participants with information on their learning.²⁹ It is accordingly necessary to consider whether the approaches and methods of JET adopted in Ireland and France adhere to the aforementioned standards prescribed at an international level.

JET in Ireland

It was not until 1995, a mere twenty-eight years ago, that Irish law required members of the judiciary appointed by the Judicial Appointments Advisory Board (JAAB) to partake in JET:

A person who wishes to be considered for appointment to Judicial office shall undertake in writing ... his or her agreement... to take such course or courses of training or education, or both, as may be required by the Chief Justice or President of the Court.³⁰

²⁵ EJTN, ‘It’s time for magistrates to improve their communication and become more resilient!’ (9 December 2022)

<<https://ejtn.eu/news/its-time-for-magistrates-to-improve-their-communication-and-become-more-resilient/>> accessed 7 February 2023.

²⁶ EJTN, ‘EJTN committed with Victim’s Rights in Criminal Proceedings with special focus on violence against women and children’ (20 December 2022)

<<https://ejtn.eu/news/ejtn-committed-with-victims-rights-in-criminal-proceedings-with-special-focus-on-violence-against-women-and-children/>> accessed 8 February 2023.

²⁷ EJTN, ‘EJTN is addressing the challenges of the war in Ukraine through training for Ukrainian judiciary’ (6 December 2022) <<https://ejtn.eu/news/ejtn-is-addressing-the-challenges-of-the-war-in-ukraine-through-training-for-ukrainian-judiciary/>> accessed 21 February 2023.

²⁸ EJTN, ‘2021 Calendar of Training Activities’ <<https://www.ejn-crimjust.europa.eu/ejnuupload/Partners/EJTN%202021%20Calendar%20of%20training%20activities.pdf>> accessed 5 July 2023.

²⁹ EJTN, ‘EJTN’s new website is online! Completely bilingual in English and French – and with a new Digital Learning Hub’ (14 December 2022)

<<https://ejtn.eu/news/ejtns-new-website-is-online-completely-bilingual-in-english-and-french-and-with-a-new-digital-learning-hub/>> accessed 8 February 2023.

³⁰ The Courts and Court Officers Act 1995, section 19.

This is somewhat striking given the fact that the Irish Courts system was initially birthed by the Courts of Justice Act 1924,³¹ and JET was initiated across common law jurisdictions in a big way during the 1970s following the formation of numerous national JET institutes.³² The narrative that ‘during their legal careers, practitioners acquired the necessary wisdom and mastery of the law to emerge as fully-fledged judges at the other end’³³ was symptomatic of common law jurisdictions until around the time of the Second World War.³⁴ The IOJT captured the transition towards a recognised need for JET in the following passage:

It was a common conception that Judges already knew everything, and didn’t need any training. This changed as the Judge’s profession began to be seen as a skill that needs to be learned...and updated. As such, the profession is similar to the practice of medicine or education, where the practitioners must be both idealistic and constantly updated in order to serve in the best possible fashion.³⁵

However, Ireland seemingly fell behind the move towards providing JET as Frances Fitzgerald’s line of thought ‘that judges did not need training’ continued to circulate in Ireland during the close of the twentieth century.³⁶ It should be noted that recognition of the need for formal JET does not discount the reality that judges learn a vast amount of their craft on-the-job. Instead, it has been suggested that formal JET in Ireland will complement the informal methods of learning that are commonly availed of by the judiciary habitually.³⁷ This point was captured by Howlin and others:

while supportive judicial networks exist, access to such networks is subject to geographical and, presumably, other limitations. One’s level of acquaintance with established judges and one’s willingness to approach peers for advice may constrain the extent to which informal work conversations are available as a resource. With the move to structured training of the Irish judiciary, judges will almost certainly continue to learn from their peers, and there may be opportunities for more formalised peer learning.³⁸

It is also suggested that JET may counter judicial misconduct, as JET will provide the judiciary with a better understanding of the role of the judge and the necessary skills to effectively exercise this role. Thus, it is assumed that the judiciary can only benefit from a formal system of JET, especially as the majority of judges have been elevated to the bench

³¹ Article 34 of the Constitution of Ireland, 1937 acquired the court system established under the 1924 Act. This was not given effect to until the Courts (Establishment and Constitution) Act 1961 was passed.

³² For example, The US National Judicial College, the New Zealand Institute for Judicial Studies, the England and Wales Judicial College, and the Judicial Institute for Scotland.

³³ Bernard Teague and Tom Gerald Daly, ‘Judicial mentoring: an introduction – part I’ (2011) 29 *Irish Law Times* 178.

³⁴ Niamh Howlin and others, “‘Robinson Crusoe on a desert island’? Judicial Education in Ireland, 1995-2019’ (2022) 42 *Legal Studies* 525, 526.

³⁵ International Organisation for Judicial Training, *Background Document* <https://www.iojt.org/_data/assets/pdf_file/0014/6143/iojt-background.pdf> accessed 8 February 2023; Robinson Crusoe (n 34) 526.

³⁶ Dáil Debate 29 November 1995, vol 459, col 1; Robinson Crusoe (n 35) 530.

³⁷ Robinson Crusoe (n 34) 536.

