

UKAJI workshop: Researching Users' Perspectives of Administrative Justice

26 January 2017

Feedback from small groups

GROUP 1 - Who are the users? What do we mean by 'users'?

Facilitator: Richard Thomas

Who are the users?

- All types of users have insights, but research priorities are likely to focus on individuals.
- Typically as "One-Shotters", they are more exposed and vulnerable.
- But beware the dangers of making assumptions about individuals – e.g. they do or do not want a "day in court".

What about non-individuals?

- Public bodies can be legitimately treated as users and there are important issues – e.g.:
 - current extent of no-shows at hearings by DWP and Home Office presenting officers and the implications of / non-participation
 - positive or negative impact of mandatory reconsideration on DWP staff

What are users' perspectives?

- Beware the dangers of 'One Size Fits All' assumptions or approaches.
- Different parts of the AJ system involve individuals with different types of circumstance and need.
- Even within a single sector, there can be very different experiences, attitudes and types of vulnerability.
- Important variables include types of dispute, age, gender, social and economic circumstances, literacy levels, digital familiarity and 'personal preferences'.

What are users' needs?

- In an ideal world there would be **choice** for each user (e.g. oral hearing? postal exchange? on-line resolution? telephone interview?).
- There are isolated examples of choice (e.g. for some housing disputes) but the system is likely to remain largely monopolistic and monolithic for users.

- Perhaps some elements of choice could however be built in as reforms are introduced.
- User feedback could play a much greater part – both to improve the system and to inform new users.
- Perhaps a 'Trip Advisor'-type scheme should be tried.

And don't forget.....

- Two types of non-user.....
 1. Those who drop out at some stage of any process through 'dispute fatigue' or for other reasons.
 2. Those who never enter the system.

GROUP 2 - Why do we need to know? What do we mean by 'perspectives'?

Facilitator: Geneva Richardson

- The administrative justice system is for all of us – and in a sense we're all users.
- Users range widely in their perspectives, example given of consultation re single person panels in Mental Health Tribunals. Panel members and patients might have radically different views. There is a need to move from subjective to more objective perspectives.
- Managing expectations of users, particularly 'claimants', is of great importance. They should be given clear information on the limits of the decision-maker's powers.
- Society might have to make objective decisions on resources – eg a 'Rolls Royce' process or not.
- Important to capture views of potential users. Perhaps only feasible to do so by identifying those who fall out without making a claim.
- Understanding user perspective is important for instrumental reasons – to help improve services. Also in terms of achieving justice?
- Can an understanding of users' views help in resource allocation?
- The importance of trust in the process – but this is also an ambiguous notion.

GROUP 3 - What do we need to know and why?

Facilitator: Sarah O'Neill

- This group suggested that the Adler and Gulland 2003 research review should be updated.
- Any user research should ideally focus on the entire user's journey - how accessible is the whole system? The tribunal/formal complaints process is the last part of the process - in social security cases, for example, the process starts at the job centre/when the user is filling out the forms. HMCTS is looking at the user perspective of its bit of the process, but what about DWP - how aware is it of the user issues? The whole social security system needs to be simplified. AJTC paper on prevention? - need to design system better in the first place.
- The system disempowers people from activating their rights/weakens their rights e.g. social security and also employment tribunals- very few get through to the tribunal stage due to the onerous fees.
- The focus of research should be on access to justice, not just about the process, as with some of the existing research.
- Importance of finding out more about non-users. What happens to those who take a complaint to e.g. an ombudsman, and are told they must go back to the body they have complained about, because they have not exhausted its complaints procedure. Do they get their dispute resolved? Do they later come back to the dispute resolution body if not? Is there any research looking at this?
- People just need somewhere to go to for advice - they may go to eg the tribunal looking for advice, but it is unable to help them as it is an impartial judicial body, and not an advice body. DWP doesn't recognise that people need help.
- How do you find users to carry out the research - what are the practicalities involved? Start at the beginning of the process, or at the end? Easier to identify start of the process in some cases eg social security, than others (eg employment) - but could we in the latter case perhaps identify parties at the stage of referral to ACAS for example?
- Research by Baldwin and Whiteley (1992) - Judging Social Security - this would be a useful baseline for some further research, but can researchers get access to users via DWP?
- Need for a 'friendly broker' like AJTC/STAJAC. Funding, and the right people being involved, are essential.
- Research has been done in various countries of the UK and further afield - should look to these as comparators.
- Much of existing 'user research' carried out by HMCTS and SCTS is on its own terms and looks at issues such as satisfaction with court facilities etc, rather than the more important quality of justice issues.

