

# A Research Agenda for Administrative Justice

March 2013



© Crown copyright 2013

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/opengovernment-licence/> or e-mail: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk)

Any enquiries regarding this publication should be sent to us at:  
Administrative Justice & Tribunals Council,  
81 Chancery Lane, London, WC2A 1QB.

This document is also available from our website at  
[www.justice.gov.uk/ajtc](http://www.justice.gov.uk/ajtc)

# Foreword

**By Richard Thomas CBE, Chairman of the Administrative Justice & Tribunals Council (AJTC)**

The AJTC's *Research Agenda for Administrative Justice* outlines proposals for future research work about the administrative justice system and its users. Building upon previous work of both the AJTC and its Scottish and Welsh Committees, what is outlined here has significance for academic and social researchers and commentators as well as policy advisers and decision-makers across a wide range of disciplines. What unites researchers in so many fields is an awareness that administrative justice matters; an awareness, in other words, of the importance of making correct decisions about citizens or making sure that things are put right when mistakes occur.

In our society governmental agencies take decisions which (as the Public Administration Select Committee of the House of Commons pointed out) “*might seem obscure and technical*”, but affect “*the lives, the standards of living, and rights, of millions of citizens every year*”.<sup>1</sup> These decisions concern welfare benefits entitlements; the allocation of social housing; and the suitability of persons to adopt or foster children – to name but three examples. The Committee reflected upon this as an “*enormous system*” of state-sponsored decision-making fundamentally affecting people's quality and way of life.

Normally these decisions are made fairly and proportionately, in a way that is conscious of their impact upon those who in many cases are at a vulnerable place in their lives. But inevitably they are not always correct, and those which have negative consequences for individuals are often challenged by them. The Select Committee recited statistics estimating that 1.4 million disputes arise per year in relation to decision-making by central government, which is to say nothing of local government. And so a complex and not always cohesive combination of statutory tribunals, internal dispute resolution schemes, ombudsmen, and the ordinary courts, exists to provide redress and remedy when disputes arise. Decisions are in fact frequently overturned – with 37% of ‘Fitness for Work’ assessments in respect of disability benefits being successfully appealed according to a recent ministerial answer.<sup>2</sup> Ours is clearly not a perfect world.

At the centre of all this is the AJTC, described as the “hub of the wheel”<sup>3</sup> of what has to be understood as a *system* of administrative decision-making and associated complaint and redress mechanisms. The AJTC exists to ensure that this administrative justice system works fairly, efficiently and effectively, and with its users at its heart.

The wheel may well however soon lose its hub. The Westminster Government has laid a draft abolition Order in Parliament under the

---

<sup>1</sup> Public Administration Select Committee: ‘*Future oversight of administrative justice: the proposed abolition of the Administrative Justice and Tribunals Council*’, HC 1621, Session 2010/12, page 3 (summary).

<sup>2</sup> Hansard, HC Written Answers 29/1/13, Column 786W (Mark Hoban MP, DWP Minister, responding to a question by Bill Esterson MP)

<sup>3</sup> Sir Andrew Leggatt: ‘*Tribunals for Users: One System, One Service*’ – the Leggatt Report, 2001, at 7.49 (referring to the AJTC's predecessor, the Council on Tribunals).

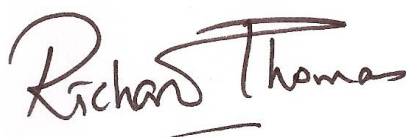
Public Bodies Act 2011. If the abolition proceeds, then the AJTC's statutory responsibility to recommend research into the administrative justice system will also be lost.<sup>4</sup>

This *Research Agenda* therefore represents something of a legacy document, seeking to prevent a research vacuum in the event of our demise. It invites all its readers to consider how existing research may be built upon to increase the insight available to governments and policymakers in different parts of the UK. We hope that it will provide a strong steer and sense of direction to all interested parties – whether commissioners and funders of research; academics seeking funding for projects in the field; or those, whether experienced or new to the area, who take an interest in administrative justice.

The loss of the AJTC would occur when research into administrative justice will be of paramount importance as changes of significant – and as yet unknown – impact make their effects felt. The next few years will represent a period in which budgets will be proportionately tighter than for decades, and in which spending reductions will inevitably place pressures upon the system's ability to cope with demand. Within this context, one of the most substantial reform programmes in the history of the welfare state will progress, transforming the existing benefit entitlements of social security claimants, and restricting their numbers by means of new assessments. At the same time, many people will lose access to legally-aided support and advice services should they wish to challenge decisions which may go to the heart of their lives.

The Agenda concentrates especially on assessing the effects of current reforms, recognising that many will impact directly on the poorer and more vulnerable in society. Research is vital for evidence-based approaches to understanding what is happening within the system and what the effect of further changes would be. It is vital that such work builds upon what has gone before, and that the contribution of researchers and policy advisors – both within and beyond government – keeps a focus on one key goal. At the heart of the nation there should continue to be an accessible, fair and efficient system of administrative justice to deliver the results intended by a democratic state, to sustain public confidence and to empower all citizens to be properly engaged in society.

This Agenda will only have real value if it inspires or leads to genuinely worthwhile research. I am optimistic, not least because this document draws heavily on the input of those who participated in two seminars which the AJTC held in Edinburgh and London in September and October 2012. I close by recording the AJTC's thanks to them, both for participating in the seminars and for the time they gave in providing feedback on previous drafts.

A handwritten signature in dark ink, reading 'Richard Thomas'. The signature is fluid and cursive, with a large 'R' and 'T'.

Richard Thomas CBE, LL.D.  
Chairman, AJTC

---

<sup>4</sup> Tribunals, Courts and Enforcement Act 2007, Schedule 7, Paragraph 13 (1) (e)

# Contents

<b>Executive summary</b>	<b>1</b>
<b>Introduction</b>	<b>2</b>
<b>Administrative justice research to date</b>	<b>4</b>
Liaison with Research and Policy Community	4
AJTC Projects	5
AJTC Scottish Committee Research	7
AJTC Welsh Committee Research	9
<b>Changing context and implications for research</b>	<b>10</b>
<b><i>The Research Agenda</i></b>	<b>12</b>
Overarching concepts	12
Structural issues	13
Procedural issues	15
Sectoral issues	17
<b>Supporting administrative justice research</b>	<b>22</b>
<b>Conclusion</b>	<b>24</b>



## Executive summary

The AJTC's *Research Agenda for Administrative Justice* is directed to all those with an interest in, or responsibility for, administrative justice. It sets out matters regarding which ongoing future research will be of particular importance, bearing in mind the imperative value of assessing the effects on the administrative justice system of forthcoming reforms – for example in the provision of public services (in particular social welfare); in the ever-rising instance of fees being levied within tribunals; in the removal of legally aided advice and support in various areas; and in the likely abolition of the AJTC.

The proposed research topics are not exhaustive and do not seek to prescribe the manner in which work should be undertaken. We suggest that a multi-disciplinary approach should be adopted, with those who might not consider themselves as concerned with administrative justice giving thought to how their skills might be used to complement existing research by legal and socio-political commentators.

The AJTC and its Scottish and Welsh Committees have coordinated research of their own whilst suggesting topics for external projects to be undertaken by others. The contribution which the AJTC and its Committees have made is outlined in the section entitled 'administrative justice research to date'. We consider that it can provide a basis and steer for future work.