³⁸ *ibid* 537.

following a successful career as a legal practitioner and ‘the qualities inherently required of an advocate are substantially different from those required for a judge’.³⁹

However, despite the apparent benefits of a formalised model of JET and the stipulation set out in the Courts and Court Officers Act 1995 necessitating judicial participation in JET, it was not until the Judicial Council Act 2019 was passed that real action was taken regarding the formal wholesale delivery of JET. Before this, there was no statutory obligation requiring the provision of JET. The Judicial Studies Institute (JSI), established on a non-statutory basis in 1996, provided limited JET for the judiciary. However, the JSI, which later became the Committee for Judicial Studies, did not advance JET in Ireland. It was suggested that the JSI and the Committee for Judicial Studies were ‘unable to provide the type of continuing training and education that is common in other jurisdictions because of financial constraints.’⁴⁰ Thus formal JET had not been engendered as a result of these bodies. Instead, a limited form of JET took place by way of ‘annual, one-day conferences’,⁴¹ ‘regular seminars and by courses provided externally.’⁴² However, support for a Judicial Council sparked by judicial conduct controversies which would not only address judicial conduct and ethics (‘JCE’) but also the issue of JET amongst other areas came to the fore towards the close of the 20th century. In 1999, the Fourth Progress Report of the All-Party Oireachtas Committee on the Constitution recommended that a Council be set up to regulate judicial behaviour and a code of ethics be drafted to include the standard that: ‘Judges should take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for judicial office’.⁴³ Similarly, the ‘Denham Report’ published in 1999 recommended that ‘an independent and permanent body should be established as an agency of the State to manage a unified courts system’,⁴⁴ which would be responsible for drafting a code of ethics, establishing a complaints procedure and judicial education.⁴⁵ A year later, similar recommendations were made in the ‘Keane Report’ which advocated for the establishment of a ‘Judicial Council’ comprising a board and three committees, namely:

1. the Judicial Conduct and Ethics Committee;
2. the Judicial Studies and Publications Committee; and
3. the General Committee.⁴⁶

Although the Irish judiciary is recognised for its independence,⁴⁷ criticism of Ireland’s failure to provide comprehensive JET continued until the Judicial Council was eventually established in December 2019 pursuant to the Judicial Council Act 2019. Just the year prior,

³⁹ Michael Kirby, ‘Modes of appointment and training of judges – a common law perspective’ (2000) 26(1) Commonwealth Law Bulletin 540 in Robinson Crusoe (n 34) 536.

⁴⁰ Robinson Crusoe (n 34) 530.

⁴¹ *ibid.*

⁴² The Judicial Council, *Annual Report 2021* (2021) 16.

<<https://judicialcouncil.ie/assets/uploads/documents/Annual%20Report%202021.pdf>> accessed 21 February 2023.

⁴³ All-Party Oireachtas Committee on the Constitution, *Fourth Progress Report: The Courts and the Judiciary* (Stationery Office 1999) 38.

⁴⁴ *Working Group on a Courts Commission Sixth Report Conclusion 1998* (Government of Ireland 1999) 11

<<https://www.courts.ie/ga/acc/alfresco/d871dde4-c70f-419d-80b3-2a27289e8fad/6th%20Report%20WGCC%20summary.pdf/pdf>> accessed 9 February 2023.

⁴⁵ *ibid* 57-58.

⁴⁶ Committee on Judicial Conduct and Ethics, *Committee on Judicial Conduct and Ethics Report* (Stationery Office 2000) 52.

⁴⁷ The Judicial Council Annual Report 2021 (n 42) 16.

it was highlighted at a European level that Ireland was one of three out of a total of forty-five states that did not provide ongoing systematic JET.⁴⁸ Ireland's shortcomings in this regard were highly criticised in the Council of Europe's 2014 GRECO Report on *Corruption prevention in respect of members of parliament, judges and prosecutors*.⁴⁹

The Judicial Council has strived to overcome this criticism and buttress its main pillars of 'excellence in the performance of judicial functions, high standards of conduct among judges, an independent Judiciary, and public confidence in the judiciary and in the administration of justice' by to put in place rigorous structures and procedures with the Council at the apex of the body and the Board as the de-facto decision-maker.⁵⁰ The Council has established various committees to exercise specific functions. These include a Judicial Studies Committee, a Personal Injuries Guidelines Committee, a Sentencing Guidelines and Information Committee, Judicial Support Committees, and a Judicial Conduct Committee. The 2019 Act specifies that the Council is obliged to 'promote and maintain continuing education of judges.'⁵¹ Hence the Judicial Studies Committee (JSC) has been set up 'to facilitate the continuing education and training of judges with regard to their functions.'⁵² The 2019 Act also provides that the JSC may 'prepare and distribute relevant materials to judges'.⁵³ Howlin and others have noted that the function attributed to the JSC 'is broader than that of its non-statutory predecessor.'⁵⁴ This is evident as the legislation lists some of the areas in which the JSC can provide JET but does not limit JET to these areas:

The Council shall — provide, or assist in the provision of, education and training on matters relevant to the exercise by judges of their functions, including but not limited to —

- (i) dealing with persons in respect of whom it is alleged an offence has been committed;
- (ii) the conduct of trials by jury in criminal proceedings;
- (iii) European Union law and international law;
- (iv) human rights and equality law;
- (v) information technology; and
- (vi) the assessment of damages in respect of personal injuries.⁵⁵

⁴⁸ European Commission for the Efficiency of Justice, *European Judicial Systems: Efficiency and Quality of Justice* (CEPEJ Studies No 26, 2018) 99 <<https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c>> accessed 9 February 2023.

