Research Roadmap

Where have we been and where do we need to go with research on administrative justice?

A UKAJI consultation

This is a consultation on a proposed roadmap[1] on the future research needs in administrative justice. It is derived from the work of the UK Administrative Justice Institute (UKAJI),[2] an independent research initiative established with funding from the Nuffield Foundation in 2014. UKAJI's primary tasks have been to bring together those involved in research (researchers, research users, policymakers, practitioners, and others) to stimulate empirically based research into administrative justice and to design an agenda for future research.

Our key learning points have been that **coordination of research is needed**, among researches and research users, funders and commissioners of research; that **the current context brings new and untested pressures** onto those who use and work within administrative justice; and that research should focus on **overarching principles**, including fairness, accountability and human rights principles. Our proposed roadmap identifies in particular the challenges of **digitalisation** and priorities relating to **people, processes and information**. We set out what we think these challenges and priorities are and invite robust and honest feedback to this consultation.

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[1] This term is used instead of 'agenda' because it suggests a direction and destination. It is used by the Government Digital Service in setting out its plans for transforming the way citizens access government services on gov.uk - https://gds.blog.gov.uk/2017/02/27/how-were-making-gov-uk-work-harder-for-users/

[2] UKAJI is based at the University of Essex. More information on UKAJI, including its people, blog and other resources, is at www.ukaji.org. This paper has been prepared by the UKAJI core team with input from the wider core team, Advisory Board, and other stakeholders. Graphics produced by Ricardo Vernaglia.

SECTION 1 – Where we've been

1.1 The importance of empirical research into administrative justice

What is administrative justice? Statute refers to it as '*the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including (a) the procedures for making such decisions, (b) the law under which such decisions are made, and (c) the systems for resolving disputes and airing grievances in relation to such decisions*'.[3] While this gives some sense of the range of processes involved, it also indicates that there is no single 'system' of administrative justice in the UK.[4]

As well as being conceived as a system, administrative justice is an approach, a way of looking at the interaction between people and the governments and other public bodies that make decisions about a wide range of aspects of everyday life. It incorporates thinking about design of the landscape of the system and design of legislative schemes; decision-making guidance; specific processes; and redress. Administrative justice is fundamentally concerned with ensuring that decisions of public bodies and their agents are properly made, that people's rights are respected, that they are treated fairly, and that they have effective routes to redress when things go wrong. Implicit in this are the assumptions that administrative systems should ensure that these needs are met and that decision-makers are responsive to criticism and capable of learning and improving when errors are revealed.

Scale, relevance and reach

The significance of research in this area is rooted in the scale, relevance and reach of administrative justice, all of which suggest the need for a proactive approach to research. In terms of **scale**, administrative justice directly affects many more people than either the criminal or civil justice systems. In terms of its **relevance**, administrative justice concerns decisions affecting many areas of our lives – some relatively routine, concerning matters such as parking offences; others of vital importance to people's living standards, such as social security, social care and health, schools and housing; and others concerning fundamental rights such as liberty, asylum and the right to information.[5] In terms of **reach**, administrative justice extends beyond the court or tribunal systems and includes policy and its application, access to advice, and initial decision-making by central and local government departments and private-sector agents who deliver public services on their behalf.

From the perspective of access to justice, administrative justice is distinct in a number of ways. As Mullen notes, it makes use of a wider range of remedies for resolving disputes between citizen and state than do civil or criminal justice, in which dispute resolution is confined mainly to courts[6], including tribunals, ombud schemes, complaints procedures and various hybrids

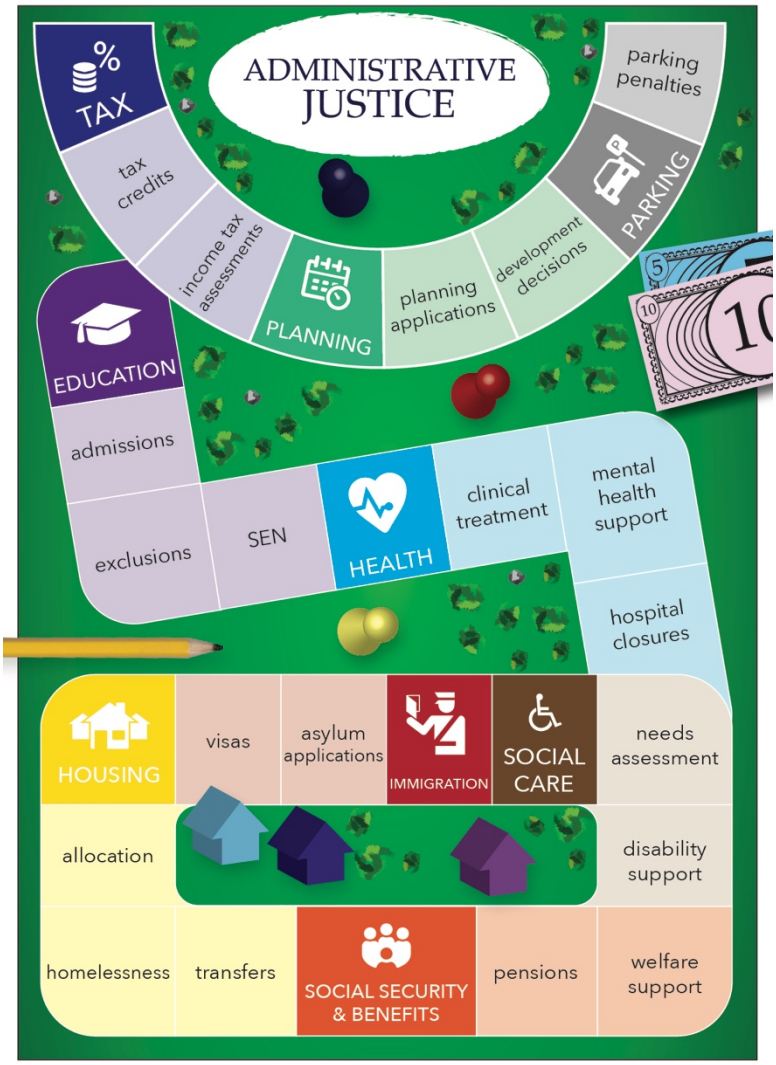
[3] Tribunals Courts and Enforcement Act 2007, Sch 7 para 13(4).

[4] For more discussion of what is administrative justice, see https://ukaji.org/what-is-administrative-justice/

[5] For an excellent overview of the reach of administrative justice, see STAJAC (2015), 'Making decisions fairly: Developing excellence in administrative justice in Scottish councils', pp.8-9, http://www.adminjusticescotland.com/documents/Event%20Documents/Making_decisions_fairly.pdf

[6] Mullen, T (2016), 'Access to Justice in Administrative Law and Administrative Justice', in Palmer, E et al (2016), *Access to Justice: Beyond the Policies and Politics of Austerity*, Hart Publishing.

including public inquiry-based decision-making processes. Most of these routes to remedy were designed to provide 'do-it-yourself justice', without the need for lawyers.[7]



Many features of the justice system, including those associated with the current reform programme such as cutbacks in legal aid, digitalisation, online dispute resolution, and automated decision-making, are likely to have distinctive implications for administrative justice. Not least this is because of the large number of people affected and their demographic characteristics; the scale of public expenditure involved; and the particular place of government policy in decision-making. This is why government, practitioners and academics derive value from sound empirical research on administrative justice.

For example, pilots trialed in one part of the system have implications for other parts; lessons learned from feedback on complaints can be translated across public services. Moreover, administrative justice is not exclusively about justice dispensed by tribunals or courts. It also extends to the quality, or justice, of decision-making beyond the court or tribunal systems. It is concerned with the direct contacts people have with government and its agents. It is about how government decisions, and the policy behind them, affect people and how decisions can be questioned. Unlike the civil justice system, where interaction starts with a dispute to be resolved, administrative justice starts with a decision by a public body.

Design concerns

Researchers have pointed out that ensuring effective accountability of executive authorities in a modern, democratic state is 'a design problem that can only be managed, not solved'.[8] Thomas

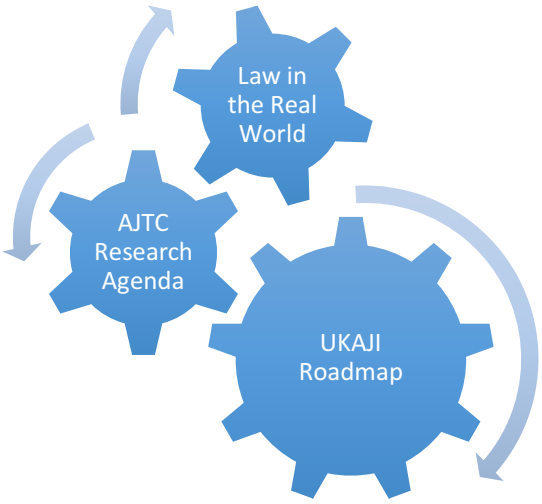
[7] *Ibid*.

[8] Mashaw, J (2009), 'Bureaucracy, Democracy and Judicial Review: The Uneasy Coexistence of Legal, Managerial and Political Accountability', Yale Law School, Public Law Working Paper No. 194, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1431601, as quoted in R Thomas and J Tomlinson (2017), 'A Design Problem for Judicial Review: What we know and what we need to know about immigration judicial reviews', https://ukaji.org/2017/03/15/a-design-problem-for-judicial-review-what-we-know-and-what-we-need-to-know-about-immigration-judicial-reviews/

and Tomlinson note that current trends in immigration judicial reviews, for example, 'undoubtedly present a serious design problem for the UK administrative justice system. If there is to be a new solution to this growing system-management problem, the best solution will be one that is informed by rigorous empirical data.'[9] Tomlinson has noted that design thinking places 'emphasis on quick prototyping, frequent testing, and the user-perspective' and includes a range of specific methods such as mapping 'the user journey'.[10] Gill and others have proposed that design of dispute and redress mechanisms require urgent attention to address the ad hoc and inconsistent development of the dispute resolution landscape; failure to address this 'risks undermining the legitimacy of state-sanctioned dispute resolution'.[11] Bondy and Le Sueur have explored models of redress and proposed principles to underpin redress design.[12]

Policy and principle

More broadly, administrative justice is about the way policy is delivered: the fairness and efficiency of the systems and whether they are delivering appropriate outcomes for people. For instance, is public money being used to achieve the desired ends, and are people getting their entitlements? Are policy and its application designed to achieve a system that runs smoothly, or to address the problems that people encounter, or both? Are decision-makers empowered to apply not just the law but also principles of fairness? These questions indicate that there is a need to evaluate and understand, through testing and empirical research, how systems work and how policy change impacts on different parts of the population: who may gain in the process and who may lose, and what the cumulative effects of this are.



Ours is not the first attempt to map research needs concerning administrative justice, and this paper may be placed in the context of previous work done.

Empirical research is 'the study through direct methods of the operation and impact of law and legal processes in society, with a particular emphasis on non-criminal law and processes.'