The publication of our *Research Agenda* comes at a time when the administrative justice system faces significant challenges. The AJTC believes that there is a real risk that the interests of the system's users will be undermined by a series of (in some cases) radical reforms which are being introduced within a short space of time, and which will be further exacerbated by the financial pressures placed upon the system in an age of austerity. The case for overseeing the effects of these changes as they are implemented is compelling, and will only increase with the abolition of the AJTC and the accompanying loss of its statutory research functions.

In developing the Agenda, we have suggested that research proposals can typically be understood in terms of the *structures* of the administrative justice system, its *procedures*, and its *sectors* (although we are conscious of the overlap between these concepts in some cases). We have identified our proposals by reference to these three overarching themes, although we reiterate that it will be for those undertaking projects to decide for themselves how to assess the underpinning rationale and scope of their work.

We believe that some government departments, as sponsors of various reforms, are ideally placed to take responsibility for relevant aspects of the research programme. Where we can see value in this, we have made suggestions to that effect.

We also invite funding organisations to consider what within this Agenda is of importance or value to them, in order to ensure that the resources are in place for work to commence. We suggest that central coordination of future research projects will be of significant value, and outline proposals for a research centre or virtual network to provide suitable foundations for such oversight.

# Introduction

1. The AJTC has a range of functions conferred on it by the Tribunals, Courts and Enforcement Act 2007.<sup>5</sup> These include keeping the administrative justice system under review, advising on its potential development and making proposals for research into it.
2. This report focuses on the AJTC's statutory role in promoting research into the administrative justice system. It records the work that the AJTC has already done in fulfilling this part of its remit and outlines a prospective programme for research – a *Research Agenda* – that the AJTC considers will be vital for the future development of administrative justice policy. It is hoped that the agenda will be pursued by researchers and supported by funding bodies, as it is vitally important that the role of research in providing analysis and evaluation of past and future policies relating to administrative justice should continue in the event of AJTC abolition. Evaluation of this kind ensures that the administrative justice system is 'fit for purpose' and works to the mutual benefit of users, service providers and the public purse.
3. Recent studies supported by the Joseph Rowntree Foundation (JRF) and others conducted by the National Audit Office (NAO) demonstrate the importance and relevance of work in this area. For example, a JRF-supported study of October 2012 explored whether the UK Government's Universal Credit reforms will improve the service for users,<sup>6</sup> whilst the NAO has conducted a performance review of the Department for Work and Pensions' (DWP's) contract management and wider strategy for the supply of medical services, including the DWP's contractual relationship with Atos Healthcare<sup>7</sup> (an issue that has attracted considerable negative media attention and regarding which problems have been identified during the AJTC's visits to tribunals).<sup>8</sup> The NAO has also recently reported on how the DWP is managing the impact of Housing Benefit reform. It estimates that reforms will result in around two million households receiving lower benefits with some receiving substantially less.<sup>9</sup>
4. The *Research Agenda* draws attention to a range of issues requiring further research. It is not an exhaustive list but goes some way to identifying key areas where more work is needed. In making recommendations for future study we are not just concerned with the research itself but also with its potential impact on the lives of those who use public services and the administrative justice system.

---

<sup>5</sup> These functions will be removed from statute, and the AJTC itself abolished, upon the coming into force of the (draft) Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013.

<sup>6</sup> <http://www.jrf.org.uk/publications/implementing-universal-credit>

<sup>7</sup> [http://www.nao.org.uk/publications/1213/dwp\\_medical\\_services\\_contract.aspx](http://www.nao.org.uk/publications/1213/dwp_medical_services_contract.aspx)

<sup>8</sup> Much attention has for example been focused on the Public Account Select Committee's recent report on DWP's management of its Atos contract: Public Accounts Committee, 'Department for Work and Pensions: contract management of medical services', HC 744, Session 2012/13: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/744/744.pdf>

<sup>9</sup> [http://www.nao.org.uk/publications/1213/housing\\_benefit\\_reform.aspx](http://www.nao.org.uk/publications/1213/housing_benefit_reform.aspx)



It would come at a time of significant change, especially for many of the more vulnerable in society, and could therefore prove to be of some considerable use in exposing existing failures and suggesting improvements.

5. In this context, it is worth reiterating – this being a point that we have made in other publications – that there is a great range and extent of public policy issues covered by administrative justice and that substantial numbers of people are affected by the decisions made in the system on a day-to-day basis. Around a million cases are dealt with annually by appeal tribunals and public services ombudsmen, which is only a small percentage of the millions of decisions taken by public bodies over the same period.
6. We therefore consider this report to be of direct relevance to governments in different parts of the UK, funding bodies, policy makers, academics, consumer groups and all those who have concern or responsibility for the delivery of the administrative justice system, as well as for the interests of those who use it.

# Administrative justice research to date

7. The AJTC and its Scottish and Welsh Committees are not themselves resourced to undertake major research projects. Nevertheless, through their project work, they have conducted studies into different topics and produced reports with key recommendations for improving the administrative justice system. They have also played a key role in liaising with the research community and with policy makers with a view to raising awareness of the importance of administrative justice and identifying issues that would benefit from further research. Relevant work undertaken to date can be summarised under the following four headings:

## i) Liaison with Research and Policy Community

8. In November 2008, the AJTC published a report, *'Developing Administrative Justice Research'*,<sup>10</sup> which set out its intended contribution in the field. It then pursued a number of initiatives, including meetings with potential partner organisations to discuss a future strategy. In June 2009, the AJTC convened its first Research Roundtable to which judges, academics, funding bodies and Ministry of Justice (MoJ) representatives were invited. The aims were to explore areas of administrative justice where further research was needed and, if possible, to achieve consensus on research priorities.
9. The Research Roundtable participants identified government decision-making as a key priority for research. In particular, they and those subsequently consulted were keen to pursue an examination of: (a) the potential benefits (to both citizens and government) of investing in improved initial decision-making; and (b) the role of feedback in improving the quality of such decision-making. These ideas formed the basis for discussion with research funding bodies.
10. In parallel with this, the AJTC conducted in-house research work to pave the way for future external research on the improvement of initial decision-making. One of the projects undertaken in 2010-11, discussed below, was *'Right First Time'*.<sup>11</sup> This report recommended action to improve original decision-making and secure lessons from feedback. It also identified areas for future research.
11. The AJTC has also participated in research seminars held by others. For example, the Nuffield Foundation held a seminar in May 2011 entitled *'Why Tribunals?'* The intention was to re-invigorate interest in administrative justice research and to encourage debate about gaps in knowledge and the problems and barriers hindering empirical studies in the field. Suggestions for future research explored at this seminar are included in our *Research Agenda*.

---

<sup>10</sup> <http://www.ajtc.gov.uk/publications/179.html>

<sup>11</sup> [http://ajtc.justice.gov.uk/docs/AJTC\\_Right\\_first\\_time\\_web\(7\).pdf](http://ajtc.justice.gov.uk/docs/AJTC_Right_first_time_web(7).pdf)

12. More recently, AJTC members participated in a roundtable discussion convened by the Access to Justice Analytical Services Unit at the MoJ in August 2012. The aim was to bring together academics in the field to identify sources of evidence and knowledge about user experiences and to draw upon attendees' expertise and experience in identifying means of improved communication with users.
13. In addition, both the AJTC's Scottish and Welsh Committees have promoted research into administrative justice, with the Scottish Committee for example convening a meeting with interested parties in 2008 to share views on the development of a research strategy. In December 2009 the Committee carried out a consultation and clarified its role as being: (a) to ensure that there is a climate in which research can be conducted and (b) to make funding and other bodies aware both of its own research and of its support for the work of others.