⁴⁹ Council of Europe, *Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors* (10 October 2014) <<http://ipo.gov.ie/en/JELR/Greco%20Eval%20IV%20Rep%202014%203E%20Final%20Ireland.pdf/Files/Greco%20Eval%20IV%20Rep%202014%203E%20Final%20Ireland.pdf>> accessed 26 June 2023; Council of Europe, *Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors* (13 July 2022) <<https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of-1680a73867>> accessed 10 February 2023.

⁵⁰ The Judicial Council, 'About the Judicial Council' <<https://judicialcouncil.ie/about-the-judicial-council/>> accessed 9 February 2023.

⁵¹ Judicial Council Act 2019, section 7(1)(d).

⁵² *ibid*, section 17(2).

⁵³ *ibid*, section 17 (3)(a).

⁵⁴ *Robinson Crusoe* (n 35) 532.

⁵⁵ Judicial Council Act 2019, section 17 (c).

The Terms of Reference for the JSC, adopted at the Judicial Council's first meeting in February 2020 build on the foregoing functions referenced in the legislation:

- a. identify and continue to update the needs of the judiciary for education and training;
- b. develop courses to meet the needs of the judiciary for induction, continuing professional education and development;
- c. provide, or assist in the provision of, induction, education and training on matters relevant to the exercise by judges of their functions, including but not limited to:
 - (i) dealing with persons in respect of whom it is alleged an offence has been committed,
 - (ii) the conduct of trials by jury in criminal proceedings,
 - (iii) the conduct of trials by judges in civil and criminal proceedings,
 - (iv) European Union law and international law,
 - (v) human rights and equality law,
 - (vi) information technology, and
 - (vii) the assessment of damages in respect of personal injuries,
- d. prepare and distribute relevant materials to judges;
- e. publish material relevant to its functions;
- f. promote, explain and protect the core value of judicial independence in judicial training and education; and
- g. establish, maintain and improve communication with –
 - (i) bodies representing judges appointed to courts of places other than the State; and
 - (ii) international bodies representing judges.⁵⁶

Rónán Kennedy expressed the view that the 2019 Act 'offers a crucial and unrepeatable opportunity to develop modern innovative, and fit-for-purpose mechanisms for key functions such as judicial conduct and ethics, and judicial education and training.'⁵⁷ A similar chord was struck by Minister for Justice, Charles Flanagan when he introduced the Judicial Council Bill 2017, as he also identified the potential that lay within the 2017 Bill which later became the 2019 Act:

All of us in our professional lives, no matter what we do, need to keep abreast of new developments in advancing technologies, changing practices and anything else that can enhance and further develop our capacity to work in a way that can be described as more efficient. Judges are no different in this regard.⁵⁸

It is thus clear that the Irish legal system has recently committed to promoting and advancing JET in Ireland and has endorsed the importance of the value of judicial independence which as previously highlighted is extensively promoted by international law and standards. It is

⁵⁶ The Judicial Council Annual Report 2021 (n 42) 16-17.

⁵⁷ Law Society Gazette, 'Formal training is needed to ensure judicial excellence' (15 April 2021) <<https://www.lawsociety.ie/gazette/top-stories2/formal-training-is-needed-to-ensure-judicial-excellence>> accessed 21 February 2023.

⁵⁸ Seanad Debate 22 November 2017, vol 645, col 1.

also apparent that the JSC has a vested interest in developing both legal and non-legal judicial skills. This paper will consider how far JET has come since the JSC began its work and thus how the JSC's commitment to establishing a robust model of JET has translated in practice after the next section of the paper which will set out the approach to JET in France and the skills it seeks to promote.

JET in France

It is widely recognised that the provision of JET in civil law jurisdictions is disparate from that seen in common law countries. In the main, this can be attributed to the differences that persist between the legal professions in both jurisdictions. In Ireland, judges are generally appointed to the bench after pursuing a long-term career as a practising solicitor or barrister. However, in France, this is not the case as judges are typically appointed to the bench not long after graduating from university with a law degree.⁵⁹ Traditionally, aspiring judges (as well as prosecutors) in France are required to complete competitive entrance exams and subsequently attend the national training school for the judiciary known as the Ecole Nationale de la Magistrature (ENM) which is based in Bordeaux and was founded in 1958.⁶⁰ France was thus more motivated to provide JET than its common law counterparts given the early establishment of the ENM in comparison to the founding of judicial training institutes in common law countries which took place several years later.

Having entered the ENM the trainee judge ('auditeurs de justice')⁶¹ has to complete 31 months of 'initial training' to become a qualified judge.⁶² During this period the trainee judge is continually assessed.⁶³ The purpose of the initial training course is to provide aspiring judges with 'professional techniques, and also to give them a broader knowledge of the institutional, human and social environment' in which they will be working. 'It alternates classroom teaching in Bordeaux with internships in courts to give the trainees a broad overall view of their profession.'⁶⁴ The internship element of this JET emphasises the level of importance the ENM attributes to the development of practical skills.⁶⁵ This method of JET is delivered by way of 'lectures and conferences, themed workshops, role plays and moot courts, debates and round tables, written work and e-learning modules.'⁶⁶ However, the main method of delivering the initial training is the organisation of tutorial groups which 'consists of work sequences in small groups on actual cases. These groups consist of about twenty trainees and are formed for the duration of their studies in Bordeaux.'⁶⁷ It has been noted that providing JET through these tutorial groups allows 'the trainers to manage the group effectively, allowing for personalised individual follow-up of the trainees and constituting a highly interactive method of learning.'⁶⁸ The initial training is conducted by judges or prosecutors to ensure that JET 'remains close to the realities of professional practice in the

⁵⁹ Cheryl Thomas, *Review of Judicial Training and Education in Other Jurisdictions Report* (May 2006) <[Microsoft Word - Judicial Training & Education Report.doc \(ucl.ac.uk\)](#)> 104.