[9] Thomas, R and Tomlinson, J (2017), 'A Design Problem for Judicial Review: What we know and what we need to know about immigration judicial reviews', https://ukaji.org/2017/03/15/a-design-problem-for-judicial-review-what-we-know-and-what-we-need-to-know-about-immigration-judicial-reviews/

[10] Tomlinson, J, 'The Policy and Politics of Building Tribunals for a Digital Age: How 'Design Thinking' Is Shaping the Future of the Public Law System', U.K. Const. L. Blog (21st Jul 2017) (available at https://ukconstitutionallaw.org/))

[11] Gill, C, Williams, J, Brennan, C and Hirst, C (2016), 'Designing consumer redress: a dispute system design (DSD) model for consumer-to-business disputes', *Legal Studies*, 36: 438–463.

[12] Bondy, V and Le Sueur, A (2012), 'Designing Redress: a study about grievances against public bodies', Public Law Project, available at http://www.publiclawproject.org.uk/resources/123/designing-redress-a-study-about-grievances-against-public-bodies

Law in the Real World: empirical work matters but there's a lack of capacity

In 2006 the Nuffield Foundation funded an inquiry into issues facing empirical legal research. The inquiry report, *Law in the Real World*, attempts to develop empirical research capacity and explains why empirical legal research matters:

> *'Put simply, empirical research helps us to understand the law better and an empirical understanding of the law in action helps us to understand society better…. [T]he work of empirical legal researchers also influences the development of substantive law, the administration of justice, and the practice of law.'*

The authors explain why empirical research in non-criminal areas of justice was in potential crisis, due to lack of capacity and skills to undertake empirical studies, the difficulties in conducting interdisciplinary studies, funding constraints and other issues. It was noted that 'the number of empirical researchers working on any particular area is very small and the coverage of issues is thin and patchy, with entire areas largely untouched. There are many fields calling out for empirical research and this is important for reasons of policy, for reform and for deeper understanding of the law and legal processes in action.'

Interestingly, the perception of capacity has changed since this inquiry, with some now arguing that 'capacity' problems are now more likely to relate to lack of funding than to lack of researchers. Government funding for research in administrative justice has long been an issue, and *Law in the Real World* noted the disparity between Home Office funding for criminal justice research and funding for civil justice research. The reasons for this are systemic and reflect issues that apply to civil justice more widely but are particularly relevant for administrative justice, including its relatively low political profile, its lack of coherence as a 'system', the diffuse range of bodies concerned and constraints on public-sector budgets.

The AJTC's research legacy

Anticipating its abolition, in 2013 the Administrative Justice and Tribunals Council (AJTC) published its Research Agenda hoping to 'prevent a research vacuum' and to provide a steer and sense of direction to research funders, commissioners and researchers. The AJTC stressed that research can be 'vital for the future development of administrative justice policy' and that it was 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's abolition'. Such evaluation, the AJTC said, 'ensures that the administrative justice system is 'fit for purpose' and works for the mutual benefit of users, service providers and the public purse'.

Recognising the need to link research with the changing policy context and reforms, the AJTC flagged up the wide-ranging reforms in areas such as social security, health, education and local government:

> *'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. … 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.'*

The AJTC made three preliminary points: first, that proposed research need not involve large-scale studies; it can involve 'short, focused pieces of work targeted at specific policies'. In this sense, work could be broad or deep. Second, research could be 'descriptive, evaluative, and /or normative'. Third, research into administrative justice 'would benefit from a multi-disciplinary approach and should not be confined to legal scholars'. In this context the AJTC specifically mentioned the expertise of behavioural economists or sociologists in the area of social security, where appeal success rates were relatively high.

The AJTC identified three broad areas of research needs in administrative justice:

- *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** - e.g. timeliness, independence, fairness, public accountability*
- *The extent to which the mistakes of executive agencies exposed by appeals and complaints are learned from and corrected in future activities, and of the **value of feedback***

1.2 The road travelled so far

It is helpful to look briefly at some of the research undertaken in the past few years. While this overview is not comprehensive, it does give an indication of the range and diversity of recent research in the field. It also assists identification of some of the challenges that we consider later in the paper. We welcome information about other research projects not included.

Dispute system design is emerging as an area of research focus that underpins comparative analysis across approaches and systems. Work in this area has included that by the Public Law Project (PLP) and Queen Mary University London, which considered the design of redress mechanisms that not only handle citizen grievances but enable the quality of public bodies' decision-making to be monitored.[13] The study produced valuable recommendations setting out key principles for designing redress. System design was also the focus of a study of consumer ADR mechanisms carried out by Queen Margaret University, which produced a 'design toolkit' based on empirical research.[14]

Comparative studies within the UK, including research into the devolved tribunals operating in Scotland and Wales, are growing in importance as practice across the different UK jurisdictions diverges. Recent work has mapped administrative justice in Northern Ireland, Scotland and Wales,[15] although no equivalent mapping project has been undertaken for England or UK-wide. Each of these projects reflects different mapping methodologies and approaches. These valuable resources will lose relevance without commitment to keep them up to date. Other recent comparative research includes Creutzfeldt's work on trust and legitimacy of ombuds in the EU.[16] A study of asylum adjudication in Europe is an example of comparative work that explores overlapping themes of tribunal decision-making, fairness and consistency.[17] Drummond's work on special educational needs tribunal decision-making is another example of comparative work, studying accessibility of tribunals in Northern Ireland and Wales.[18]

Collection of, and access to, data on the different forms of dispute resolution furthers understanding and enables comparisons to be made. There is increasing recognition, however, that lack of consistent data hampers comparisons and evaluation. A report commissioned by

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[13] Bondy, V and Le Sueur, A (2012), 'Designing Redress: a study about grievances against public bodies', ibid.
[14] Gill, C; Williams, J; Brennan, C; and Hirst, C (2014), 'Models of Alternative Dispute Resolution (ADR)', Queen Margaret University and the Legal Ombudsman, available at http://www.legalombudsman.org.uk/downloads/documents/research/Models-Alternative-Dispute-Resolution-Report-141031.pdf
[15] Anderson, M, McIlroy, A, and McAleer, M (2014), 'Mapping the administrative justice landscape in Northern Ireland: Report on research undertaken on the Administrative Justice System in Northern Ireland'; Morrison, A (2015), 'Mapping administrative justice in Scotland'; Nason, S (2015), 'Understanding Administrative Justice in Wales'; links to all mapping reports available at https://ukaji.org/what-is-administrative-justice/
[16] Creutzfeldt, N (2016), 'Trusting the Middleman', https://www.law.ox.ac.uk/trusting-middle-man-impact-and-legitimacy-ombudsmen-europe
[17] Gill, N and Burridge, A (2016), 'Fair and Consistent? Are asylum appeal hearings the same wherever they are heard?', https://administrativejusticeblog.files.wordpress.com/2016/10/oct-2016-gill-and-burridge.pdf
[18] Drummond, O (2016), 'When the law is not enough: guaranteeing a child's right to participate at SEN tribunals', *Ed. Law* 2016, 17(3), 149-163; Drummond, O (2016), 'Potential barriers to the new child's right to appeal to Special Educational Needs and Disability tribunals in Northern Ireland', *N.I.L.Q.* 2016, 67(4), 473-490; see also https://administrativejusticeblog.files.wordpress.com/2016/10/oct-2016-orla-drummond.pdf

Citizens Advice[19] and carried out by Queen Margaret University and Westminster University noted that in the consumer sector the implementation of the ADR Directive has encouraged a level of competition that makes it difficult to extract data across those providers approved by regulators to deliver complaint handling and resolution. A scoping study of ombuds and other complaint handlers also identified a lack of consistency in recording, reporting and terminology.[20]

Users, and potential users, are a key concern. Largely because of the difficulty of identifying and reaching those who do not access the system, research tends to concentrate on the very small percentage of the population that makes use of tribunals, complaints procedures, judicial review and ombuds, and not on the vast majority of the population who do not challenge decisions when they may gain by doing so. Research on users includes a study of users' journeys across the justice systems commissioned by HMCTS;[21] Gill and Creutzfeldt's work on legal consciousness and online critics of ombuds;[22] and McKeever's work on litigants in person.[23] The experience of litigants in person has grown in importance in light of LASPO and reductions in legal aid, and this has been the subject of recent research, including an evaluation of the Mandatory Telephone Gateway[24] and the 2014-15 *Legal Problems and Resolution Survey*.[25] Emerging work concerns the linguistic challenges of litigants in person[26] and makes innovative use of oral history techniques to explore the experiences of unrepresented court users.[27]

Research issues arising in relation to the work of **ombuds** include the need for greater harmonisation of their work; their relationship to other dispute resolution and redress mechanisms, and in particular tribunals and the Administrative Court; and comparative work on cost-effectiveness and users' experiences. The implementation of the EU ADR Directive has also highlighted the potential divide between public- and private-service providers and the fluidity between these, as well as the diverse range of practices and standards among ombuds and

[19] Gill C *et al* (2017), 'Confusion, gaps and overlaps', Citizens Advice, https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/consumer-policy-research/consumer-policy-research/confusion-gaps-and-overlaps/

[20] Doyle, M, Bondy, V, Hirst, C (2014), 'The use of informal resolution approaches by ombudsmen in the UK and Ireland: A mapping study', https://ombudsmanresearch.files.wordpress.com/2014/10/the-use-of-informal-resolution-approaches-by-ombudsmen-in-the-uk-and-ireland-a-mapping-study-1.pdf

[21] See presentation by Luc Altmann at https://ukaji.org/2017/02/15/researching-users-perspectives-report-from-a-ukaji-workshop/

[22] Gill, C and Creutzfeldt, N (2016), 'Online critics of the ombudsman', https://www.law.ox.ac.uk/research-and-subject-groups/online-critics-ombudsmen

[23] McKeever, G (2017), 'The impact of litigants in person on the Northern Ireland Court System', current research http://www.nuffieldfoundation.org/impact-litigants-person-northern-ireland-court-system

[24] Hickman, B and Oldfield, D (2015), 'Keys to the Gateway: An Independent Review of the Mandatory Civil Legal Advice Gateway', Public Law Project, available at: http://www.publiclawproject.org.uk/resources/199/an-independent-review-of-the-mandatory-civil-legal-advice-gateway

[25] Franklyn, R *et al* (2017), 'Findings from the Legal Problem and Resolution Survey, 2014–15', Ministry of Justice Analytical Series, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596490/legal-problem-resolution-survey-2014-to-2015-findings.pdf

[26] Tkacukova, T (2017), 'Barriers in Access to Justice for Litigants in Person: Communicative, Conceptual, Cognitive and Procedural Challenges', SLSA 2017 Conference and https://administrativejusticeblog.files.wordpress.com/2016/10/oct-2016-tatiana-tkacukova.pdf

[27] Leader, K (2017), 'Fifteen Stories: Litigants in Person in the Civil Justice system', SLSA 2017 Conference.

complaint-handling schemes. A current draft bill[28] to reform the public services ombuds landscape in England presents a number of questions about the role of the ombud institution in relation to administrations. Research has explored the use of informal resolution techniques by ombuds;[29] the range of models of higher education ombud schemes;[30] the evolution of the ombud institution using the Legal Services Ombudsman as a case study;[31] and action research focused on the work of investigators in the offices of the Scottish, Irish and English Information Commissioners.[32]

In relation to **tribunals**, the Ministry of Justice made a commitment to scope, develop and implement clear, evidence-based tribunal funding and fee models (including incentives for decision-makers to get it 'right first time').[33] Yet no pilot has been carried out on the effects of a sanctions scheme for departments whose decisions are overturned on appeal (sometimes referred to as 'polluter pays'), a suggestion made by the AJTC and others. In addition, there have been no independently evaluated pilots on the use of alternative dispute resolution methods by tribunals along the lines of those commissioned in 2010, on early neutral evaluation and judicial mediation.[34] A review of new disagreement resolution arrangements for special educational needs and disability disputes in England[35] assessed the value and costs of mediation in relation to tribunal appeals and evaluated a pilot extending the powers of the tribunal.