## ii) AJTC Projects

14. In 2010 the AJTC published a Strategic Plan for 2010-13,<sup>12</sup> accompanied by an Action Plan setting out the main research projects it intended to undertake that year. All of these in-house projects, listed below, identified areas for future work.

### Principles for Administrative Justice (November 2010)<sup>13</sup>

15. The *Principles* were published in November 2010 following a wide-ranging consultation. They reflect the AJTC's expectations of how people should be treated in the administrative justice system and of how organisations should design, carry out and learn from their processes and procedures. The report also contained a detailed self-assessment toolkit to support organisations in achieving these expectations. Both documents were distributed widely across the sector.

### Time for Action (February 2011)<sup>14</sup>

16. The AJTC carried out research into the effect of Rule 24(1)(b) of the Social Entitlement Chamber Rules governing social security appeals. Unlike procedural rules for other tribunal jurisdictions which impose strict time limits for the conduct of appeals, Rule 24(1)(b) does not prescribe a specific period in which a decision-maker must respond to an appeal, providing only that responses must be made "*as soon as is reasonably practicable*". The research involved conducting case studies and collecting statistics to show how the length of time from lodgement of an appeal to the date of a hearing is often unacceptable. We made a number of recommendations to improve on this, including that a 42 day time limit be introduced in which the Department of Work and Pensions (DWP) should provide its response to enable the appeal to proceed to a hearing.

---

<sup>12</sup>[http://ajtc.justice.gov.uk/docs/Published\\_Version\(1\).pdf](http://ajtc.justice.gov.uk/docs/Published_Version(1).pdf)

<sup>13</sup>[http://ajtc.justice.gov.uk/docs/principles22\\_10.pdf](http://ajtc.justice.gov.uk/docs/principles22_10.pdf)

<sup>14</sup>[http://ajtc.justice.gov.uk/docs/Time\\_Limits\\_final.pdf](http://ajtc.justice.gov.uk/docs/Time_Limits_final.pdf)

## Patients' Experiences of the Mental Health Tribunal (March 2011)<sup>15</sup>

17. This pilot project was carried out jointly with the Care Quality Commission (CQC), which, through its statutory oversight of the operation of the Mental Health Act 1983, has the right to visit and interview detained patients. There has been little investigation of patients' own views of their experiences of the First-tier Tribunal (Mental Health), which adjudicates on their continued detention and compulsory treatment. Our aim was, therefore, to find out more about patients' own perceptions of applying to and appearing before the tribunal, with a view to making recommendations for improving its operations. The research involved CQC's Mental Health Act Commissioners conducting 152 interviews with patients who were, or had been, compulsorily detained in a hospital. This evidence was analysed and then used to identify trends and suggest a number of approaches to improvement. Importantly, the project highlighted that it was both possible and worthwhile to collect feedback directly from detained and community patients.

## Right First Time (June 2011)<sup>16</sup>

18. As discussed above, getting initial decisions 'right first time' was identified as a key priority. To this end, we carried out background research and conducted two case studies (concerning the UK Border Authority and the Criminal Injuries Compensation Authority respectively) into how organisations can take steps to improve the quality of their original decision-making and complaints handling. We drew on this evidence to devise 'fundamentals' of a 'right first time' approach and set out 'practical steps' that decision-makers can follow to improve the quality of outcomes. The report suggests that there is scope for making substantial savings through a concerted effort to improve initial decision-making within governmental and other public bodies; and, further, that there is scope to improve user experiences and enhance staff morale. It makes a series of recommendations to government agencies, parliaments and tribunals across the UK.

## Putting it Right (June 2012)<sup>17</sup>

19. This report began with an evaluation of the various methods for the resolution of administrative disputes, but it was then recognised that resolution is actually only one stage, and a late stage, in the cycle of disputes. This cycle has four stages: preventing disputes; reducing their escalation; resolving them; and learning from them. It was argued that steps can be taken at each stage to develop a more appropriate and proportionate approach to resolution, and that action at earlier stages is likely to stop disputes from reaching external handlers, whether tribunals, ombudsmen or something else, hence saving public money and leading to a better service for users.

---

<sup>15</sup> [http://ajtc.justice.gov.uk/docs/AJTC\\_\\_CQC\\_First\\_tier\\_Tribunal\\_report\\_FINAL.pdf](http://ajtc.justice.gov.uk/docs/AJTC__CQC_First_tier_Tribunal_report_FINAL.pdf)

<sup>16</sup> [http://ajtc.justice.gov.uk/docs/AJTC\\_Right\\_first\\_time\\_web\(7\).pdf](http://ajtc.justice.gov.uk/docs/AJTC_Right_first_time_web(7).pdf)

<sup>17</sup> <http://ajtc.justice.gov.uk/docs/putting-it-right.pdf>

### iii) AJTC Scottish Committee Research

20. Against the background of substantial constitutional change since the devolution settlements of 1998, the Scottish Government has assumed large degrees of autonomy over justice in general and administrative justice in particular. In that context, there is definite value for Scotland of a clear administrative justice strategy. The recent research work of the Scottish Committee, as described below, provides a strong foundation for future development of such a strategy.

#### Tribunal Reform in Scotland (2011)<sup>18</sup>

21. Following the announcement that the Scottish Government intended to establish a unified Scottish Tribunal Service, the Committee set up a Working Group which produced a discussion paper, *'Options for Tribunal Reform in Scotland'*. This was distributed to all tribunals operating in Scotland and a number of other stakeholders. The group held a number of round-table meetings and one-to-one discussions. The results were then condensed into a report for Scottish Ministers, *'Tribunal Reform in Scotland – A Vision for the Future'*,<sup>19</sup> which put forward 32 recommendations and offered a blueprint for the establishment of a “coherent, independent and user friendly” tribunal system in Scotland.

22. Once it had become clear that the Scottish Government was likely to accept a number of recommendations made in the Lord Justice Clerk's Civil Courts Review<sup>20</sup> that would have implications for tribunals, the Committee went on to commission two papers by Elaine Samuel, a socio-legal researcher and former member of the Civil Courts Review Team. Her first report, *'The Scottish Civil Courts Review: Implications for Tribunals'*,<sup>21</sup> examined all those Review recommendations that were pertinent to tribunals in Scotland, including those dealing with the establishment of a Sheriff Appeal Court, judicial appointments and the respective jurisdictions of the sheriff and the newly proposed district judges. Her second, *'The Business of the District Judge: Reviewing the Options'*, looked at the effects of transferring certain types of sheriff court business to district judges rather than to tribunals. Its aim was to provide the Committee with background information to enable it to reach an informed conclusion about the most appropriate forum for the likes of housing and small claims disputes.

#### Review of the Allocation of Jurisdictions between Tribunals in Scotland

23. In 2011 the Committee also undertook a desk-based exercise which sought to identify appropriate principles for grouping tribunals together within a unified Scottish Tribunals Service, as well as the practical implications of adopting a system of tribunal 'Chambers'. It produced an interim paper for Scottish Ministers on these issues, conscious of the (then) as yet unknown effects for Scotland of the unification of English courts and tribunals following the establishment of Her Majesty's Courts and Tribunals Service.