⁶⁰ ENM, *National School for the Judiciary leaflet* (2017) 1 <[READ French ENM leaflet.pdf](#)> accessed 12 February 2023.

⁶¹ ENM Initial Training <https://www-enm-justice-fr.translate.goog/formations/magistrats-francais/formation-initiale? x_tr_sl=fr& x_tr_tl=en& x_tr_hl=en& x_tr_pto=sc& x_tr_hist=true> accessed 5 July 2023.

⁶² ENM leaflet (n 60) 4.

⁶³ ENM Initial Training (n 61).

⁶⁴ *ibid.*

⁶⁵ *ibid.*

⁶⁶ *ibid.*

⁶⁷ *ibid.*

⁶⁸ *ibid.*

courts⁶⁹ and to safeguard the principle of judicial independence. It has been suggested that this ‘front-loaded’ approach to training strives to ‘compensate for new judges’ relative inexperience.⁷⁰ This approach has been contrasted with that taken in ‘common law jurisdictions, where judges are recruited from the ranks of experienced legal professionals.’⁷¹ However, the ENM and the JSC in Ireland are similar in the sense that they both aim to produce a judiciary that possesses the skills to be an astute decision-maker which, according to the ENM, requires ‘mastery of legal techniques, but also the essential ability to understand human issues.’⁷² The next section of this paper will indicate that it is apparent from the JET put into practice since the inception of the JSC that the Irish legal system has endorsed the foregoing values. To mould astute judicial decision-makers the ENM sets out to equip all trainee judges with the following skills:

- Identifying, grasping and applying ethical rules;
- Analysing and summarising a situation or case;
- Identifying, respecting and enforcing a procedural framework;
- Adapting;
- Adopting a position of authority or humility to fit the circumstances;
- Knowing how to manage relations, listening and debating;
- Preparing and conducting hearings or questioning in accordance with adversarial procedures;
- Eliciting agreement and conciliating;
- Making a sensible, enforceable decision that is adapted to its context, based on the law and the facts;
- Justifying, formalising and explaining a decision;
- Taking account of the national and international institutional environment;
- Working in a team;
- Organising, managing and innovating.⁷³

The ENM also offers the French judiciary ‘life-long’ education and training programmes otherwise known as ‘in-service training’ which was established in 1971,⁷⁴ and is also run by judges and prosecutors.⁷⁵ There are more than five hundred courses offered as part of this JET and since 2008, judges are mandated to engage in five days of this training per annum.⁷⁶ The purpose of the in-service JET is to provide judges (and prosecutors) with the opportunity to ‘enhance their technical skills and specialise throughout their career.’⁷⁷ More specifically, the following seven objectives have been set out to enable the in-service JET to ‘meet the needs of a modern European democracy and the expectations of users of the judicial system’:⁷⁸

⁶⁹ *ibid.*

⁷⁰ Robinson Crusoe (n 34) 528.

⁷¹ *ibid.*

⁷² ENM leaflet (n 60) 1.

⁷³ *ibid.*

⁷⁴ *ibid.*

⁷⁵ ENM Initial Training (n 61).

⁷⁶ ENM leaflet (n 60) 4, 5.

⁷⁷ ENM Initial Training (n 62).

⁷⁸ *ibid.*

- Keep up with legislative and regulatory reforms and developments in case law;
- Assist judges and prosecutors with changes in their work practices and functions;
- Prepare them for management positions and promote a culture of good management;
- Promote sharing of knowledge, methods and good professional practice;
- Contribute to keeping the profession aware of its economic, social and cultural environment;
- Enhance knowledge of European and international law among judges and prosecutors; and
- Provide a multi-disciplinary approach to the subjects that are addressed.⁷⁹

Both the initial training and in-service training initiatives have been established on a cross-disciplinary basis since 2009⁸⁰ which indicates the depth of the role of the judge. The judiciary is not required to solely concern itself with the law and legal issues but to possess skills that enable it to take into account the mores of society and thus seek a formulation of the truth that is socially acceptable to the community as opposed to ‘*vérité absolue*’ or the ‘absolute truth’.⁸¹ The ENM also has a far-reaching international presence. The ENM has membership with the EJTN, the Euro-Arab Judicial Training Network (‘EAJTN’), the European Programme for Human Rights Education for Legal Professionals and the IOJT. As a result, French judges are in a position to avail of JET offered by these international networks.⁸²

Rising to the Challenge: Adopting a Holistic Approach to JET Developments in Ireland

To draw conclusions on how the Irish and French approaches to JET compare in practice and whether either model gives rise to any valuable lessons for JET more broadly, the progress made by the JSC since its establishment on 10 February 2020 must be considered.⁸³ The Judicial Council Annual Report 2021 (‘the Annual Report’) provides an insightful indicator of how far the JSC has come. The recently published Report on integrating judicial training and conduct in Ireland with international best practice published before the release of the Annual Report recommended that JET in Ireland should reflect international best practice and more specifically that the JET provided by the JSC should explore the following topics:

- interpersonal and communications skills, including the use of clear and plain language;
- the broader social context;
- unconscious bias and diversity for judges;
- specific human rights topics;
- EU, Council of Europe and UN human rights instruments; and

⁷⁹ *ibid.*

⁸⁰ ENM leaflet (n 60) 1.