It is to be expected that users will find it harder to navigate the administrative justice system as cuts in **legal aid and advice services** make access to support and advice increasingly difficult. Such difficulties affect both users and those who work within administrative justice, such as tribunal staff and front-line complaints handlers. Legal needs surveys are costly and time consuming and have to be carried out regularly to understand change over time. As discussed by Coxon's report[36] on a seminar jointly hosted by the Open Society Justice Initiative (OSJI) and the Organisation of Economic Co-Operation and Development (OECD) to examine access to

[28] Draft Public Services Ombudsman Bill (2016), https://www.gov.uk/government/publications/draft-public-service-ombudsman-bill; see also McBurnie, G (2017), https://ukaji.org/2017/01/12/the-draft-public-service-ombudsman-bill-what-recommendations-are-being-taken-forward/

[29] Doyle, M, Bondy, V, Hirst, C (2014), 'The use of informal resolution approaches by ombudsmen in the UK and Ireland: A mapping study', https://ombudsmanresearch.files.wordpress.com/2014/10/the-use-of-informal-resolution-approaches-by-ombudsmen-in-the-uk-and-ireland-a-mapping-study-1.pdf

[30] Behrens, R (2017), 'Being an Ombudsman in Higher Education', ENOHE, https://ukaji.org/2017/06/26/new-comparative-research-being-an-ombudsman-in-higher-education/

[31] O'Brien, N and Seneviratne, M (2017), *Ombudsmen at the Crossroads. The Legal Services Ombudsman, Dispute Resolution and Democratic Accountability*, Palgrave Macmillan, London, 2017.

[32] Dunion, K and Rojas, H (2015), 'Alternative Systems of Dispute Resolution and the Right to Freedom of Information', *Transparencia & Sociedad*, No. 3, pp. 69-91.

[33] Ministry of Justice (2012), 'Administrative Justice and Tribunals: A Strategic Work Programme 2013–16', p.16, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217315/admin-justice-tribs-strategic-work-programme.pdf

[34] Urwin, P, et al (2010), 'Evaluating the use of judicial mediation in Employment Tribunals', Ministry of Justice Research Series 7/10; and Hay, C, McKenna, K and Buck, T (2010), 'Evaluation of Early Neutral Evaluation Alternative Dispute Resolution in the Social Security and Child Support Tribunal', Ministry of Justice Research Series 2/10, London: Ministry of Justice.

[35] Cullen, MA et al (2017), 'SEND: Review of arrangements for dispute resolution', Department for Education/University of Warwick, https://www.gov.uk/government/publications/send-disagreement-resolution-arrangements-in-england-review

[36] Coxon, C (2017), 'International workshop on measuring effective access to justice – an overview', available at https://ukaji.org/2017/01/16/international-workshop-on-measuring-effective-access-to-justice-an-overview/

justice, the funding constraints make it impossible for many governments to commission such surveys. The Legal Action Group has also noted that official statistics help in identifying those who use tribunals and other parts of the administrative justice system but tell us nothing about those who do not challenge decisions, because of lack of legal advice, for example.[37] Partnership working and collaboration across governments and disciplines would help to generate alternatives, such as 'piggybacking' on general population surveys on housing, employment, education, health; and better collection and sharing of administrative data.

In November 2016 the Bach Commission published an interim report identifying key problems with accessing justice.[38] The Commission proposed a number of reforms which, if taken forward, would help to address the crisis in accessing advice through simplifying the legal system, using new technologies, focusing on the journey of the user through the system and possibly reversing cuts to legal aid.

In this area, the *Legal Problems and Resolution Survey 2014-15 (LPRS)*[39] considered the routes to resolution taken by individuals in England and Wales. The report presents the key findings from the LPRS, focusing on how people experience legal problems and the resolution strategies adopted, including the advice obtained to help them resolve their problems and the reasons why people took no action. The survey is the latest in a programme of empirical research on legal needs in England and Wales that started with Genn's pioneering *Paths to Justice Survey* in 1999. A 'Paths to Justice' study on legal needs in Scotland was conducted by Genn and Paterson in 2001, but equivalent studies have not been carried out on users (and non-users) in Northern Ireland and Wales as distinct jurisdictions.

In order to design effective systems of redress, it is important to understand **initial decision-making**. This is an area of increasing importance, as seen by the National Audit Office's condemnation of HMRC's handling of the Concentrix contract for tax credits and the ongoing concerns about decision-making by DWP's assessment providers ATOS and Capita.[40] Research on the DWP's process of **Mandatory Reconsideration** (MR), introduced in 2013, has highlighted the importance of research to identify failings in a new policy and procedure and, more importantly, opportunities to put these right. The Social Security Advisory Committee (SSAC),[41] for example, attempted to identify the costs of error in the process. It found that processing MR requests and preparing for tribunals in ESA cases costs the DWP more than £300 million per year, and estimated costs to the tribunal are more than £240 million (arrived at by dividing the cost of the Social Security and Child Support Tribunal by the number of cases, 2013/14). The SSAC notes the need to add the costs of complaints to the Parliamentary and Health Service

[37] Legal Action Group, http://www.lag.org.uk/magazine/2013/11/paths-to-justice.aspx

[38] Bach Commission on Access to Justice (2016), 'The crisis in the justice system in England & Wales', interim report, http://www.fabians.org.uk/wp-content/uploads/2016/11/Access-to-Justice_final_web.pdf

[39] Franklyn, R *et al* (2017), 'Findings from the Legal Problem and Resolution Survey, 2014–15', Ministry of Justice Analytical Series, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596490/legal-problem-resolution-survey-2014-to-2015-findings.pdf

[40] See, e.g., Thomas, R (2016), 'A sorry episode for the welfare state', https://ukaji.org/2016/12/13/a-sorry-episode-for-the-welfare-state-concentrix-and-mandatory-reconsiderations/ and 'Tax credits, Concentrix and privatised administrative justice', https://ukaji.org/2016/09/15/tax-credits-concentrix-and-privatised-administrative-justice/

[41] SSAC (2016), 'Decision making and mandatory reconsideration', https://www.gov.uk/government/publications/ssac-occasional-paper-18-decision-making-and-mandatory-reconsideration

Ombudsman and the Independent Case Examiner (both of which can consider aspects of service provided by the DWP), and the costs to other government departments, local authorities, and devolved administrations through, for example, discretionary payments. The costs go wider, however. Loss of trust in public bodies and their ability to be fair can lead to more, and more complex and time-consuming challenges to decisions, putting additional burdens on initial decision-makers. More worrying, the costs to claimants can mean increased personal debt while awaiting decisions, build-up of arrears, ill health and stress.

Researchers have examined mandatory reconsideration by local authorities in homelessness cases. They have concluded that the relation between mandatory reconsideration and administrative justice must be investigated 'context by context, eschewing straightforward conclusions, paying attention, both empirically and theoretically, to the relationships between reconsideration practices, the interests of individual applicants who feel mistakes have been made, the quality of ongoing routine administration, and the administration of the redress system itself.'[42]

Learning from mistakes, and using that learning to improve initial decision-making, has been a key concern of oversight bodies, yet research on this has been scarce. Following the SSAC's research on mandatory reconsideration, the DWP[43] agreed to take forward actions including having more Presenting Officers attend appeal hearings in order to ensure feedback from the tribunal is taken on board. Other recommendations to improve the use of feedback were rejected, however, such as publishing the DWP's annual report to the President of the Social Entitlement Chamber to improve understanding of how feedback is being used and what improvements are implemented.

In immigration and social security appeals, both of which are high volume, researchers have noted the difficulties in providing timely feedback to the appropriate individuals within the agency and providing consistent feedback across tribunals.[44] Thomas has explored the importance of improving initial decision-making and the need for departments to engage in organisational learning, i.e. 'consciously assuming responsibility to raise decision-making standards, to understand the causes of poor decisions, and to improve'.[45] This, he argues, requires better training for case workers, re-designing procedures to ensure that relevant evidence is collected, and quality assurance systems'. He points in particular to the need for departments to make better use of data on the nature and quality of decision-making, including feedback from tribunals. At heart, he argues, this requires the development of cultures and structures that value such learning.

On **digitalisation**, research has been relatively scarce, especially considering the significant

[42] Cowan, D *et al*, (2017) 'Reconsidering Mandatory Reconsideration', [2017] *Public Law* 215-234, 234.
[43] 'Government response: SSAC report on decision making and mandatory reconsideration' (January 2017), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604139/detailed-response-from-the-government-to-the-ssac-mandatory-reconsideration-report.pdf
[44] Thomas, R and Tomlinson, J (2016), 'Current Issues in Administrative Justice: Examining administrative review, better initial decisions, and tribunal reform', https://drive.google.com/file/d/0B9hEf7Oxz59QR2toVWEwQkhVcEk/view
[45] Thomas, R, (2015), 'Administrative Justice, Better Decisions, and Organisational Learning' [2015] *Public Law* 111-131. See also Thomas, R and Tomlinson, J (2016), 'Current Issues in Administrative Justice: Examining administrative review, better initial decisions, and tribunal reform', *ibid.*

impact of the reform programme.[46] Lord Justice Briggs, in the interim report on his Civil Justice Structure Review[47], carried out a SWOT analysis of the reform programme, noting that one threat is the 'widespread scepticism about the ability of any government organisation to conduct large scale IT procurement exercises costing hundreds of millions of pounds with a real prospect of ultimate success'. Briggs envisions the concept of an Online Court as addressing access to justice issues by making the courts accessible to litigants without requiring lawyers. This focus on process is an ongoing theme, reflected in the 'Assisted Digital' solutions (e.g. telephone helplines and online chat services) to assist litigants challenged by the online processes.