---

<sup>18</sup><http://ajtc.justice.gov.uk/docs/tribunal-reform-scotland-discussion-paper.pdf>

<sup>19</sup><http://ajtc.justice.gov.uk/docs/tribunal-reform-scotland.pdf>

<sup>20</sup>Final report: <http://www.scotcourts.gov.uk/about-the-scottish-court-service/the-scottish-civil-courts-review>

<sup>21</sup><http://ajtc.justice.gov.uk/docs/implications-for-tribunalsl.pdf>

## Administrative Decisions without Appeal Rights

24. In drawing up its 2011 work plan the Committee considered issues raised in *'Tribunal Reform in Scotland: A Vision for the Future'*<sup>22</sup> (above) that merited further attention. One related to those administrative decisions made by Scottish public bodies that affect the rights of individuals but against which there is no right of appeal. Members decided to undertake a project that would identify examples of such decisions and to consider what should be done about them.
25. The new project comprised three stages: (1) a discussion paper (based on an analysis of published decisions of the Scottish Public Services Ombudsman, judicial reviews in the Court of Session, and a number of interviews with experienced complaints investigators); (2) a consultation exercise (with an analysis of the responses of 38 stakeholders who had been asked whether the *status quo* was acceptable and, if not, which alternative course they favoured); and (3) a series of meetings in which the Committee formulated its own position. The project was facilitated by the award of a small grant from the Nuffield Foundation.
26. The five devolved policy areas identified as lacking a right of appeal against a first-instance decision were *community care, higher education, housing, legal aid and planning*. For the first three, the Committee recommended a new tribunal jurisdiction to hear appeals; in the fourth, a tightening up of existing procedures, and, in the fifth, the amalgamations of existing review procedures within a new tribunal. The final report, *'Right to Appeal – A review of decisions made by Scottish public bodies where there is no right of appeal or where the appeal procedure is inaccessible or inappropriate'*,<sup>23</sup> was published in September 2012.
27. The Committee had meanwhile had on-going concerns about the new system for reviewing planning decisions and decided to examine the operation of the Local [Planning] Review Bodies. The project informed relevant sections in *'Right to Appeal'*, whilst a background paper, *'Modernising Planning: Local Review Bodies'*,<sup>24</sup> has been put on the Committee's webpage as a report in its own right.

## The separation between complaints and appeals

28. The Committee is currently investigating the perceptions and experiences of those who provide information and advice to members of the public on the issue of the complaints/appeals distinction. In collaboration with Citizens Advice Scotland (CAS), it is carrying out a survey which seeks to elicit advisers' understanding of appeals, complaints and reviews; their experience of the separate procedures for dealing with them; and whether these cause problems for clients, hence making a 'one-door approach' more satisfactory. It is expected that the project will conclude with the publication of a suitable report.

---

<sup>22</sup> <http://ajtc.justice.gov.uk/docs/tribunal-reform-scotland.pdf>

<sup>23</sup> [http://ajtc.justice.gov.uk/docs/decisions\\_with\\_no\\_appeal\\_web\\_final.pdf](http://ajtc.justice.gov.uk/docs/decisions_with_no_appeal_web_final.pdf)

<sup>24</sup> [http://ajtc.justice.gov.uk/docs/Modernising\\_Planning\\_2\\_-\\_LRB\\_Working\\_Paper.pdf](http://ajtc.justice.gov.uk/docs/Modernising_Planning_2_-_LRB_Working_Paper.pdf)

#### iv) AJTC Welsh Committee Research

29. Following a root and branch review of the relevant tribunals, the Welsh Committee published a special report in 2010 entitled '*A Review of Tribunals Operating in Wales*'.<sup>25</sup> It maps out the entire Welsh tribunals system, looking specifically at those tribunals listed under the Administrative Justice and Tribunals Council (Listed Tribunals) (Wales) Order 2007, as well as those concerned with reserved subject areas. Information was gathered by surveying tribunals directly and through consultation with delegates at the Committee's Conference in June 2009.
30. The impact has been significant. The Welsh Government has since introduced an Administrative Justice and Tribunals Unit to centrally administer its devolved tribunals, further to the Committee's recommendations. Some tribunals have already been brought into the Unit (which, whilst maintained by the Welsh Government, is independent of those of its departments which would be tribunal respondents). Others will be brought in over time.

---

<sup>25</sup>[http://ajtc.justice.gov.uk/docs/RTOW\\_English\\_t.pdf](http://ajtc.justice.gov.uk/docs/RTOW_English_t.pdf)

## Changing context and implications for research

31. In October 2010, the UK Government announced its intention to abolish the AJTC. The organisation is listed in Schedule 1 to the Public Bodies Act 2011 and a draft abolition Order was laid in Parliament on 18 December 2012. In the event of its abolition, there will be no other body that has statutory functions to promote research into the administrative justice system. This Agenda can therefore act as a signpost and support to whichever persons or bodies assume the research responsibilities which the AJTC currently fulfils.
32. The AJTC's abolition would come at a time of significant change for the structures of the administrative justice system. Mindful of this, our 2011 report, *'Securing Fairness and Redress: Administrative Justice at Risk'*,<sup>26</sup> set out the changing environment and reiterated the case for:
- Good laws to underpin administrative justice;
  - Public service decisions to be made right first time;
  - Cohesive tribunal reform between and across Great Britain;
  - Help, advice and representation for users in pursuing redress; and
  - Proportionate dispute resolution and wider strategic reform.

The report drew attention to the current financial situation and its implications for public services and their users. In addition to the budget cuts at the MoJ, the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 will shortly remove legal aid in almost all areas of administrative justice where life, liberty and home are not directly threatened. Moreover, the UK Government has introduced direct fees for appellants to immigration and asylum tribunals and has consulted the AJTC on a draft Order to introduce them for the first time into employment tribunals and the Employment Appeal Tribunal (EAT). In addition, changes to the funding of advice services are likely to adversely affect the ability of users to pursue appeals or complaints about public services.

33. Other wide-reaching reforms in areas such as welfare benefits, health, education and local government are likely to have consequences on the demand for and delivery of administrative justice in a range of settings. For example, the introduction of Employment and Support Allowance to replace Incapacity Benefit has already resulted in a significant increase in the number of appeals against decisions to withdraw benefit and a substantial backlog of cases for the First-tier Tribunal.<sup>27</sup> The Department for Work and Pensions has had to provide additional funding of £5 million to Her Majesty's Courts and Tribunals Service (HMCTS) to meet the cost of

---

<sup>26</sup> [http://ajtc.justice.gov.uk/docs/AJTC\\_at\\_risk\\_\(10.11\)\\_web.pdf](http://ajtc.justice.gov.uk/docs/AJTC_at_risk_(10.11)_web.pdf)

<sup>27</sup> See, e.g., House of Commons Work and Pensions Select Committee, *'The role of incapacity benefit reassessment in helping claimants back into employment'*, HC 1015-I, Session 2010/12, at paragraph 138 et seq.: <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmworkpen/1015/1015.pdf>



managing this additional workload, at a time when, according to the Work and Pensions Select Committee, appeals on ESA reassessments are already costing in the region of £50 million per annum.<sup>28</sup>

34. Any changes to policies in fields of administrative justice will have a major impact on large numbers of people, often the most vulnerable in society. In such circumstances, it is essential that major innovations, such as the shift to Universal Credit and Personal Independence Payment, are monitored and evaluated through research assessing their impact on the quality and delivery of public services and the costs to the public purse.<sup>29</sup> The *Research Agenda* set out below aims to capture the key areas where research would be of most value in this regard. In drafting it, we have been mindful of the capacity for rapid policy change and development, and note how current research priorities may change as new political or legal concerns come to the fore. It should thus be seen as a living document capable of adaptation to new situations.