⁸¹ Boris Bernabé, ‘The judgement of Solomon, truth and peace’ (2020) 4(4) *Les Cahiers De La Justice* 595, 604.

⁸² ENM Initial Training (n 61).

⁸³ Judicial Studies Committee, <[https://judicialcouncil.ie/judicial-studies-committee/#:~:text=This%20Committee%20was%20established%20on,as%20is%20possible\)%20train%20judges](https://judicialcouncil.ie/judicial-studies-committee/#:~:text=This%20Committee%20was%20established%20on,as%20is%20possible)%20train%20judges)> accessed 21 February 2023.

- the issues raised by vulnerable witnesses, which has already been identified as a priority.⁸⁴

To ensure relevant JET that meets the needs of the judiciary is continually provided, the Report also suggested that the JSC facilitate ‘widening the needs based assessments for JET to groups outside of the judiciary, as recommended by the international experience; and engaging external reviewers on a regular basis, such as every five years.’⁸⁵ A holistic approach to JET that aims to develop skills including and beyond a knowledge of the law, legal research, writing and advocacy skills is thus requisite.

Given the international weight attached to judges training judges otherwise referred to as judge-led training, High Court judge Ms Justice Mary Gearty was appointed to the position of Director of Judicial Studies (‘JS’) in July 2020. It has widely been recognised that ‘[j]udges themselves are best suited to conduct continuing professional development for their colleagues’,⁸⁶ and that this means of JET safeguards judicial independence. Hence, the implementation of a workplan for the future of JET that addresses judge-led training amongst other issues:

1. A focus on newly appointed judges has been provided with dedicated induction training, emphasising conduct and ethics;
2. Commencement of ‘judge-led’ mentoring training, including training judges from every first instance jurisdiction in this process;
3. Implementing the recommendations of Mr Tom O’Malley in his ‘Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences’;
4. Addressing the challenges of transforming court practices to enable virtual hearings.⁸⁷

The JSC is hard-working and ambitious because not only has it satisfied its four aims, but it has also afforded time and resources to additional JET initiatives. Staying with the topic of judge-led training, judges received formal training on how to train their colleagues in September and November 2021. International judges shared their ‘experience, techniques and skills’ with the Irish judiciary thereby enabling Irish judges to ‘design, offer and deliver their own training programmes.’⁸⁸ The training was designed and delivered by the JSC Director and experienced judicial trainers from England and Wales and the training and study centre for the Judiciary in the Netherlands.⁸⁹ Induction training was launched in September 2020 for the benefit of incoming judges. This course resembles a small-scale version of the mandatory initial training provided by the ENM. The induction training offers newly appointed judges practical experience that prepares them for sitting in court as a judge for the first time. This form of training invites experienced judges to engage with their new colleagues by participating in role plays during which newly appointed judges consider a minimum of two applications in numerous areas. Actors are appointed to play the role of litigants and lawyers thereby providing the judges with an opportunity to discuss ‘how best to address issues, deal with participants in the court process and manage court time fairly,

⁸⁴ *Towards Best Practice* (n 7) 60.

⁸⁵ *ibid.*

⁸⁶ Paul McCutcheon, Ray Friel, and Dermot Coughlan, ‘Review of the Judicial Studies Institute’ (University of Limerick School of Law and Department of Lifelong Learning and Outreach 2004) 119.

⁸⁷ The Judicial Council Annual Report 2021 (n 42) 17.

⁸⁸ *ibid.* 20.

⁸⁹ *ibid.*

courteously and efficiently.⁹⁰ Newly appointed judges are also provided with a ‘more experienced judicial mentor’ who is trained to offer ‘a formal, but individualised response to the needs of the new judges’.⁹¹

2021 also saw the JSC deliver interactive workshops on judicial conduct and ethics. The Bangalore principles were fundamental to the development of these workshops. Hence the workshops centre on a structured consideration of: ‘Independence, Impartiality, Integrity, Propriety, Equality, Competence and Diligence.’ This is achieved by requiring judges to discuss ‘relevant cases’ and share their experience and offer ‘hypothetical examples relevant to each of the principles.’⁹² The material used to inform these workshops was modelled on the sources used by the Judicial Council of England and Wales and informed by relevant case law and input from judges at home and abroad.⁹³ JET has also addressed how judges should deal with victims sensitively and appropriately during sexual offence cases. The Criminal Law (Victims of Crime) Act of 2017 and Mr Tom O’Malley’s recent recommendations that vulnerable witnesses should receive better levels of protection in court and the provision of JET covering sexual offence cases made this JET course known as Avoiding Re-traumatisation a priority. The course was developed with the support of the study centre for the Judiciary in the Netherlands and can be availed of by all judges working in criminal courts. The course aims to reduce trauma for victims of sexual crime.⁹⁴ The JSC’s effectuation of JET which will allow judges to better deal with bias and vulnerable witnesses was very progressive. It mirrors the growth of mental health awareness and intellectual disability awareness in society as well as a willingness to provide everyone with dignity and the opportunity to heal and develop resilience:

The aim of the training is not only to inform judges but to enable witnesses to give their best evidence by helping judges to identify potential areas of bias, to question and contradict stereotypes and to offer the judges a deeper understanding of people whose experiences are different from their own.⁹⁵

The course includes an online presentation and discussion on what unconscious bias is and its potential impact on judicial decision-making. The course also incorporates practical court work during which judges preside over hypothetical cases designed with input from the King’s Inns which aim to enhance the judge’s ability to identify and reduce biases in court.