Briggs and others[48] have argued that digitalisation can potentially deliver greater transparency. Such an aim is challenged by lack of openness about trials and pilots. An example of missed opportunities is the Complaints Portal Pilot run by the Cabinet Office with the DWP and Land Registry. The purpose of the pilot was to explore the value of a digital complaints channel, part of a wider agenda to move to 'digital by default'. The main policy objective was to reconcile a user-centred approach with the need to capture and analyse suitable feedback to be used for service improvements. For a number of reasons the pilot had not met the needs of the department: funding had not been available to build the 'portal' so that it integrated with the department's own Customer Relationship Management system. Furthermore, there was no commitment to evaluating and reporting on the pilot, and it was only through discussion at the Administrative Justice Forum that it was agreed that a report would be in the public interest.[49]

Citizens Advice has recently reported on the many challenges facing the roll-out of Universal Credit (UC).[50] UC replaces six means-tested benefits and tax credits with a single benefit, and its implementation is being rolled out in phases – the first a limited 'live service' and the other, introduced in May 2016, a 'full service'. The Citizens Advice monitoring survey identified that 45% of claimants in the areas targeted for 'full service' roll-out of UC (i.e. where claims are both made and managed online) had difficulty accessing or using the internet, or both. The report notes that although a digitally delivered benefit service has many potential advantages for claimants, it also requires significant support.

[46] See Ministry of Justice (2016), 'Transforming Our Justice System', https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553261/joint-vision-statement.pdf

[47] Lord Justice Briggs (2015), 'Civil Courts Structure Review: Interim Report', https://www.judiciary.gov.uk/wp-content/uploads/2016/01/CCSR-interim-report-dec-15-final-31.pdf

[48] See Smith, R (2017), 'Online Courts: unintended consequences; unintended transparency?', https://law-tech-a2j.org/odr/online-courts-the-unintended-consequences/

[49] Administrative Justice Forum, Meeting minutes November 2015 https://www.gov.uk/government/groups/administrative-justice-advisory-group. Minutes of the March 2017 meeting are yet to be published.

[50] Foley, B (2017), 'Delivering on Universal Credit', Citizens Advice, https://www.citizensadvice.org.uk/Global/CitizensAdvice/welfare%20publications/Delivering%20on%20Universal%20Credit%20-%20report.pdf; see also commentary by Smith, R (2017), 'Online Benefits to Online Courts: 'There may be trouble ahead', https://law-tech-a2j.org/odr/online-benefits-to-online-courts-there-may-be-trouble-ahead/

SECTION 2 – Where we are now

2.1 The changing context

Events in 2017, not least the wide-ranging implications of Brexit, highlight the fast-changing context within which administrative justice issues arise. Another example from the current year, the Grenfell Tower fire, was a tragic incident with huge repercussions for its residents and surrounding neighbourhood and also an illustration of the interconnected nature of administrative justice. Although it is not yet known whether it was a consequence of decisions taken under the austerity agenda,[51] the fire shows the real-world impact of complex issues of accountability, trust, complaints handling, the role of the State in ensuring people's welfare and safety, cuts to local authority budgets, de-regulation, and public service decision-making in times of financial constraints. The decision to carry out a public inquiry into the fire, its causes and the wider context, and the design of that inquiry, are also administrative justice matters.

The recent Supreme Court ruling[52] in the UNISON challenge of tribunal fees criticised 'the assumption that the administration of justice is merely a public service like any other, that courts and tribunals are providers of services to the "users" who appear before them, and that the provision of those services is of value only to the users themselves and to those who are remunerated for their participation in the proceedings'. This ruling's significance goes beyond the impact it will have on the levels of fees to access employment tribunals; it also recognises the value of courts and tribunals within the democratic framework and the rule of law.

In this part of the paper we summarise what we see as the primary contextual factors that impinge on research priorities and planning, setting out the effects of several contextual and systemic pressure points.

Effects of austerity

First, it is worth stressing that many of the issues identified by previous agenda-setting work remain important, not least due to the continuing impact of the austerity agenda on matters such as legal advice; people's need for support; pressures to increase the efficiency of systems; and the general pressures on public bodies which, for example, reduce resources available to

[51] See Prime Minister Questions, 28 June 2017, http://www.parliament.uk/business/news/2017/june/prime-ministers-questions-28-june-2017/

[52] *R (on the application of UNISON) (Appellant) v Lord Chancellor (Respondent)*, 2017, https://www.supremecourt.uk/cases/docs/uksc-2015-0233-judgment.pdf

assist research. JUSTICE has noted that the system 'is reeling from the impact of ongoing state retrenchment'.[53] It has been suggested that the abolition of the AJTC can be regarded as a consequence of austerity politics as, although the Government stated that its principal objective in cutting the number of quangos was to improve democratic accountability, it also emphasised the benefits of reducing public expenditure.[54]

Effects of justice reforms and new technologies

The justice system generally is undergoing transformation toward **digitalisation,** including **virtual hearings** and **online appeals**. The judiciary has described the six-year courts and tribunals reform programme[55] as the most ambitious reform since the 1870s – a £1 billion investment project aimed at bringing far-reaching efficiencies and improved access.[56] The intention is not merely to replicate offline processes but to develop a new integrated approach that will bring efficiencies in the administration of justice.

A related but less heralded change is the **increased use of automated decision-making** in aspects of everyday life**.** It has been noted that the UK government's target of making every interaction it has with citizens digital by 2020 'is no small task and one that will require every department to take on responsibility for delivering the technology that will facilitate this change.'[57] This ambition raises significant implications for our understanding of initial decision-making and internal review and, in terms of research, the potential for data on how these processes operate. Work is needed on the benefits and the risks posed by automated decision-making from an administrative justice perspective – for example, to identify adverse consequences such as discriminatory implications,[58] errors and bias in the way the algorithms work, and how much error in decision-making is tolerable: person-made decisions inevitably involve human error, arguably more than decisions by algorithm. An emerging challenge for redress mechanisms (ombuds and regulators, tribunals and judicial review) is whether they are appropriate (and appropriately resourced) for handling challenges generated by automated decision-making.[59]

The current programme of court reform raises significant research needs and opportunities, including those around the user experience, digitalisation and online dispute resolution (ODR).[60]

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[53] JUSTICE (2015), 'Delivering Justice in an Age of Austerity', https://2bquk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2015/04/JUSTICE-working-party-report-Delivering-Justice-in-an-Age-of-Austerity.pdf

[54] Mullen, T (2016), 'Access to Justice in Administrative Law and Administrative Justice', in Palmer, E et al (2016), *Access to Justice: Beyond the Policies and Politics of Austerity*, Hart Publishing.

[55] 'Transforming our Justice system', September 2016, https://www.judiciary.gov.uk/wp-content/uploads/2016/09/narrative.pdf

[56] See, e.g., Sir Ernest Ryder, Senior President of Tribunals, Public Law Project Conference speech, October 2016, http://www.publiclawproject.org.uk/data/resources/238/PLP-Speech-12-10-16-Final.pdf; Sir Terence Etherton, Master of the Rolls, Lord Slynn Memorial Lecture, June 2017, https://www.judiciary.gov.uk/wp-content/uploads/2017/06/slynn-lecture-mr-civil-court-of-the-future-20170615.pdf

[57] Guy Kirkwood, 'The Government's Big Opportunity', 22 March 2017, http://www.reform.uk/reformer/the-governments-big-opportunity/

[58] See e.g. work of the Human Rights Big Date and New Technologies Project based at Essex: https://www.hrbdt.ac.uk/

[59] See, e.g., https://www.theguardian.com/technology/2017/jan/27/ai-artificial-intelligence-watchdog-needed-to-prevent-discriminatory-automated-decisions?CMP=share_btn_tw

[60] Civil Justice Council, Online Dispute Resolution for Low Value Civil Claims, February 2015; Civil Justice Council, Fourth National Forum on Access to Justice for Litigants in Person, Summary, 4 December 2015; Digital Director for HM Courts & Tribunals Service, Modernisation of justice through technology and innovation, 21 June 2016; Ministry

Our work with stakeholders illustrates that those involved in the reform programme recognise the value of robust, empirically based research to help inform the process of reform and to test its effectiveness.

In some jurisdictions new technologies are being used to improve access to justice, e.g. the online civil resolution tribunal in British Columbia,[61] the Rechtwijzer in the Netherlands in a project on divorce,[62] and in Australia in an attempt to use machine learning to enable people to access tailored legal advice via an avatar.[63] Creative approaches such as 'designed thinking' and online tools have the potential to address the 'quality vs quantity' dilemma that is an ongoing quandary for administrative justice. Roger Smith has explored the reasons why the Rechtwijzer faces obstacles, noting the problems of cost and capacity: 'The demand for better procedures from citizens is huge. But the government institutions to which we entrust adjudication and legal aid do not have processes for implementing and scaling up innovation.'[64] Overcoming scepticism and suspicion are also challenges, but carefully conducted research on new technologies should help identify to what extent suspicion can be alleviated by evidence and by new approaches to governance.[65]

Without a commitment to fund and evaluate pilots in digital approaches, there is likely to be continued scepticism about the government's ability to deliver on its promises under the 'digital by default' agenda.

Effects of devolution

Court and tribunal reforms may have led to greater coherence in the system especially in relation to appeals; however, in many ways the administrative system as a whole is becoming increasingly diverse and fragmented. An obvious example is in relation to the ability of devolved administrations to take different approaches with devolved powers. Smaller jurisdictions face particular challenges but also embrace particular opportunities. In Northern Ireland, for example, tribunal reform has stalled; tribunal operation still sits within sponsoring departments, but administrative control rests with the Department of Justice. Resources tend to be focused on delivery of new operational systems rather than reform.

But devolution is a constantly changing process, not a single moment in time, and it offers unique opportunities to develop distinctive initiatives. In Wales, for example, new legislation

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of Justice, *Transforming Our Justice System*, September 2016; Lord Justice Briggs, *Civil Courts Structure Review: Final Report*, July 2016.

[61] https://www.scl.org/articles/3784-the-online-justice-experience-in-british-columbia

[62] http://www.hiil.org/project/?itemID=2641; see also Bindman, D (2017), http://www.legalfutures.co.uk/latest-news/pioneering-odr-platform-to-rein-in-ambitions-after-commercial-setback

[63] See, e.g., http://www.abc.net.au/am/content/2016/s4495245.htm and http://law-tech-a2j.org/funding/cate-blanchett-voices-ground-breaking-advice-avatar/ (Australian avatar project for LiPs). However, the withdrawal of a private-sector partner in the Dutch initiative has put the future of the innovative digital project at risk; see Roger Smith at http://law-tech-a2j.org/advice/goodbye-rechtwijzer-hello-justice42/

[64] See, e.g., https://law-tech-a2j.org/odr/rechtwijzer-why-online-supported-dispute-resolution-is-hard-to-implement/?utm_content=buffer18b43&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer

[65] *Data Management and Use: Governance in the 21st Century*, Joint Report of the Royal Society / British Academy: https://royalsociety.org/~/media/policy/projects/data-governance/data-management-governance.pdf

will introduce a reserved powers model of devolution to Wales.[66] Consideration is being given to how to make tribunals more investigative, and the jurisdiction of special educational needs and school exclusions is being merged under one tribunal.