---

<sup>28</sup>Ibid., at paragraph 146

<sup>29</sup>See, e.g., Work and Pensions Select Committee, '*Universal Credit implementation: meeting the needs of vulnerable claimants*', HC 576, Session 2012/13: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmworpen/576/576.pdf>

# The Research Agenda

35. Different aspects of the administrative justice system have been the subject of numerous research studies, and the AJTC acknowledges the important contribution that such work has made and continues to make. A recent example of a significant and insightful project is the joint work of Varda Bondy, of the Public Law Project, and Professor Andrew Le Sueur, of Queen Mary, the University of London, entitled '*Designing Redress: a Study about Grievances against Public Bodies*',<sup>30</sup> launched at the end of 2012.
36. It is not possible to provide a comprehensive literature review of relevant work in this field. Our approach has instead been to identify, through our own project work, visits to tribunals and the feedback from our liaison with the research and policy community, the gaps in existing knowledge and potential areas for further study. As discussed above, recent and ongoing developments in administrative justice policy areas also require ongoing research, monitoring and evaluation.
37. We have grouped the areas of our Research Agenda into three main categories – structural, procedural and sectoral, as set out below. It is important to stress a number of preliminary points, however. First, that the proposed research need not always take the form of a large-scale study, but could instead involve short, focused pieces of work targeted at specific policies. In that sense, and depending upon the interests of the researcher and the particular subject matter involved, depth, rather than breadth, of analysis could be a primary feature. Second, that the type of research could be descriptive, evaluative, and/or normative. The topics listed below are in no way intended to prescribe the manner in which research concerning them might be undertaken, and neither are they intended to prescribe what other issues of relevance (deserving their own attention) there might be. And third, that research into administrative justice would benefit from a multi-disciplinary approach and should not be confined to legal scholars. It should instead embrace different disciplines and involve researchers who would not naturally see themselves as working in the field. For example, the expertise of behavioural economists or sociologists might be particularly helpful in understanding why some people may be more inclined to challenge the decisions of officialdom whilst others may not. This is particularly significant in the area of social security where appeal success rates are relatively high, perhaps therefore implying that some people who choose not to appeal may in fact have been successful had they chosen to do so.

## Overarching concepts

38. In respect of all of the Agenda's proposals, it becomes clear that there are overarching concepts, of general relevance, which warrant their own investigation. This may take a holistic form or may instead be accounted for as part of a more specific review, such as of those

---

<sup>30</sup><http://www.publiclawproject.org.uk/documents/DRM%20Final%20with%20logo%20and%20colour.pdf>

specific areas (health, education etc.) exemplified below. Examples of overarching concepts include:

- The need to monitor the impact of institutional or structural change through the use of meaningful statistics of empirical value to the questions being considered;
- The need to evaluate the protection afforded to administrative justice principles – for instance, timely redress, independence of adjudication, etc – at a time of increased outsourcing and private responsibility for what was formerly public service provision;
- The extent to which the mistakes of executive agencies exposed by appeal and complaint mechanisms are learned from and corrected in future activities, and of the value of feedback from tribunals and ombudsmen in that regard.

### **Structural:**

Research focusing on the nature of the administrative justice system as a whole – whether at UK or devolved levels – and how, and to what extent, the different aspects of the system fit together.

### **Framework of Dispute Resolution**

39. There is a need for better understanding of the framework for dispute resolution and the different options and avenues open to citizens who wish to appeal a decision or make a complaint about the delivery of a public service. Such understanding could be improved through the collection of data on the different forms of dispute resolution, so as to enable comparisons to be made between them. These might address the number of cases resolved by each particular form whilst commenting on the average length and cost of a typical case resolved in that way. Such a 'whole system' approach is admittedly complex, and as such the specific examination of particular resolution methods is in no way being discounted. For example, in the light of increasing trends to adopt internal re-consideration processes before external appeal routes become available,<sup>31</sup> there may be scope for investigation of the success and value of this approach.

### **Comparative Studies**

40. There is room for further examination of the administrative justice systems in other countries, so as to identify what can be learned from them and implemented in the UK. Attention could be paid in this regard as much to European comparators as to common law jurisdictions.
41. There is additional scope for comparative study within the UK, e.g. through research into the devolved tribunals operating in Scotland and Wales (such as in the mental health and special educational

---

<sup>31</sup> Powers enabling the Secretary of State for Work and Pensions to introduce regulations setting out processes for mandatory internal review of entitlement decisions, i.e. before access to external appeal becomes available, are provided (in the context of Universal Credit and related benefits) by s. 102 Welfare Reform Act 2012.

needs sectors) in comparison with their English counterparts. Ongoing constitutional change has resulted in a divergence of practice between different UK jurisdictions in various policy areas, something which would also lend itself to comparative work. Insofar as internal UK practices do vary, there is much to be learned across national divides. For example, the views of the Scottish Committee of the AJTC in its recent *Right to Appeal* report<sup>32</sup> would be of relevance in England and Wales insofar as areas of administrative decision-making might lack clear and independent appeal routes. Similarly, the Committee's future findings on how effectively the distinction between complaints and appeals is managed in Scotland will have significance for the rest of the UK, in which the distinction has also sometimes been a cause of confusion.

## Outcomes, Enforcement and Impact

42. Studies of the processes of the administrative justice system do not always address the outcomes and their impact on users and the system itself. There is a need for larger-scale investigation into the outcomes of various forms of dispute resolution, and into what happens after adjudication in these cases, including as regards the ease with which successful appellants obtain the benefits of judgments given in their favour. The incidence and impact of feedback from tribunals and to decision-makers also warrants further study.

## Users

43. There is a key question about how users can best be supported in getting their disputes resolved. Research commissioned by Plenet and carried out by the Legal Services Research Centre in 2010 suggested that up to two-thirds of the population are unaware of their legal rights and nearly 70% have no knowledge of basic legal processes.<sup>33</sup> Further research is needed to identify effective mechanisms for supporting people in finding solutions to legal problems and getting disputes resolved – whether through the provision of advice, information and/or representation, or through other means of developing 'legal capability', such as public legal education, so as to help people develop the skills to find own solutions to their problems. Such research could help to identify what type of help, or what combinations of help and support, are most effective.
44. There is further need for work that monitors and assesses the effects of withdrawn or reduced funding for and within various parts of the system, its structures and resources, so as to assess the impact of changes upon users. Research assessing the successes of government or private sector initiatives aimed at mitigating the effects of overall funding reductions<sup>34</sup> would also be of value.