The JSC has already taken into account four out of the six topics of JET recommended in the Report with interpersonal and communications skills, including the use of clear and plain language and specific human rights topics yet to be addressed. However, it was stated in the Annual Report that depending on the availability of resources during the year 2022, the JSC would address these topics amongst others by introducing courses on ‘human trafficking, insolvency and practical information technology for serving judges.’⁹⁶ The JSC also identified establishing ‘a leadership course for judges and to focus on resilience and judgment writing’

⁹⁰ *ibid.*

⁹¹ *ibid.*

⁹² *ibid* 18.

⁹³ *ibid.*

⁹⁴ *ibid* 19.

⁹⁵ *ibid.*

⁹⁶ The Annual Report noted that the JSC would expand its induction training and update its courses on unconscious bias and avoiding re-traumatisation. It also noted that the provision of JET on the area of Assisted Decision-Making was one of its main areas of focus.

as ‘medium term’ priority.⁹⁷ The progress of the JSC thus far and its plans for the future indicate that the JSC is striving towards a holistic and multi-disciplinary approach to JET that heeds international standards and best practice on JET as well as national and international legal research on JET and seeks to pave the way for a judiciary with a well-developed skill set that will enable it to perform its judicial function with excellence. This in turn will maintain confidence in the judiciary and the administration of justice.

Developments in France

A desire to foster a model of JET that caters for a judiciary with a broadly developed skill set has also been evidenced by the ENM in France. The new Deputy Director of the ENM, Haffide Boulakras, has a background in digital technology. Upon his appointment, Haffide recognised the need for JET for other members of the court team. He suggested that the provision of JET in this area will provide the judiciary with better support thereby allowing judges to reap the benefit of saving time on tasks that their court team will be able to assist on. The need for reform within this area is indicative of heavy workloads exacerbated by a lack of resources. On this topic, he also noted that reform is already underway to enhance the skill set of the wider court team. Since September 2022 the ENM has commenced training for legal assistants (juristes assistants). To enable the continued development of this initiative Haffide announced that the Specialist Professional Training Department will be expanding.⁹⁸ He also emphasised the importance of continuing to adhere to international standards in particular the rule of law which will be achieved through ‘cooperation and the strengthening of judicial schools abroad.’⁹⁹ The importance of judges adhering to the rule of law as well as international and human rights law is made clear from the ENM’s organisation of JET courses on ‘Combatting Terrorism and Corruption’ and participation in judicial cooperation projects including the Law Enforcement in Central Asia project funded by the European Union and implemented by Civipol and the International Security and Emergency Management Institute. Similarly, the ENM also signed a cooperation agreement with the National School of Judges of Ukraine to provide long-term support to Ukraine’s judicial training institutes on how to deal with the issues they are currently facing. The ENM is also actively involved in the JET facilitated by the EJTN on the war in Ukraine.¹⁰⁰ The need to foster respect for victims’ rights while exercising the role of the judge was also addressed in the JET provided by the ENM. Accordingly, the ENM recently organised a seminar as part of its European project ‘Victims, Information, Compensation in Trials, Investigation’ (VICTI). The main aim of this project was explained as follows:

Its main objective is to establish some minimum standards for guaranteeing the rights of victims in the Member States of the European Union and to share the good practices established in the countries that have been confronted with these "exceptional" trials, to ensure victims are kept informed of what is happening throughout the procedure, to accompany and

⁹⁷ The Judicial Council *Annual Report 2021* (n 42) 21.

⁹⁸ ENM, ‘Haffide Boulakras: Impact of the États Généraux de la Justice Consultation on Justice and Digital Technology at the ENM’ (13 February 2023)

<<https://www.enm.justice.fr/en/actu-13022023-haffide-boulakras-impact-etats-generaux-de-la-justice-consultation-justice-and-digital>> accessed 14 February 2023.

⁹⁹ *ibid.*

¹⁰⁰ ENM, ‘The ENM signs a cooperation agreement with Ukraine’ (2 December 2022)

<<https://www.enm.justice.fr/en/actu-02122022-enm-signs-cooperation-agreement-ukraine>> accessed 21 February 2023.

support them through the formalities involving them and ensure they receive fair redress for the harm suffered as quickly as possible.¹⁰¹

The first seminar took the following format:

This first seminar brought together all the actors of the judicial world who have been confronted with these issues (judges, prosecutors, lawyers, court clerks, specialised assistants, forensic scientists, representatives of victim support associations, civil servants from European justice ministries and advisors from the French Inter-ministerial Delegation for Victim Support), taking a multidisciplinary approach, to enable them to share their experiences, suggest solutions or talk about remedies that have been applied in the face of the difficulties encountered during this type of investigation.¹⁰²

This event highlights the significance the ENM places on working with other jurisdictions and disciplines beyond the law to share insights in an endeavour to enhance how justice is administered. More broadly speaking, recent developments in the JET offered by the ENM indicate expansion and a desire to keep up with issues on the ground.