The devolution of social security powers also highlights actual or potential 'points of divergence'[67] from the Westminster approach in administering social security in Scotland and Northern Ireland. An example is the commitment of the Scottish Government to ensuring that respect for the dignity of individuals will be at the heart of how it administers devolved social security benefits.[68] This raises questions around how decisions on benefits reflect the duty to consider the impact of the process on the dignity of the person receiving the benefit, and what impact embedding these principles will have on the outcome? The Equality and Human Rights Commission has commissioned research to give clear meaning to the terms 'dignity' and 'respect' in the context of social security and to inform the approach taken by the Scottish Government.[69] Other work in this area includes that by Adler on assessing the policy of benefit sanctions against the principles of the rule of law[70] and the development of guidance for ombuds caseworkers to help them identify human rights issues arising in complaints.[71]

As the above examples indicate, these shifts offer opportunities for researchers and those interested in learning from comparative work and the experience of others. They may also increase opportunities to gain access to data and institutions given that local government and the devolved governments have on occasions been more amenable to providing access and support for research than some central government departments.

Effects of privatisation

The increasingly porous divide between public and private poses a number of questions about accountability and transparency. There are also concerns about value for money and ultimately the impact on those who are subjected to privatised decision-making. The Concentrix debacle is a sobering example of what the Work and Pensions Select Committee described as 'a sorry episode for the welfare state'.[72] The Committee's report into the HMRC's handling of its outsourcing contract criticised both Concentrix's decision-making and HMRC's oversight. The report stated that 'vulnerable people lost benefits to which they were entitled through no fault of their own. Some have been put through traumatic experiences as a consequence of avoidable

[66] Wales Act 2017, http://www.legislation.gov.uk/ukpga/2017/4/contents/enacted. See also Pritchard, H (2017), 'Tribunal reform in Wales under the Wales Act 2017', https://ukaji.org/2017/07/20/tribunal-reform-in-wales-under-the-wales-act-2017/

[67] Simpson, M (2016), ' The social union after the coalition: devolution, divergence and convergence', http://uir.ulster.ac.uk/35236/1/JSP%20WR%20devo%20OA.pdf

[68] See https://consult.scotland.gov.uk/social-security/social-security-in-scotland/

[69] https://ukaji.org/2017/01/17/social-security-systems-based-on-dignity-and-respect-invitation-to-tender/

[70] See, e.g., Adler, M (2015), 'Benefit Sanctions and the Rule of Law ', https://ukaji.org/2015/10/14/benefit-sanctions-and-the-rule-of-law/

[71] Northern Ireland Equality and Human Rights Commission and Northern Ireland Public Services Ombudsman (2016), Human Rights Manual, launched at an international conference in Belfast in May 2016: https://nipso.org.uk/nipso/nipso-latest-news/941/

[72] See Work and Pensions Select Committee inquiry report, http://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/parliament-2015/concentrix-and-tax-credits-16-17/; and see Thomas, R (2016), ''A sorry episode for the welfare state': Concentrix and Mandatory Reconsiderations', https://ukaji.org/2016/12/13/a-sorry-episode-for-the-welfare-state-concentrix-and-mandatory-reconsiderations/

failures.'[73] On the process of requesting a review of an unfavourable decision via Mandatory Reconsideration, the Committee stated: 'Tax credit claimants seeking to ensure continued eligibility for tax credits were faced with a decision making system stacked against them.'[74]

Effects of lack of oversight

In this context, it is important to stress that since the abolition of the AJTC no single body has had formal responsibility for overseeing the various parts of the system or its overall research needs. The AJTC's successor body, the Administrative Justice Forum (AJF), was not tasked or resourced to develop or progress the AJTC's research agenda.[75] One consequence is that alternative methods may be needed to identify research needs, especially in relation to strategically or generically important matters that cross systems. Another challenge will be to ensure that adequate opportunities exist for researchers and other stakeholders to come together, in formal and informal networks, to discuss research priorities and to enable practitioners and policymakers to learn about what is being done and what research opportunities exist.

Effects of demand for impact

Turning more specifically to the researchers: universities must increasingly demonstrate that their research matters, that it has impact beyond academia; most funders now expect this as well. Related to this is the expectation that academics in research-led universities generate research income. These requirements are likely to have stimulated interest in empirical research as well as incentives for researchers to work across disciplines and also more directly with practitioners and policymakers. However, they may also have increased competition for funding and shifted resource away from work that is not directed at achieving 'impact', making it more difficult for lone researchers or early career researchers who have yet to achieve a track record in empirically based funded research.

2.2 Challenges and obstacles

Capacity

Based on the wide range of research topics and researchers featuring in UKAJI's Current Research Register[76] and on our contacts with early career researchers over the past three years, capacity – in terms of the number of those undertaking empirically based legal work on administrative justice – may be less of a concern today than it was at the time of the Nuffield *Law in the Real World* inquiry. Nonetheless, while there are healthy signs in the range of research on administrative justice, there is a growing need to increase capacity to undertake work that crosses disciplinary fields and responds to changing research needs, including in developing areas of research, such as the effects of digitalisation. Drawing a wider range of

[73] *Ibid.*
[74] *Ibid.*
[75] However, the AJF did take an interest in research. For example, it identified the Social Fund (emergency payments) and in particular review, appeal, and complaints mechanisms under the newly administered local authority managed schemes as areas in which comparative research would be beneficial. It identified as important the need to compare approaches taken to administering these funds in the devolved nations following the change from a central scheme. The AJF also noted that the change in the scheme reflected the changing role and expectations on local authorities.
[76] See https://ukaji.org/current-research-register/

researchers into work related to administrative justice remains a challenge in part because many academics in fields such as education, social policy, government, economics and computer science do not identify as administrative justice researchers although their work is clearly part of that landscape.[77]

In addition to improving future research capacities through teaching at all levels (including PhD and beyond) in 'big' areas of administrative justice, it might also be possible to increase capacity through international collaboration on comparative work. In social security, for example, there might be value in pooling resources across jurisdictions to create more viable resource groups. Providing a more explicit international focus may also increase research funding possibilities.

Research is not only being conducted in universities but within government departments, non-governmental organisations (NGOs), redress mechanisms (e.g. ombud schemes) and by practitioners. These groups bring valuable expertise and insights but may welcome input on methodologies and awareness of potential funding sources. There are obvious mutual benefits arising from collaboration between university researchers and practitioners/NGO-based researchers. The former gain from acquiring fresh perspectives and different contacts as well as much needed REF impact possibilities, and the latter gain expertise in research methodology and in negotiating the research funding maze.

Funding

Capacity and funding are linked. The role of funders in setting the research agenda – which in turn provides the agenda for universities to follow – is another necessary piece in the capacity jigsaw. UKAJI is researching the priorities of funders who operate in areas of potential importance to the field with a view to opening up a dialogue regarding future research needs.

Undertaking empirically based research is likely to be costly both in terms of time and financial resource, and securing adequate funding is a constraint, in particular for early career researchers. We are concerned that while the requirement to demonstrate 'impact' both as part of REF requirements and as a key element of funding applications offers opportunities for some, and may encourage universities to provide support, it is also likely to have a chilling effect. This may be so especially in relation to research that does not have immediate policy implications or which generates findings that are unlikely to find their way into reform programmes or new practices.

Currently administrative justice research is funded by a range of funders. An examination of the 55 projects on UKAJI's Live Research Projects register, for example, shows the following distribution: The ESRC funds 10 of the projects, Nuffield funds 9, and 2 are Leverhulme funded. The remaining 34 projects are funded by various (own) universities (8), and one each by diverse bodies such as the Children's Commissioner, Department for Education, Intra European Fellowship, NI Legal Services Commission, Socio-Legal Studies Association, the former Scottish

[77] See, e.g., Cullen, M *et al* (2017), 'Review of Arrangements for Disagreement Resolution (SEND)', conducted by CEDAR at the University of Warwick, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/603487/CEDAR_review.pdf; and the Welfare Conditionality Project, a consortium of social policy researchers, http://www.welfareconditionality.ac.uk/who-we-are/

Tribunals and Administrative Justice Advisory Committee (STAJAC), Jersey Law Commission, Strategic Legal Fund, Trust for London, and Welcome. Several projects are PhD or self-funded.

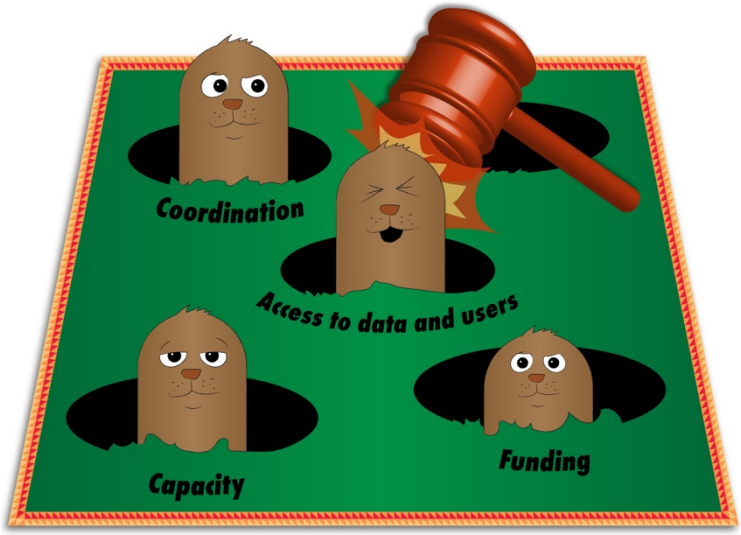
This, albeit partial, survey indicates that there is a range of funding opportunities and that funders can be persuaded to support administrative justice research. However, more needs to be done to persuade a broader range of potential funders to champion administrative justice research as a priority area. Increasing funding opportunities may help attract a wider pool of researchers. Funders also need to be more agile in the consideration of applications to allow for large-scale and small-scale projects and to allow for quicker projects that respond to urgent needs.

Researchers have suggested that thought should be given to what research can be done without research grants, such as through smaller-scale pilot projects. Many ombud schemes and other redress mechanisms, for example, are open to commissioning research that has wider implications for a sector and its users.[78] Seed money should also be available for developing proposals, including for those who do not have access to university support. At a UKAJI workshop in May 2017, it was suggested that researchers might concentrate on seeking relatively small research funds for work on specific and narrowly focused areas of administrative justice (e.g. on issues such as how the very young and the old experience administrative justice, or school exclusion and admission appeals) in order to build a foundation for larger projects.

The decline in central government funding for research of direct importance to government departments represents a key change in the funding landscape. Until 2010, the Lord Chancellor's Department and its successor, the Ministry of Justice, commissioned regular independent research projects.[79] In the past 5-7 years, however, government departmental budgets for commissioning or conducting research have been severely cut. Foundations, trusts and other funders cannot be expected alone to fill that void, but there needs to be a coordinated effort to address this.

Access to research data

Access to data is also an important constraint and in this section we explore the data access issues faced by researchers.



Central government

Over the years, numerous research projects (e.g. on immigration, mediation, court scheme pilots, judicial review) have been conducted with essential support from government departments. More recently, although some government departments identify a need for

[78] See, e.g., Gill, C *et al* (2014), 'Models of Alternative Dispute Resolution (ADR): A report for the Legal Ombudsman', Queen Margaret University Consumer Insight Centre.