---

<sup>32</sup> [http://ajtc.justice.gov.uk/docs/decisions\\_with\\_no\\_appeal\\_\\_web\\_final.pdf](http://ajtc.justice.gov.uk/docs/decisions_with_no_appeal__web_final.pdf)

<sup>33</sup> <http://www.lawforlife.org.uk/data/files/knowledge-capability-and-the-experience-of-rights-problems-lsrc-may-2010-255.pdf>

<sup>34</sup> Such as the new Advice Services Fund announced by the Cabinet Office late in 2011: see: <http://www.cabinetoffice.gov.uk/news/168-million-support-free-advice-services>

## Procedural:

Research focusing on issues which cut across the system and impact upon how it works in practice

### Legal Aid

45. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 coming into force in April will bring about huge changes to the legal aid scheme, aimed at reducing cost by limiting help only to those at risk of losing their life, liberty or home. Legal aid advice and assistance will be removed for most cases involving housing, welfare benefits, employment, debt and immigration. Law centres, citizens' advice bureaux and many independent agencies will lose their main source of funding and will increasingly have to charge clients for services. Research undertaken by Dr. Graham Cookson of King's College London<sup>35</sup> into the likely effect of these changes identified unintended additional costs – for example through procedural delays – of £139 million per annum, meaning that the Government will realise only approximately 42 per cent of the predicted savings. It is essential that the impact of the changes is properly researched – both as to the effect on individuals who no longer have access to legal support, but also as to the functioning of the overall system (including in terms of case numbers, waiting times, the length of hearings and user experiences).

### Right First Time

46. The AJTC's '*Right First Time*'<sup>36</sup> project highlighted the fact that there is no systematic evaluation by public bodies of the costs to them of not getting decisions 'right first time'. In particular, there is an apparent lack of appreciation of how a proactive response to initial decision-making offers significant potential for saving costs. One way of helping to change this is by quantifying the actual costs to an organisation of handling both appeals about decisions and complaints about service delivery and thus identifying how specific savings could be made. Case studies of this kind could provide the type of evidence from which different organisations could learn – something of evident value at a time of economic austerity and consequent reductions in budgets across the board.

47. *Right First Time* also drew attention to proposals for building in incentives to encourage public sector bodies to reduce the number of successful appeals against their decisions, for example through a 'polluter pays' scheme. Research could be carried out exploring how 'polluter pays' might yield dividends (in particular in large volume jurisdictions).

### Complaint Handling

48. Comparatively little research has so far been completed on the issue of complaint handling, and especially in connection with the introduction of complaint-handling procedures as an alternative to, or in conjunction with, more formal dispute resolution processes.<sup>37</sup> It

---

<sup>35</sup><http://www.kcl.ac.uk/campuslife/student/news/stories/UnintendedConsequences-FinalReport.pdf>

<sup>36</sup>[http://ajtc.justice.gov.uk/docs/AJTC\\_Right\\_first\\_time\\_web\(7\).pdf](http://ajtc.justice.gov.uk/docs/AJTC_Right_first_time_web(7).pdf)

<sup>37</sup> Academics such as Professor Linda Mulcahy have worked to redress this imbalance. See, e.g.: '*Disputing doctors: the socio-legal dynamics of complaints about medical care*', Open University Press, 2003

is therefore particularly important that research establishes whether there are any significant implications for users in having their concerns classified as complaints to be handled (as opposed to disputes to be resolved), and particularly where this takes place by default.

## Mediation

49. In recent years the concern to avoid contested hearings, particularly in civil justice but also in administrative justice, has seen the promotion of mediation as a favoured technique of alternative dispute resolution (see, for example, the 2011 consultation '*Solving Disputes in the County Courts*').<sup>38</sup> The evidence base for this development is not particularly strong.<sup>39</sup> The Department for Education has however produced a draft Bill which includes provisions to implement mediation proposals contained in the 2011 White Paper '*Support and Aspiration*'.<sup>40</sup> The proposals are that mediation should be mandatory before an appeal to a special education needs tribunal can be lodged. The Education Committee of the House of Commons, in considering the draft Bill, has reported that evidence submitted to them indicated strong resistance to mandatory mediation. The Committee recommended instead that it should only be "*compulsory to attend a meeting to consider mediation but not compulsory to enter [into] it*".<sup>41</sup> Any compulsory mediation which does come into effect should be closely monitored to ensure that it does not impede access to tribunals and that mediators are independent and professionally appraised.
50. In the AJTC's report '*Putting it Right - A Strategic Approach to Resolving Administrative Disputes*'<sup>42</sup> proposals were made for indicative criteria or 'mapping factors' which would match disputes with appropriate and proportionate resolution processes. Research is needed to test and refine these indicative criteria. In relation to mediation, work should be carried out to evaluate the outcomes where it is used. Projects might also address public knowledge of, and confidence in, mediation, and the extent to which a regulatory framework for mediators' quality assurance - ranging from their training and accreditation to conduct and complaints - could impact upon that knowledge and confidence.

## Inquisitorial procedures and models

51. In the areas in which tribunals currently operate, it is worth considering whether they should adopt more clearly defined inquisitorial procedures and models. In that sense it could be asked whether judges should be subject to a 'duty to inquire', or to 'enable' unrepresented litigants to establish their case. Comparison could be made, for example, between the workings of the Social Fund

---

<sup>38</sup> <http://www.justice.gov.uk/consultations/consultation-cp6-2011>

<sup>39</sup> See, for example, the research by Harris and Riddell on the Special Educational Needs (England) and Additional Support Needs (Scotland) Tribunals: Harris and Riddell, '*Resolving Disputes about Educational Provision*', Ashgate, 2011.

<sup>40</sup> <https://www.education.gov.uk/publications/standard/publicationDetail/Page1/CM%208027>

<sup>41</sup> House of Commons Education Select Committee, '*Pre-legislative scrutiny: Special Educational Needs*': HC 631-I, Session 2012/13, at paragraph 110: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeduc/631/631.pdf>

<sup>42</sup> <http://ajtc.justice.gov.uk/docs/putting-it-right.pdf>

Commissioner's office (which operates largely as an inquisitorial complaint-handler),<sup>43</sup> and some social security appeal tribunals. Questions to explore are:

- i) Can an inquisitorial model replace tribunals?
- ii) If so, would an inquisitorial model be more economical and effective?
- iii) Would it give rise to greater consumer (user) satisfaction?
- iv) Do users prefer the traditional three-person tribunal model or to appear instead before a single judge?
- v) What effects do these varying tribunal compositions have upon the way in which proceedings are conducted?

## Information Technology

52. As the use of information technology becomes more widespread, research could examine whether it is being used to maximum and optimum effect. For example, the Parking Adjudicators largely carry out their work from on-line submissions and through telephone hearings. This raises the question of whether there is scope for other tribunals or dispute resolution schemes to do the same, conscious of the varying needs of tribunal users in different jurisdictions.<sup>44</sup>

## Sectoral:

### Research focusing on specific sectors within the system

#### Ombudsmen

53. In 2011 the Law Commission recommended that the UK Government should establish a wide-ranging review of public services ombudsmen and their relationship with other institutions for administrative redress.<sup>45</sup> In response the AJTC hosted a seminar in June 2012 with the aim of beginning an informed debate about public services ombudsmen and their role cross the UK.

54. These developments were driven by recognition that the context in which public sector ombudsmen now operate is very different from that existing when their offices were established. Not only have their remits grown (often on a piecemeal basis); but the greater use of independent review schemes, the establishment of separate ombudsmen for devolved nations, and a revolution in the use of information technology, have also all played a part. All the while caseloads have increased and funds have declined.

---

<sup>43</sup>Albeit that the office of the Social Fund Commissioner faces imminent abolition further to the implementation of the Welfare Reform Act 2012.