A look to the future

When looking to the future and considering how the objective of JET ought to adapt to keep abreast of a changing society it is worth noting that the Report on judicial education and conduct in Ireland also made recommendations for Government which are central to the success of the rolling out and maintenance of JET in Ireland:

The Government, in its role in resource allocation, should ensure there is sufficient time available for judges to attend training courses, by appointing an adequate number to the bench; and adequate financial resourcing for the Judicial Council to staff its training function and to engage external experts as necessary.¹⁰³

This recommendation was very recently endorsed in the Report of the Judicial Planning Working Group ('the Working Group').¹⁰⁴ It is thus clear that the provision of resources is central to the success of JET. In fact, the Working Group noted 'that a structured approach to ensuring judges' training needs do not constantly compete with Court sittings can best be addressed by jurisdictions being better resourced.'¹⁰⁵ The issue of resourcing is relevant to JET programmes the world over and should be a key priority for JET bodies. After all, it is established that JET is pertinent to the success of the role of the judge. Therefore, JET needs to be fully resourced so that judges receive education and training that allows them to acquire the skills and knowledge necessary to keep a pace with an ever-evolving society. As previously outlined, the issue of adequately resourcing JET also came to the fore of the ENM's recent consideration of how best to renew and develop its JET. Hence its expression

¹⁰¹ ENM, 'Ensuring Respect for Victims' Rights in Europe' (6 October 2022) <<https://www.enm.justice.fr/en/actu-06102022-ensuring-respect-victims-rights-europe>> accessed 15th February 2023.

¹⁰² *ibid.*

¹⁰³ *Towards Best Practice* (n 7) 61.

¹⁰⁴ *Report of the Judicial Planning Working Group* (Department of Justice 2022) 121.

¹⁰⁵ *ibid.*

of the need for more staff to enable the success of the provision of training not only for judges (and prosecutors) but the wider court team including court assistants. Providing in-depth training and education to other members of the courtroom workplace on how to assist with tasks generally completed by the judiciary but not fundamental to the role of the judge may be an initiative to be welcomed with open arms across many jurisdictions. The provision of education and training in this area would assist judges in reducing backlog, thereby endeavouring to uphold the rule of law, and allowing justice to be administered effectively. The ENM also identified the need for resourcing in the form of supporting staff for the Specialist Professional Training Department as essential to the success of this form of training and education. The need for the appointment of staff to assist with the expansion of JET was also identified by the JSC in Ireland:

The further expansion of the judicial training function in 2022 is very much dependent upon two key factors, being the appointment of the necessary staff to support this area and extending the number of judges being available to attend courses organised by the committee.¹⁰⁶

The Working Group also made a similar point: ‘providing case management training for judges, officers carrying out quasi-judicial functions such as County Registrars and support staff is one of the key elements of training’.¹⁰⁷ Therefore, both Ireland and France face the common challenge of needing more staff to ensure JET is properly provided. The JSC has also called for the appointment of more judges because in its opinion, ‘[t]he availability of judges to attend training courses in the light of significant court-sitting commitments is of some concern.’¹⁰⁸ Perhaps the ENM’s proposal to expand JET to the wider court team could also benefit JET in Ireland in this regard as such an initiative would provide the judiciary with more time to attend JET events. Interestingly, the Working Group has emphasised giving the Court Service greater responsibility.¹⁰⁹ This is particularly appealing to jurisdictions such as Ireland that deliver judge-led training and have a shortage of judges because in such instances not only are judges obliged to attend JET events to upskill but to impart knowledge to their peers. Therefore, time is of the essence. The Working Group also identified this issue and recommended ‘judges should be provided with adequate time during the working year to attend training and skills development programmes.’¹¹⁰ It has also been suggested that judges should be provided with support in the form of: ‘public sector norms, the development of a full suite of human resource supports including welfare supports and the collection and management of relevant HRM data (sick leave, holiday/vacation days, retirement schedules, diversity characteristics).’¹¹¹

A link can also be made between the issue of resourcing JET bodies and the JET they offer. The JET provided hinges on the resources possessed by its training body. Therefore, to allow for the development of JET programmes and the piloting of new courses and events JET requires continuous investment. It is suggested that the JET programmes that are already implemented and need to be further developed in both Ireland and France as well as those that need to get off the ground because they are viewed as essential to the future of JET should be resourced appropriately by its training body. Accordingly, the Deputy Director of

¹⁰⁶ The Judicial Council Annual Report 2021 (n 42) 21.

¹⁰⁷ *Report of the Judicial Planning Working Group* (n 104) 122.

¹⁰⁸ The Judicial Council Annual Report 2021 (n 42) 21.

¹⁰⁹ *Report of the Judicial Planning Working Group* (n 104) 8.

¹¹⁰ *ibid* 121.

¹¹¹ *ibid* 6.

the ENM noted that there is a need to ‘make better use of digital technology in the justice system generally.’¹¹² He suggested that this ought to be achieved through ‘digital acculturation across the board: everyone needs to be aware of the constraints inherent in information system security, data protection issues and the GDPR, etc.’¹¹³ Haffide noted that initial training and in-service training would have to provide training that would enhance one’s skills when relying on professional applications. Similarly, the Terms of Reference for the JSC in Ireland identified the importance of ‘information technology’ and the need to expand its delivery of JET on ‘practical information technology for serving judges.’¹¹⁴ Given the prevalence of information technology (‘IT’) in the world today and its advantages in the workplace including time-saving and environmental sustainability coupled with the safety risks it can pose continuous interactive JET within this area is welcomed.