[79] For example, Hay, C *et al* (2010), 'Evaluation of Early Neutral Evaluation: ADR in the Social Security and Child Support Tribunal', Ministry of Justice Research Series 2/10 January 2010; Moorhead, R *et al* (2008), 'Just satisfaction? What drives public and participant satisfaction with courts and tribunals', Ministry of Justice Research Series 5/08 March 2008; Genn, H *et al* (2006), 'Tribunals for diverse users', DCA Research Series 1/06 January 2006.

better data, and while there remain examples of excellent cooperation between departments and academics, many independent researchers told us that they had experienced obstacles undertaking research involving government departments. Some of these are structural; others are about resources or organisational cultures.

There is a perception among veteran researchers that access to central government departments and to government-held data, as well as court-held data, has become more difficult over the past decade or so. For example, in 2006-07, while conducting research on the resolution of judicial review challenges before final hearing, the research team obtained full cooperation from Treasury Solicitor lawyers. Seven years later, the same research team was met with significantly less willingness to engage, with client confidentiality being cited as a barrier. As a result, most of the learning on post-judgment judicial review impacts was reliant on information from other defendants, mainly local authorities, despite the fact that over half of the cases in the research sample were against central government. This was a missed opportunity to improve our understanding of the effects of judicial review.

A researcher with extensive experience of research in the field of social welfare found that the unwillingness of government departments to facilitate empirical research has also made it impossible to include the UK in comparative international research. This again represents missed opportunities for learning and improving systems.

Researchers have reported failure by government officials to participate in research by, for example, not responding to questionnaires or not allowing access to government lawyers. Officials are often frustrated that researchers need to submit Freedom of Information applications in response to lack of access to data, and some researchers have reported failures by departments to reply to requests for access. It may be possible to identify trends and patterns in departmental openness by, for example, pooling information on refused FOI requests for access to data. The anticipated digitalisation of the justice system is also likely to affect pattern and possibilities in this context.[80]

There are many reasons why departments avoid engagement in research, such as political sensitivity; concerns over issues of security and confidentiality; apprehension that research findings may be critical of a department, reveal flaws in the system and call for greater resources; lack of familiarity and trust in relation to external independent researchers; and lack of appreciation of the need for the research. One researcher reported long delays in getting a response from the Department for Work and Pensions (DWP), with the department ultimately refusing access because the research (on decision-making) did not fit into its strategic objectives. Several researchers have been left with the impression that the DWP are not interested in external research on mandatory reconsideration due to this being a highly political issue. There is a perception that research is only welcome if it is likely to serve the current interests of policymakers, most notably with regard to cost saving and if it is unlikely to challenge desired policy. There is a view amongst researchers, for example, that work on issues such as efficiency will be more readily accommodated than work that is less closely aligned to policy priorities.

[80] Smith, R (2017), https://law-tech-a2j.org/odr/online-courts-the-unintended-consequences/

Researchers find the 'mass transactional' departments/agencies (DWP, Home Office) to be difficult to engage with. This may be partly logistical, due to the nature and scale of the body and the lack of clarity as to the best contact or relevant data controller, but some researchers also experience those departments as more suspicious of external researchers generally. In contrast, departments that are policymaker-heavy but relatively light on 'transactional' functions tend to be more amenable to engaging with researchers. For example, a researcher has found the Cabinet Office to be responsive and forthcoming with well-thought-out suggestions for the project.

Even where there is willingness to engage, other obstacles arise, such as obtaining judicial approval and lack of coordination between various parts of the system. A researcher in Scotland experienced resistance on the part of the judiciary/Courts and Tribunals Service to accessing court users. Researchers argued unsuccessfully that this was not about the substance/integrity of the decision, and therefore not a matter of interfering with judicial independence. A team researching litigants in person was unable to obtain judicial approval to observe hearings or interview court staff, despite having obtained HMCTS approval. As a result, the project redesign meant a reduction in the scope of the questionnaires and abandoning other elements of the research.[81]

Departments themselves often do not collect data that could be useful not only to external researchers but also internally. One researcher experienced the Ministry of Justice (MoJ)/HMCTS to be very approachable in their response to data requests. Where there was delay in responding, it was often because of the many layers of approval necessary for certain data/access. Despite a general openness, one of the bigger problems in relation to data is knowing what data is held — often there is a sense of taking a 'stab in the dark' when making requests.

In its Administrative Justice Strategy for 2013-16, the MoJ noted that lack of access to consistent data across government departments hampers our ability to understand what is happening in practice. The MoJ identified that:

> *'[W]e do not have consistent system-wide data on decisions taken by public sector bodies, nor on disputes resolved successfully before reaching tribunals. This makes it difficult to identify where there are genuine areas of concern with original decision-making bodies or where good practice is having an impact. It also does not allow us to identify where, in some areas, appeals to the tribunal may be the most effective and efficient mechanism for people to exercise their rights.'*[82]

Despite its commitment to develop better end-to-end sharing of data across tribunals and government departments, the MoJ decided to focus on particular areas identified as pressure points in the system and 'prioritised those tribunals where there is an identifiable problem, such as an unexplained increase in volumes in the mental health tribunal or where a government

[81] Lee, R and Tkacukova, T (2017), 'A Study of Litigants in Person in Birmingham Civil Justice Centre', Working Paper, University of Birmingham, Birmingham http://epapers.bham.ac.uk/3014/1/cepler_working_paper_2_2017.pdf
[82] Ministry of Justice, 'Administrative Justice and Tribunals: A Strategic Work Programme 2013–16', para 57, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217315/admin-justice-tribs-strategic-work-programme.pdf

department is assessing the effectiveness of a new policy'.[83] This may be a reasonable reaction to pressures on public-sector finances, but it does not allow for the type of analysis identified by the MoJ in its strategy document.

The National Audit Office (NAO) published a report[84] in November 2016 on the impact of benefit sanctions, criticising the DWP's failure to examine its own data, to collaborate with researchers or to assess the overall costs/benefits of the sanctions regime. The NAO notes that sanctions have costs for government as well as for benefit recipients/applicants, and says that the DWP should *'support better understanding of the impact of sanctions':*

> *'It should use its data – including real time information on earnings – to track the direct and indirect impact of sanctions on the likelihood, duration and quality of employment, including for those with barriers to work. It should adopt an open and collaborative approach to working with academic researchers and third-party organisations.'*

Even where there is good will and interest in a project, a department may be unable to devote the needed resources for liaison with researchers. Constraints (in terms of time and resources, for example) on departments and those working within administrative justice, such as tribunal staff, hamper their ability to agree to access requests from researchers.

While cost concerns are real and must be acknowledged, it is good practice to build evaluations into the design and establishment of new initiatives or procedures which should be more widely adopted across agencies. For example, when the Home Office adopted a mandatory internal review stage in its asylum decision-making, an evaluation by the Independent Reviewer was built into the legislation, and the Reviewer reported in 2016 on how this new procedure was working in practice.[85]

The 'silo working' of government often means that there is little opportunity to engage across departments or organisations in order to share learning. Interestingly, researchers have reported less of a silo structure in devolved administrations. The cross-governmental complaints network represents an example of good practice, but little is known outside the network of the work it is doing. The Ombudsman Association presents a positive example of an organisation that works to share learning across ombud schemes and complaint handlers.

Several researchers commented to us that their research directions have been affected by the anticipated 'impregnability' of central government with regard to cooperation in research and have chosen to 'gravitate to more open institutions – local government and tribunals'. There were also indications that the devolved administrations are more open to working with academic researchers than central government, for example empirical work on social security

[83] Ministry of Justice, 'Administrative Justice and Tribunals: Final report of progress against the Strategic Work Programme 2013–2016', para 6.2, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/601481/administrative-justice-tribunals-final-progress-report.pdf

[84] National Audit Office (2016), 'Benefit Sanctions', HC 628 SESSION 2016-17 30 NOVEMBER 2016, https://www.nao.org.uk/wp-content/uploads/2016/11/Benefit-sanctions.pdf

[85] Bolt, D (2016), Independent Chief Inspector of Borders and Immigration, 'An Inspection of the Administrative Review processes introduced following the Immigration Act 2014'.

in Northern Ireland and Scotland, which successfully involved both politicians and policymakers.[86]

Local Government and ombud schemes

Researchers reported positive responses to requests for data and participation from other public bodies such as local authorities and ombud schemes. For example, an approach to the research committee of the Association of Directors of Children's Services – which vets research before recommending that their members participate - was successful, but only after having to abandon important aspects of the research methodology (observation and case file analysis). Following approval of the project, the researcher obtained a good level of participation from invited local authorities.

Ombuds have been found to be willing to cooperate with researchers. The Scottish Public Services Ombudsman (SPSO), for example, has been receptive to a project on the model complaint handling procedures and complaints data, providing access to staff and introductions to key local authority staff. The SPSO has also asked for bodies under their jurisdiction to take part in a study of the impact of complaints on those complained about. Researchers need to understand the internal politics and hierarchies of ombud organisations. As one researcher has noted:

> '*It was all about relationships built with the senior staff who then usually delegated the interaction to a more junior colleague. This then enabled us to form a working relationship with relevant members of staff, despite the fact that participating in the research was in fact an additional burden to their existing work.'*

In another study,[87] the research team received full cooperation from the Ombudsman Association, without any interference in the project design, which in turn led to a response rate of 75% from member schemes.

Accessing users

Understanding the 'user perspective' is one of the most sought-after aspects within administrative justice and also one of the most complex to research and therefore to understand. Some of the methodological and ethical issues that arise include confidentiality (e.g. with regard to personal data, the processes for challenge and redress, and outcomes), vulnerability of many segments of the consumer-citizen population, problems with representative sampling, and access to users.

In the course of UKAJI's engagement with stakeholders we have been reminded of the importance of assessing quality of justice issues rather than general satisfaction levels, such as whether people experienced delays in the process and their views on the facilities at the hearing venue. However, this requires direct access to users. Confidentiality, ethical considerations and data protection are an obvious concern for any court, tribunal or department requested to facilitate access to users. One research team has written about being required to address the

[86] See, for example, https://www.ulster.ac.uk/staff/m-simpson

[87] Doyle, M, Bondy, V, Hirst, C (2014), 'The use of informal resolution approaches by ombudsmen in the UK and Ireland: A mapping study', https://ombudsmanresearch.files.wordpress.com/2014/10/the-use-of-informal-resolution-approaches-by-ombudsmen-in-the-uk-and-ireland-a-mapping-study-1.pdf

HMCTS's concerns regarding issues of ethics, as a result of which they advise others 'to forward to HMCTS the ethical approval documents and subsequent consent and to be explicit in the process of ethical approval in those areas where there may be implicit or internal understandings about how research systems work'.[88]

Researching aspects of users' experience has been done through the filter of a third party, such as legal advisers, who can themselves relay their understanding of their clients' experiences.[89] It is not ideal, but in many cases lawyers have intensive contacts with their clients and are aware of their concerns and of how they experience the system. But these lawyers too are difficult to reach and it may be unrealistic to expect them to devote valuable time to a project that does not obviously and immediately benefit them. In order to achieve such cooperation, it is important to be able to convey how the research aims are relevant to those whose help is being sought.