<sup>44</sup>Although not strictly concerned with tribunal adjudication as such, there has been considerable comment on the likely difficulties which some Universal Credit claimants will face in navigating computerised systems to be introduced as the default means of submitting claims: see, e.g.: Work and Pensions Select Committee – '*Universal Credit implementation: meeting the needs of vulnerable claimants*' HC 576, Session 2012/13, Chapter 2

<sup>45</sup><http://lawcommission.justice.gov.uk/publications/ombudsmen.htm>

55. In the light of this, research is needed to examine and assess:

- i) the changing role and functions of ombudsmen;
- ii) the consequences of the Government's '*Open Public Services*' White Paper<sup>46</sup> for ombudsmen and their work;
- iii) any fragmentation and lack of coherence in the system;
- iv) the place of the public sector ombudsmen in the wider administrative justice landscape, and their relationship with courts and tribunals;
- v) the consequences of devolution for the UK ombudsmen system;
- vi) ways of utilising I.T. to make ombudsman schemes more efficient;
- vii) the appropriate balance between casework and systemic improvement;
- viii) the characteristics of the ombudsman technique;
- ix) whether the appropriate balance exists between informal resolution and formal investigation.

## Tribunals

56. It is now five years since the establishment of a unified Tribunals Service by the Tribunals, Courts and Enforcement Act 2007. During that period most of the largest UK tribunals have been brought within the unified system under the judicial leadership of the Senior President of Tribunals. In 2011 the process culminated in the establishment of HMCTS and brought courts and tribunals together within a single administrative agency. Developments during this later period have taken place against a backdrop of economic recession and financial austerity. The AJTC's more recent work has focused on how these changes have impacted on tribunal users and on how significant savings can accrue from getting more decisions right first time.

57. A number of potential research questions flow from these developments, including:

- i) the extent to which decisions of the First-tier Tribunals are used to improve initial decision-making across a range of jurisdictions;
- ii) the extent to which the distinctive features of tribunals as specified by the Franks Report have been retained;
- iii) the means by which tribunal composition (with the respective roles of judges/Chairs and expert wing members) affects outcomes across a range of jurisdictions – in particular, as to the impact which lay membership may have;
- iv) whether there have been any unintended consequences of removing tribunals from their original sponsoring departments, and in particular whether a 'policy gap' has emerged.

---

<sup>46</sup><http://files.openpublicservices.cabinetoffice.gov.uk/OpenPublicServices-WhitePaper.pdf>



## Employment Tribunals

58. A raft of changes in employment law affecting employment tribunals are proposed in the provisions of the Enterprise and Regulatory Reform Bill currently before Parliament. The underlying aims of the reforms include streamlining the tribunal system and encouraging more workplace resolution. Clauses in the Bill and related secondary legislation provide for reforms to the employment tribunal's rules of procedure,<sup>47</sup> the introduction of a new rapid resolution scheme and access to early conciliation by ACAS. In addition, the Government has laid a draft Order in Parliament which introduces fees for bringing claims to tribunals and appeals to the Employment Appeal Tribunal (EAT).<sup>48</sup>
59. Since the effects of these innovations will need to be monitored, the Department for Business, Innovation and Skills (the sponsor of both employment tribunals and the EAT) could provide a proactive steer in this, and in particular by assessing the impact of early conciliation on appeal numbers. It might also take note of the amount, type and eventual outcome of those cases which take up the new rapid resolution process, should it be introduced.
60. The MoJ might meanwhile wish to monitor the operation of the new fees regime, including the remission system, and its impact on access to justice. In particular, any associated research would need to identify and include individuals who would otherwise have brought a tribunal claim but for the requirement to pay.

## Social Security

61. The Welfare Reform Act 2012 reforms social security provision, and most especially by providing for the new Universal Credit, the replacement of a range of means-tested benefits, including Housing Benefit. It also creates a new disability-related benefit, Personal Independence Payment, to replace Disability Living Allowance. Entitlement to these benefits will be assessed through on-line claims, something likely to prove a daunting prospect for many claimants with limited awareness and experience of new technologies. The Act also provides for a new mandatory reconsideration process before claimants may appeal. In its consultation on how this reconsideration will operate the DWP indicated that it intends in future to provide for appeals to be lodged directly with the First-tier Tribunal and to introduce a time limit for its agencies to deal with them.<sup>49</sup>
62. Meanwhile, and in line with the UK Government's localism agenda, the Local Government Finance Act 2012 provides for the devolution of council tax support to local authorities in England and to the devolved administrations in Scotland and Wales. Each

---

<sup>47</sup> Further substantial changes to the tribunal's rules are expected later in 2013 following implementation of Mr Justice Underhill's Review of Employment Tribunal Rules. A summary of the Underhill Review's findings is available here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/32151/12-952-fundamental-review-employment-tribunal-rules-letter.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32151/12-952-fundamental-review-employment-tribunal-rules-letter.pdf)

<sup>48</sup> The (draft) Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013, as supplemented by the (draft) Added Tribunals (Employment Tribunals and the Employment Appeal Tribunal) Order 2013

<sup>49</sup> <http://www.dwp.gov.uk/docs/mandatory-consideration-consultation.pdf>, at page 31

authority will be responsible for establishing its own arrangements regarding a 'reduction scheme' to replace Council Tax Benefit. Local authorities and devolved governments will also take over responsibility at their own discretion for providing replacements for what (up until April 2013) have been the Community Care Grant and Crisis Loan elements of the Social Fund. They will devise their own arrangements (if any) for the payment of crisis loans or grants to those in urgent need. The UK Government funding to be made available for such payments is however being reduced by 10%.<sup>50</sup>

63. On Universal Credit, the DWP would be in an ideal position to monitor the introduction of the new reconsideration process in terms of the time it takes for reconsideration to be undertaken, its effectiveness in reducing appeals volumes, and its impact on access to justice for social security claimants. The Department for Communities and Local Government could also ideally review the impact of devolving council tax support, having particular regard to any divergence in the treatment of cases between different authorities and/or the different nations of Great Britain, both in administering the schemes and in the operation of associated appeal rights.<sup>51</sup>

### Health – detained and community patients

64. Following on from the pilot project conducted jointly by AJTC and the Care Quality Commission (CQC) to collect information directly from detained patients about their tribunal experiences, more in-depth research is needed on the experiences of people subject to detention or compulsory powers in the community. In particular, the higher than predicted use of Community Treatment Orders and the lengthy duration of those orders in some cases is having a knock-on effect on the number of tribunal hearings relating to community patients, and without any consequent reduction in the number of patients detained in hospital. Such research must be sensitive to the needs of these service users, drawing upon the support and expertise of the CQC.

### Education: School Exclusion Review Panels

65. The Education Act 2011 contained provisions to change the constitution and powers of the former (English) exclusion appeal panels and to alter their status from that of an appellate body to a review body. The Act also removed the power of the new independent review panels to reinstate a pupil where the original decision is found to be flawed in the light of judicial review principles. Instead, the new review panels may only quash the exclusion and direct that the matter be reconsidered by the school governing body. If the child is not subsequently reinstated a financial penalty will be imposed on the school.

---

<sup>50</sup>The localisation of the Social Fund's discretionary elements was provided for (as a DWP policy) by the Welfare Reform Act 2012, rather than the Local Government Finance Act.