Within an Irish context, it has been ‘assumed that the COVID-19 pandemic caused rapid upskilling in this area’,¹¹⁵ again indicating the importance of IT during times of global crisis and the need for it to feature in the future of the administration of justice in a worldwide basis. It is clear from the international standards on JET and recent developments in JET in Ireland and France that judges require practical and multidisciplinary-based JET on how to address emerging issues on the ground to promote the rule of law and adhere to international standards. A common thread in both models of JET is the provision of JET on respecting victims and their rights. While both jurisdictions have identified the need for sensitivity on this issue it can be noted that the JSC in Ireland has excelled in this area. Not only has it coordinated informative sessions on issues concerning victims, vulnerable witnesses, unconscious bias and avoiding retraumatisation in court but it has provided judges with a safe environment in which they can gain hands-on experience in applying the knowledge they have garnered on how to cater for these experiences as a judge. This approach to JET allows judges to administer justice with compassion and respect while also adhering to the principles of judicial impartiality and independence. After all, it has been reported that:

Trauma begets trauma so that people rendered vulnerable by trauma in childhood are very frequently victims of violence and abuse in later life. Survivors of trauma use drugs and alcohol to cope with the aftermath, then find themselves involved with crime which leads to imprisonment and homelessness and further cycles of alienation and despair.¹¹⁶

Moreover, as ‘most trauma is alterable through human intervention’,¹¹⁷ JET has the potential to provide judges with the ability to ‘enhance the experience of those appearing in our courts in any capacity.’¹¹⁸ Practical-based JET sessions have the potential ‘to offer the judges a deeper understanding of people whose experiences are different from their own’,¹¹⁹ and in turn to enhance the interpersonal and communication skills of the judiciary. This approach to JET is viewed positively and should be endorsed to promote impartiality and

¹¹² Impact of the États Généraux (n 98).

¹¹³ *ibid.*

¹¹⁴ The Judicial Council Annual Report 2021 (n 42) 21.

¹¹⁵ *ibid.*

¹¹⁶ Jonathan Tomlinson, ‘We need to talk about trauma’ (15 October 2017)

<<https://abetternhs.net/2017/10/15/we-need-to-talk-about-trauma/>> accessed 20 February 2023.

¹¹⁷ Saoirse Enright, ‘Mixed views in judiciary on jury guidance ‘bench book’ (Law Society Gazette, 22 September 2021) <<https://www.lawsociety.ie/gazette/top-stories/2021/09-september/mixed-views-in-judiciary-on-bench-book-for-jury-guidance>> accessed 20 February 2023.

¹¹⁸ The Judicial Council Annual Report 2021 (n 42) foreword 4.

¹¹⁹ *ibid.* 19.

independence in judicial decision-making. Moreover, because of the value of providing JET on issues beyond the law ‘judicial training should not just include programmes that are about legal factors and processes but also cover non-legal matters such as the avoidance of cognitive biases.’¹²⁰ It is also clear from the recent advancements made in Ireland and France regarding JET that cooperation between jurisdictions plays a crucial role in the provision of JET. In particular, this is apparent from the JET projects the ENM has recently signed up for. It may be suggested that its collaboration with the National School of Judges of Ukraine is both collaborative and with the times. The importance of civil and common law jurisdictions relying on one another for support when developing JET was denoted by the recent initiation of JET in Ireland. In particular, it is noted that the JSC gained vital insight from the study centre for the Judiciary in the Netherlands. Therefore, continued cooperation between legal systems is deemed positive for the advancement of JET. It is thus promising that both Ireland and France have committed to continuing their collaboration with international training bodies such as the EJTN and other jurisdictions.

Conclusion

It is plain that Ireland’s newly established model of formal JET requires ongoing enhancement to ensure the effective exercise of the role of the judge which, according to international standards and recent academic analysis on JET, necessitates a well-rounded skill set that exceeds the skills intrinsic to a successful legal researcher, writer, and advocate. Judges are not only required to interpret and apply the law, but they are also obliged ‘to listen courteously, to answer wisely, to consider soberly and to decide impartially.’¹²¹ Hence, JET is demanding. Nonetheless, after considering the JET frameworks in place in Ireland and France it is clear that both jurisdictions attempt to provide judges with the skills necessary to effectively administer justice. It is also clear that it is invaluable to look to other jurisdictions when developing and enhancing JET. This was acknowledged in the ENM’s new international strategy for 2023 to 2027 as one of its three main objectives is ‘to rely on the School’s international activities and what our experts observe abroad to enrich the training of French judges and prosecutors as well.’ Similarly, as outlined in the Judicial Council’s 2021 Annual Report the JSC has recognised the benefit of heeding the evolution of JET at an international level: ‘The Director and the Committee renewed and strengthened their engagement with international judicial training bodies and will continue to foster these networks and develop new allies across the world to facilitate cooperation at a global level in the coming years.’¹²² It has accordingly been suggested that the provision of JET in Ireland and France will continue to flourish with the aid of continued collaboration with international training bodies. This paper has also emphasised the need for JET to be sufficiently resourced to enable current programmes to be enhanced and new programmes to be developed. With regards to the development of new JET programmes, it is clear that the EJTN provides cutting-edge programmes and therefore inspiration should arise from collaboration with the EJTN and recent developments in society such as technological advancements and humanitarian crises such as the Russia-Ukraine war. Also, it has been suggested that the role of the judge is nuanced and multi-faceted thereby requiring skills beyond legal research, writing, and advocacy. Therefore, judge-led practical skills-based JET that goes beyond legal considerations and is thus informed by various disciplines such as

¹²⁰ *Report of the Judicial Planning Working Group* (n 104) 122.

¹²¹ Socrates, as cited in The Right Hon Lady Rose of Colmworth DBE, ‘What makes a good judge?’ (The Barnard’s Inn Reading, Barnard’s Inn Hall, 16 June 2022) 1.

¹²² The Judicial Council Annual Report 2021 (n 42) 17.

sociology, politics, communications, and neurobiology is essential to the success of the exercise of the judicial function.