User research can be difficult to fund when its potential impact is unknown. McKeever has noted that 'there has to be a balance between the need to do research because it is important and the need to do research because it can have an impact. Ideally, the two would come together, but the research can still be important in giving a voice to the user, even if that voice is not persuasive enough to create systematic or structural change'. She also notes that we often refer to 'users' experience and voice', but these need to be balanced with the voices of those working within the system, where the issues of operational efficiency may be the overarching priority.

Consultation Question 1:

Have we accurately summarised the constraints and obstacles to empirical research in administrative justice? If not, in what ways is the summary inaccurate?

Consultation Question 2:

How are constraints on funding, capacity, and access to be addressed?

Should researchers be pragmatic and accept that it may never be possible to access data from some government departments, or other public bodies and private contractors carrying out work on their behalf? In other words, should research priorities be focused on the institutions that can be accessed? The challenge is to identify the 'soft' point of rocks from the 'hard' rocks, focusing on those areas where it is possible to open up meaningful dialogue on the use/types of data. Other suggestions include using existing databases where possible and engaging with the UK Statistics Agency to encourage departments to open their data to researchers.

[88] Lee, R and Tkacukova, T (2017), 'A Study of Litigants in Person in Birmingham Civil Justice Centre', Working Paper, University of Birmingham, Birmingham http://epapers.bham.ac.uk/3014/1/cepler_working_paper_2_2017.pdf

[89] See, e.g., Bondy, V, Platt, L and Sunkin, M (2015), 'The Value and Effects of Judicial Review', at p. 39 on claimants' experiences in JR claims, http://www.publiclawproject.org.uk/data/resources/210/Value-and-Effects-of-Judicial-Review.pdf

We are aware that untapped data resources exist**.** Ombuds and dispute resolution services, for example, have expressed an interest in researchers helping them analyse the data they hold on complaints. Government departments and researchers can mutually benefit from sharing expertise. Other mechanisms of support for a healthy research environment can be fostered, for example, facilitating access to data held by government departments and other organisations to improve understanding of the operations of the system.

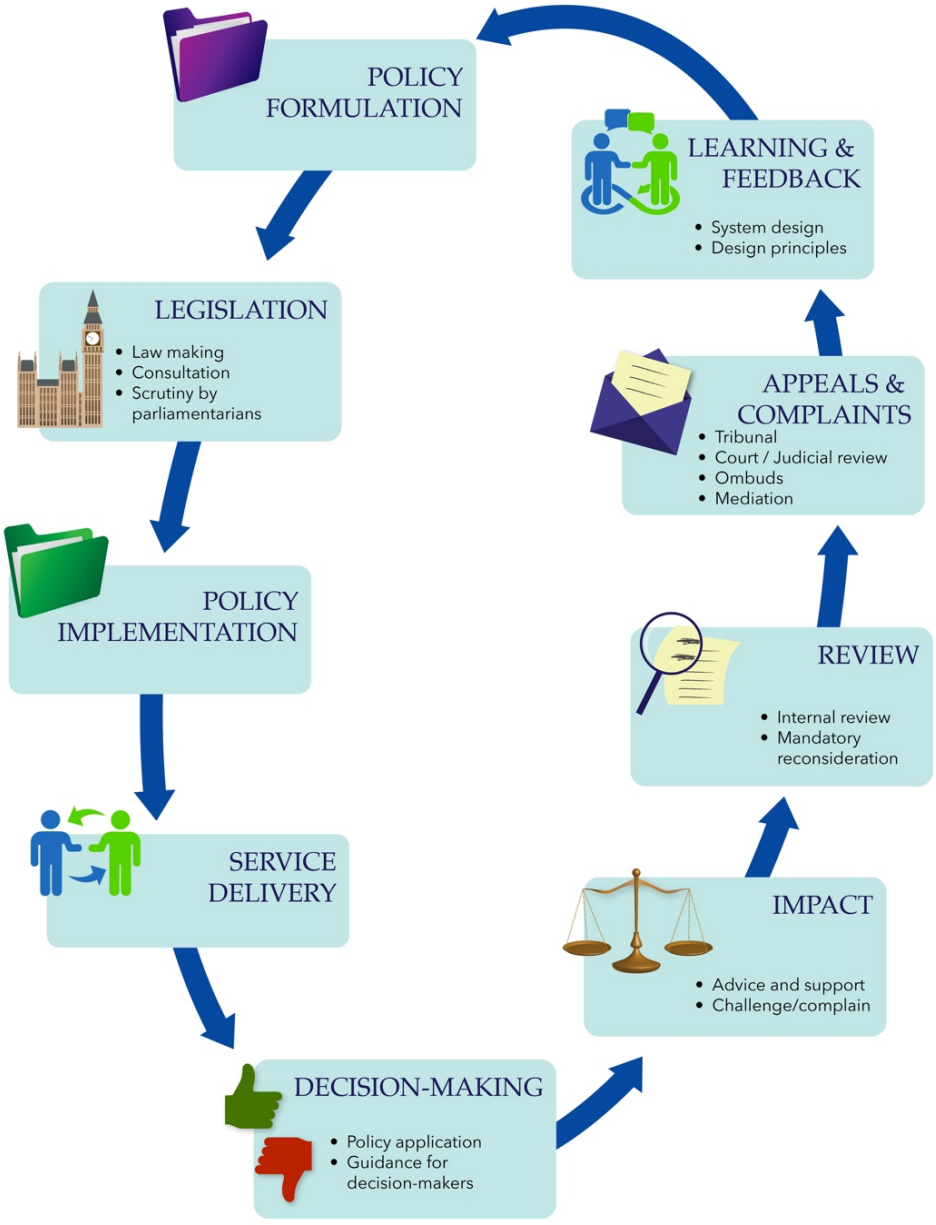
UKAJI is engaged in work designed to identify publicly available data sources in the form of a scoping project on administrative data relating to administrative justice held by central government. This project focuses in the first instance on data on benefits and social security, immigration, and courts and tribunals. This project has the potential to be expanded to cover other areas of government-held data and provide a resource to researchers.

SECTION 3 – Where we need to go

We have addressed the question of where we need to go in two ways: an overall look at the needs of the system, in terms of design and institutional approach, and the specific priority areas for research.

3.1 A fresh strategic and institutional approach

One of the key learning points from our work in the past three years is that coordination and oversight are needed in order to take a holistic and forward-looking perspective of research needs and priorities. Without a body capable of ensuring that the research agenda keeps pace with change, there are inevitable risks that new and emerging research needs will not be met. For this and other reasons, UKAJI believes that a fresh strategic institutional approach to research on administrative justice is needed. This will necessarily require a focus on overall design issues.



During our work we have seen the value of research, but we have also seen a variety of situations where research has been less effective than it might have been, including because data has not been available, as well as situations where opportunities, including those available to government departments, to evaluate reforms, have been missed. One of the lessons drawn is that data collection, evidence gathering (including piloting), and evaluation should be built into system design and planning rather than be left for post-hoc research.

Our contacts with various stakeholders have shown a need and a desire among stakeholders for greater awareness, cooperation and learning across systems and across jurisdictions. In order to help achieve this, there is considerable value in enabling policymakers and academics to

work together to increase mutual understanding; to ensure that appropriate data is collected; that pilots are designed and undertaken by independent researchers in collaboration with the relevant bodies; that evaluations are effective; and that learning is shared.

We have considered whether, in order to promote these goals, there is a need for a body with appropriate research expertise and overview of ongoing research to provide information and access to resources (such as those as currently provided by UKAJI) and to enable policymakers, practitioners and academics to meet and liaise on research related issues. Such a body should be instrumental in, among other activities:

Taking an overarching perspective:

- developing a system-wide perspective to research that responds to new challenges and identifies evolving strategic priorities over time
- sharing experiences of initiatives and novel approaches taken by devolved administrations, and how they may apply across the UK
- collaborating with funding bodies to promote a holistic view of funding research that links up so as to address patchiness of projects within the same area (e.g. digitalisation) and move towards coordinated research agenda

Linking people:

- bringing together academics and other researchers across disciplines and developing on-going relationships and promoting trust between independent researchers and bodies researched
- helping support research networks that will facilitate sharing of research knowledge, methodologies and practice
- encouraging new ways of bringing together those who use the system and those who work in it to enable all perspectives to be taken into account

Improving evidence gathering:

- facilitating independent input to assess what data is collected (and what is not) and ensuring that data for monitoring quality of decision-making and redress /outcomes is sufficient
- helping government and other public bodies to audit the data they collect and share this information with researchers
- promoting government commitment to transparent independent evaluation of pilot initiatives, with such matters as clear explanation of targets, monitoring arrangements, and success measures.

Consultation Question 3:

Is there in-principle support for a body able to play the sort of roles we have outlined?

If YES, what form should such a body take and how should it be funded? Are there any other activities that should be undertaken? Are any of the activities mentioned inappropriate for such a body?

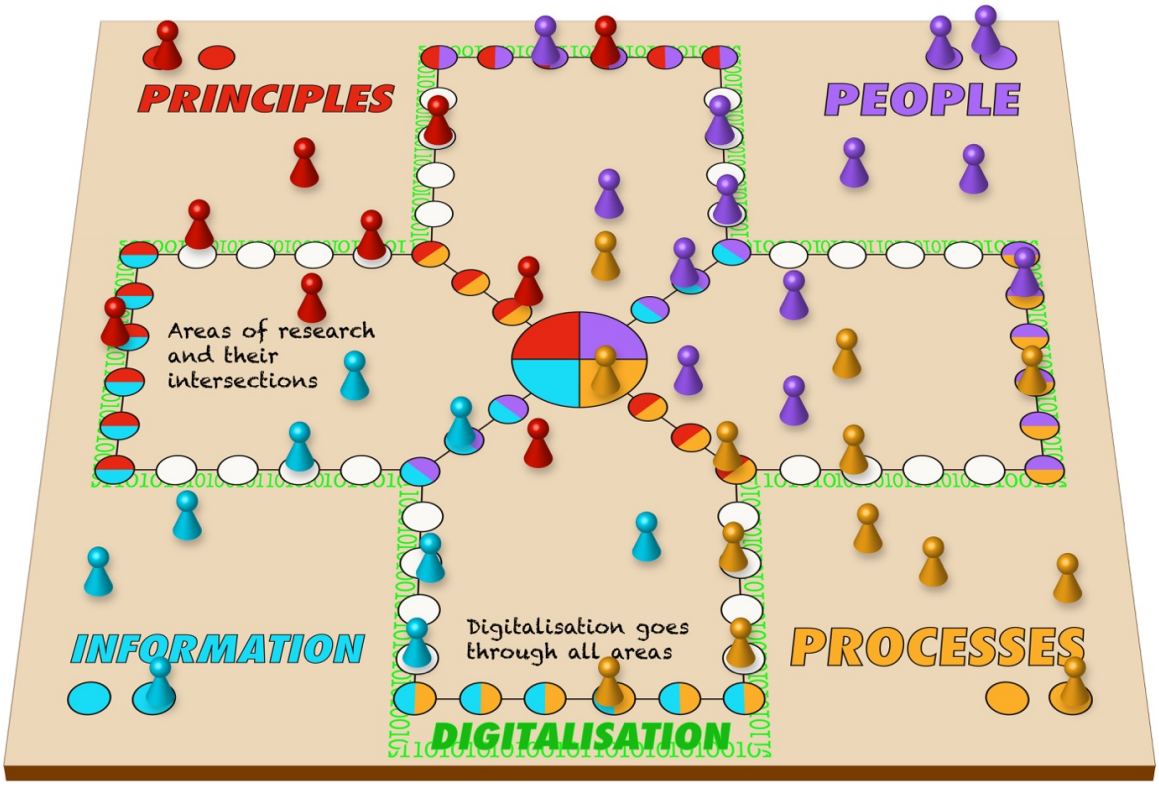
If NO, why not?