<sup>51</sup>Part of the reform includes provision for the Valuation Tribunal for England, the Welsh valuation tribunals (and with them most likely the Scottish Valuation Appeal Committees), to hear appeals against Reduction Scheme decisions. These tribunals will have varying composition and administrative support. The AJTC expressed its concerns on this point in its submission to the Communities and Local Government Committee's enquiry into the Implementation of welfare reform by local authorities: [http://ajtc.justice.gov.uk/docs/CLG\\_Committee\\_Submission.pdf](http://ajtc.justice.gov.uk/docs/CLG_Committee_Submission.pdf)

66. The Department for Education may wish to examine the operation of the new arrangements, bearing in mind any fluctuations between the number of cases formerly appealed to a panel as against the number now subject to review. The Department could also ideally investigate the numbers of cases in which panels quash exclusion decisions, and, where cases are reconsidered by the governing body, in how many the child is reinstated (including the impact of the financial penalty on the decision as to whether or not to reinstate).

### Academies

67. In England, an academy is a school that is directly funded by central government (specifically, the Department for Education) whilst being independent of direct control by local government. This is so even though the latter remains responsible for the funding formulae used to allocate funds between schools within an authority area. Academies may receive additional support from personal or corporate sponsors (either financially or in kind), must meet the National Curriculum core subject requirements and are subject to Ofsted inspections. Academies are self-governing and most are constituted as registered charities or operated by other educational charities.
68. Academies are obliged to comply with the requirements of the statutory Codes on Admission and Admission Appeals and the Secretary of State's guidance on exclusions. Some academies choose to opt into the local authority's arrangements for managing admission and exclusion appeals but others manage their own, something which immediately raises questions as to perceptions of independence. Academies and their independent appeal panels fall outside the jurisdiction of the Local Government Ombudsman and the AJTC. Little is known, therefore, about the operation of appeals systems for those academies that choose to manage their own affairs – although a January 2013 report by the Academies Commission<sup>52</sup> highlights that it “*would be better if the procedures for academies were the same as those for maintained schools*” in respect of admissions procedures.<sup>53</sup> There is consequently an urgent need for research to be undertaken regarding these academies' arrangements, including by examining: the independence of their panels; the appointment of their panel members and clerks; the administrative arrangements in place for dealing with their appeals; the training given to their panels; and the handling of complaints following their appeal decisions.

---

<sup>52</sup> The Academies Commission was established by the Royal Society for the Encouragement of the Arts, as supported by the Pearson Think Tank.

<sup>53</sup> Academies Commission, 'Unleashing Greatness – getting the best for an academised system', available at: [http://www.thersa.org/\\_\\_data/assets/pdf\\_file/0020/1008038/Unleashing-greatness.pdf](http://www.thersa.org/__data/assets/pdf_file/0020/1008038/Unleashing-greatness.pdf), at page 77 et seq.

## Supporting administrative justice research

69. There are a number of potential sources of funding for administrative justice research and there is scope for co-ordinated, cross-disciplinary work in the field. This could draw upon a variety of different perspectives such as those found in public administration, social science, law and so on. For example, the Nuffield Foundation has administrative justice as one of its seven themes within its *Law in Society* programme.<sup>54</sup> Nuffield state that the focus of its work in this area is “not on public administration per-se but on how dispute resolution may be improved. This may require acquiring better descriptive information or studying reforms or making comparisons between different practices”.<sup>55</sup>

70. Nuffield list the following as particular topics of interest:

- *Feedback*: Better understanding how feedback from redress mechanisms might improve front-line decision-making.
- *Support*: Looking into how appropriate support for applicants can be provided where required.
- *Mechanisms*: Investigating how particular administrative justice mechanisms work, their strengths and weaknesses and what principles (for example, of proportionality and access) might guide the policy of choosing between them.
- *Outcomes*: Investigating what happens after redress has been obtained, including in terms of compliance and enforcement.

Where appropriate, we have incorporated these topics into the Agenda.

71. Another way in which support for a programme of research into administrative justice could be developed is through the setting up of an Administrative Justice Institute that would bring together those from different research backgrounds with specific interests in particular areas of study. Alternatively, there could be scope for housing such expertise within a research centre or centres in different universities across the UK. In this connection, it may be possible to submit applications to the ESRC in relation to its support for evidence-based Policy Centres. The research work proposed in this *Research Agenda* is of particular relevance in the context of the growing awareness of the need for academics to demonstrate the impact of their work.

72. In the absence of a new institute or a dedicated research centre, then there would be a clear need for a virtual network to be established. This would be essential to ensuring that research remained coordinated, a key concern in a subject matter as expansive and diffuse as administrative justice. A network would provide the best opportunity for necessary improvements to be made to the system whilst preserving data and evidence from older research studies. Establishing a virtual network would require initial

---

<sup>54</sup><http://www.nuffieldfoundation.org/law-society>

<sup>55</sup><http://www.nuffieldfoundation.org/administrative-justice>

funding and then ongoing support thereafter. It would also have to be run by the most appropriate organisation for the role. We would recommend that, in the absence of the AJTC, the Ministry of Justice should take a lead role in advancing this specific proposal, albeit mindful of the operational independence which the network should enjoy to be most effective.

73. Different governments in different parts of the UK may also wish to develop their own initiatives. For example the Scottish Government is developing an administrative justice strategy for Scotland whilst giving consideration to the establishment of a Judicial Institute. In pursuing such proposals it will be important to include consideration of how research can best be supported.

## Conclusion

74. It is worth noting that, at the seminar on administrative justice research held by the Nuffield Foundation in May 2011, the point was made that “there is much that needs researching in the future, especially with the possible demise of the AJTC”. We conclude, therefore, by indicating some appropriate bodies and organisations which could take the lead in advancing this research.

Proposed Action(s)	Suggested Researchers and/or Coordinators
<ul style="list-style-type: none"> <li>• Adopting the AJTC’s role of promoting research into the administrative justice system in the event of AJTC abolition;</li> <li>• Enhancing its capacity to carry out or commission research into administrative justice issues;</li> <li>• Taking a role in advancing the proposal for a virtual centre or network – mindful of the importance of independent comment by external actors</li> </ul>	The Ministry of Justice
<ul style="list-style-type: none"> <li>• Monitoring and evaluating policy changes that will impact upon the administrative justice system; and in particular by reference to the interests of users (especially vulnerable ones);</li> <li>• Assessing the impact of devolution and localisation, especially where taking place in policy areas not previously affected by it</li> </ul>	<p>The Ministry of Justice and other UK Government Departments</p> <p>The Scottish and Welsh Governments</p> <p>Researchers and academics (especially with a legal or socio-political background)</p>
<ul style="list-style-type: none"> <li>• Including administrative justice as a field in which more research is required, with a particular focus on cross-disciplinary work;</li> <li>• Supporting research into administrative justice issues through the funding of a research institute or virtual centre/network</li> <li>• Helping to coordinate future research initiatives, whether or not in combination with the Ministry of Justice or other government agencies</li> </ul>	<p>Universities</p> <p>Funding organisations</p> <p>Trusts and the charitable sector</p>
<ul style="list-style-type: none"> <li>• Considering the proposals in this Agenda and contemplating areas in which applications for funding may be made;</li> <li>• Assessing how new outlooks and disciplines could be applied in the administrative justice field</li> </ul>	Individual researchers



© Crown copyright 2013

Any enquiries regarding this publication should be sent to us at  
Administrative Justice & Tribunals Council,  
81 Chancery Lane, London WC2A 1QB

This document is available from our website at  
[www.justice.gov.uk/ajtc](http://www.justice.gov.uk/ajtc)