- There is research that suggests that, if users feel that they have been treated fairly, they can be happy with the process even though they don't like the outcome - although some in the group were sceptical of this, especially as it was recognised that there are some (albeit it a small number) of persistent complainers who will never be happy because they don't like the outcome.
- Getting back to the notion of tribunal/ombudsman etc as a last resort, what research is there about users' views on, and experiences of, mediation/ADR within an administrative justice process? While some research has been done on mediation success rates (which is usually positive) in e.g. a courts/ ombudsmen context, what do we know about why people do or do not agree to go to mediation?
- There has been some research in both England and Scotland on mediation in additional support needs/special educational needs cases, which found that education authorities did not like mediation, although required to provide it. What about the parties though?
- There was mention of two Nuffield Foundation-funded research projects, on Tribunal reform in Northern Ireland and The impact of Litigants in Person on the Northern Ireland court system (both led by Grainne McKeever), which followed the standard research approach (also used by Hazel Genn in her research on court mandated mediation) and involved researching the views of all parties involved – users/advisers/tribunal members /tribunal staff.
- Will people's perceptions of fairness change when cases are dealt with online?
- Non-users/ potential users- how to identify these and get their views? In courts, there are help-desks run by CitA or law for Life, which help litigants in person post legal aid cuts. There are also people called 'concierges' in Quebec/Victoria courts in Canada, who assist people going into court for a hearing, although it may be more difficult to find those who haven't actually started a court action yet. Could this kind of service be introduced for tribunals/admin justice processes here, and if so how?
- Questions used in user research should be open ended, rather than tick box, so as not to limit the scope of answers from the outset.
- In some areas of law, there are a number of cases that don't proceed - why not? Do we know the reasons?

GROUP 4 - What data are available?

Facilitator: Robert Thomas

Administrative data

- Government departments and public authorities hold administrative data on users, for example DWP Customer survey.
- Information held by the Legal Aid Agency that is given by lawyers applying for legal aid. It contains a lot of detail about claimants, their circumstances their claim and outcomes, but it is not collated or analysed.
- There is the possibility of matching datasets between different government departments.
- Not much data collected are actually published. Discussion about the NAO report on unmet legal need. The Administrative Data Research Network can be used to access government data.
- Beware: government data can be misinterpreted - eg MoJ research on representation in immigration appeals presented data on whether someone had a representative, which is not the same as whether someone was actually represented at a tribunal hearing.
- The NGO Asylum Support Appeals Project collects data on asylum support claimants and gives it to the Asylum Support Tribunal.
- Discussion on when data are collected, over what time period – which will not necessarily coincide with policy changes. Interesting to capture data on the impact of transitional provisions.
- Ombudsmen data – Creutzfeldt research, and Creutzfeldt and Gill research on online critics of ombuds. Ombuds undertake customer satisfaction surveys. Caveats around this in terms of sampling of people. Also, not all is yet available publicly, but expected to be published soon.
- LGO has set up an advisory group comprising previous users in order to test-run LGO plans.
- At what point of the user journey do we ask claimants questions? Concern is that the outcome of AJ procedures will inevitably affect user impressions and perceptions of the AJ process.
- Discussion around the link between face-to-face procedures and user-satisfaction.
- Should there be a code of practice so that different ombudsmen schemes collect coherent and comparable sets of data?
- Data collected by advisers – CAB and National Association of Welfare Advisers collect data. CAB collects data on 7 million cases per year. How can these rich data be utilised in research?
- Discussion around access to data through HMCTS, e.g. to look at tribunal case-files and decisions. Government concerns around data protection issues. Difficulties of accessing data.

GROUP 5 - What are the research obstacles? And the opportunities?

Facilitator: Andrew Le Sueur

- Limited data in the public domain
- Managing relationships between researchers and public bodies can be a moving target in terms of extent and nature of cooperation
- Is there more internal research than we know of already in existence?
- Is research fatigue in departments, including MOJ an issue for researchers?
- How to identify opportunities of greater sharing of knowledge?
- Non-users: there are many in the room.i.e. it may not necessarily be as difficult as it often seems to reach non-users.
- Why is it important to know about non-users? There may be positive, as well as negative reasons for choosing not to engage.
- Methodology: can be sector-specific, but there is clear appetite for sharing experiences between researchers. UKAJI could act as a broker for researchers wanting to share and collaborate. UKAJI's Current Research Register is one available resource.