3.2 Future research priorities

During the course of our work, in collaboration with researchers, ombuds, advice networks and government, we have identified priority matters that have particular importance across administrative justice and which warrant special attention in research planning. These may be summarised under the following headings: **principles, information, people,** and **processes**. Here we sketch out very briefly the issues that we see as being raised under these priority headings, including proposed research questions. At this stage these are indicative rather than comprehensive. They are matters that cut across many aspects of the justice system, although they have particular bite in relation to administrative justice.

Inevitably there are many overlaps between these priority areas – exploring the impact of using data to shape system design, for example, or the impact on users of applying human rights principles to redress mechanisms. The synergies and overlaps illustrate the rich potential that exists for collaborative, multi-perspective and multi-disciplinary approaches to empirical research in administrative justice. Digitalisation and the challenges we have noted relating to digital justice and delivery of public services feature in all four priority areas. It is clear that this is a subject requiring coordination of research so that aspects of digitalization are not investigated in an ad hoc, disconnected way.

While we argue for a more strategic approach to research and to identifying priority themes, this is not intended to diminish the value inherent in more traditional researcher-led initiatives. Administrative justice is a rich area for research and important work will continue to be done by researchers driven by their own interests, experiences, expertise and concerns in response to change and new circumstances.



Principles

By **principles**, we mean the values that underpin any justice system, including not just courts and tribunals but justice within everyday interactions between individuals and the State and the outcomes that result. We are interested to explore what people understand by **fairness** and fair outcomes and whether this is this changing in light of recent developments. Allied to this is the need to evaluate continuously the protection afforded to **administrative justice principles** - e.g. timeliness, independence, fairness, public accountability – and **human rights principles** that underpin individuals' interactions with public bodies.

It has been noted that administrative justice, dealing as it does with the highest volume of decision-making and redress mechanisms in the entire justice system, confronts a constant tension between quality and quantity (balancing cost-effectiveness with fairness and accuracy).[90] With cost and efficiency as key priorities of the administration, the danger is that less tangible 'goods', such as fairness, accountability, transparency, and dignity, are overlooked or relegated.

Related to this is the importance of assessing the substantive outcomes for individuals. What is the quality of administrative review decision-making? Does it deliver 'justice'? Obtaining appropriate access and developing relevant measurement methods are two significant challenges to assessing the quality of decision-making. Researchers' experience shows that investigating this question within a local government setting, a small, defined jurisdiction, or a single redress mechanism may provide a useful starting point.

Research questions for Principles projects

- What does a human rights approach require?
- How would such an approach affect users' experiences, and how are human rights reflected in initial decision-making, complaint handling, and appeals?
- What are opportunities offered by digitalisation for greater transparency and open justice and what are the risks and threats posed by digitalisation, and how can these risks be overcome?
- How can fears of 'Secret' justice (e.g. rules on secrecy in evidence, and lack of scrutiny for pilots) be met?
- How to ensure accountability in decision-making delegated to private-sector contractors?
- Can such initiatives as automated decision-making be undertaken in accordance with principles of accountability and open justice?

Information

Information is concerned with what is known and what needs to be known about the system from initial decision-making through to redress mechanisms. Given the courts and tribunals reform programme and the more general move to digitalisation in citizen-state interactions, the issue of data recording and availability raises a number of key research concerns, including researchers' access to data (and indeed departments' access to data managed by private contractors); what data is collected and how researchers know what is recorded; and consistency of data; and how data is used by providers and decision-makers. Important issues

[90] See, e.g., Thomas, R and Tomlinson, J (2016), 'Current Issues in Administrative Justice: Examining administrative review, better initial decisions, and tribunal review', https://drive.google.com/file/d/0B9hEf7Oxz59QR2toVWEwQkhVcEk/view

also arise in relation to how information is obtained and used in relation to particular complaints and disputes and we touch on these under **processes** below.

This area could include such matters as information discovery and use of evidence by decision-makers, and how providers such as local authorities use information about tribunal decisions.

Research questions for Information projects

- Understanding (through audit) what data is collected by departments and on tribunal appeals and judicial review, including statistics, decisions and guidance?
- How are datasets established, accessed, shared (data audit, standardisation of data) and analysed?
- Using data to set standards across the system, in decision-making and review and appeals
- Information on key matters such as costs – comparative across departments and mechanisms, and studies of costs of not getting decisions right first time
- More granular management information on users of tribunals
- Identifying what data is not collected and should be, and how openness and transparency can be improved through access to datasets and permissions
- Investigating the role of private contractors (e.g. Capita, ATOS, Resolver) in data collection and control within administrative justice
- Considering the 'data relationship' between government and new technologies (the Cloud, GAFA)
- Consistency of operational and outcome data across ombuds system, and data sharing

People

The priority area of **people** is concerned with how people (including those with particular vulnerabilities) experience, operate within, and are affected by the administrative justice system. This includes access for users and users' experiences, but also non-users and the experiences of operators and decision-makers within the system. Also within this priority are the need to research advice and support; the impact of representation; and procedural justice for those who go through mediation and different forms of hearing (paper, oral, online).

One approach to researching the user perspective is to start with 'the furthest', the most difficult groups/individuals to engage with, those most likely to be left behind by the digital agenda.[91] 'The furthest' includes, for example, a stay-at-home parent who does not speak English and has no Internet access, an elderly person in a care home, a homeless teenager. For the justice system and those working within it, it is vital to be able to model elasticity of demand by users (using factors such as tribunal fees, self-representation, etc) and to consider this for different groups of users and different jurisdictions.

A focus on users' experience and voice needs to be balanced with the voices of those working within the system, where the issues of operational efficiency may be the overarching priority.

[91] Doteveryone, 'Why Better Digital Commissioning?', https://projects.doteveryone.org.uk/improvingcare/pages/commissioning.html

Research questions for People projects

- Identifying and addressing unmet need and needs of those who do not challenge decisions (hidden populations)
- Early decision points and influence – the role of the advice sector, information on routes to redress and choices made by complainants
- Persistent complainants and how to encourage smarter complaints
- Modelling elasticity of demand and exploring how demand varies for different groups of users and different jurisdictions
- Attitudes toward digital services, and more in-depth knowledge of the digital divide and how this affects access to justice in the reformed system
- Mapping remedies available, in user, or not used by public bodies across the system (including apologies, compensatory payments and other forms of redress)
- Users' experiences of alternative methods of dispute resolution including actual practice of informal resolution by ombuds
- Who is accessing the administrative justice system – knowing more about the demographic characteristics of users and their geographical location would shed light on key access issues
- Experiences of redress for individuals with mental health problems, including operation of initial decisions (e.g. on sectioning) and consequent impact on tribunal
- Experiences of users across devolved administrations – e.g. using the Social Fund as a case study for comparative research
- What does a model of user involvement look like?
- How to identify and address the various effects of planned digitisation on the above aspects of users' engagement with administrative justice

Processes

The priority area of **processes** is concerned with the uses and implications of process changes and access to administrative justice, as well as with the process of learning from decisions across the system. Within this priority area, the primary focus for research should be the use of **new technologies** and **digitalisation**, from which will flow some of the most significant developments affecting administrative justice over the next few years. These are radically altering how people and administrations interact, including: how people access advice online; the development of automated decision-making and new forms of dispute resolution; how data is collected, managed and used; the relationships between the State and powerful private-sector organisations (such as GAFA: Google, Apple, Facebook, Amazon). In this way processes as a priority area overlaps with people and principles. The use and development of new technologies offer considerable opportunities, including for researchers, but they also pose potential threats to human rights and the quality of justice[92] and raise new issues of data governance.[93]

New technologies also have potential to transform how law is developed and scrutinised, matters of interest to constitutional lawyers but also important to the empirical study of

[92] See ESRC project on Human Rights Big Data and New Technologies (HRBDT) based at the University of Essex: www.hrbdt.ac.uk.

[93] *Data Management and Use: Governance in the 21st Century*, Joint Report of the Royal Society and the British Academy: https://royalsociety.org/~/media/policy/projects/data-governance/data-management-governance.pdf

accountability for new policy initiatives. Richard Susskind recently proposed[94] two areas of research needed in relation to increasing use of IT in developing and scrutinising legislation, including surveying what has been achieved using technology by other legislatures producing a detailed map showing how legislation is produced in the UK.

Digitalisation, however, should not be the only focus of work on processes; this area is also concerned with filtering processes and triage; judicial decision-making; alternatives to adjudication; pilot initiatives; the relationships between complaint and redress mechanisms including tribunals, judicial review, ombuds and mediation. There will also be continuing need to develop work on how organisations can learn from mistakes and the ***value of feedback.*** There are cultural issues about an organisations' willingness to consider and apply potential learning from earlier actions. The importance of these issues is unlikely to diminish.

There is a need to understand how information affects outcomes of individual disputes or complaints. For example, why are some appeals successful and others not? Are decisions overturned because of initial errors, because claimants submit new evidence, or for other reasons? Departments usually explain this as being due to new evidence, but this remains an unknown because no data have been collected and analysed. Similarly with ombuds' complaints investigations? What accounts for the varying levels of upheld complaints among different ombud schemes? The question also links up with feedback and 'right first time' issues and goes right to the heart of how administrative justice operates.

Research questions for Processes projects

- What are the implications of increased automated decision-making by government departments?
- What role can digitisation play in improving sharing of good practice, standards, and guidance for decision-makers?
- How will increased digitalisation of tribunal work affect outcomes, and will this lead to less inquisitorial practices by tribunal judiciary?
- Is there scope for fact-finding by tribunals?
- How will access to support and advice work in digital processes?
- Understanding of impact on users' experiences and on outcomes of increased use of paper-based appeals rather than in-person hearings
- More pilots, independently evaluated, of digital approaches and the effect on procedural justice and outcomes
- Use of IT in medical evidence in tribunals – increased effectiveness, risk to privacy and data protection
- Analysis of cost savings generated by 'digital by default'

[94] http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/constitution-committee/legislative-process/written/43991.pdf

Consultation Question 4:

Is it helpful to researchers, funders and other stakeholders to identify priority areas for research?

If YES, have we identified the right priority areas? Are there others to include? If so, please specify.

Consultation Question 5:

Do you have any other comments or suggestions?

How to respond

We welcome your views and feedback. Please respond using this **online survey**. All responses to the survey will be anonymous. Note that there is no obligation to provide your email address in order to complete the survey.

If you prefer to respond by email, please send your responses to each of the questions to ukaji@essex.ac.uk

Please respond by **30 September 2017**.