A Research Roadmap for Administrative Justice: SUMMARY

The UK Administrative Justice Institute

Administrative justice =
Citizen and the State ✓
  Decision-making by public bodies ✓
Fairness ✓
Human rights ✓
Social justice ✓
Right to fair treatment ✓
Justice in administration ✓

This Summary is an overview of UKAJI's Research Roadmap, which will be published in early January 2018. The Roadmap and this Summary have been written by UKAJI Core Team members Varda Bondy, Margaret Doyle and Maurice Sunkin, with valuable contributions from the administrative justice research and practitioner communities, UKAJI's Wider Core Team, our Advisory Board and The Nuffield Foundation. All views are those of the UKAJI Core Team, and the authors take responsibility for any errors or omissions.

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A Research Roadmap for Administrative Justice

This roadmap explores the future research needs in administrative justice over the next five years. It is derived from the work of the UK Administrative Justice Institute (UKAJI), an independent research initiative established with funding from the Nuffield Foundation in 2014. UKAJI's primary tasks have been to bring together academics and those who use or work within the system to kickstart empirically based research into administrative justice and to design a research agenda. Here we present a summary of the roadmap. The full Research Roadmap is available on https:ukaji.org.

SUMMARY

Administrative justice is about how government and public bodies treat people, the correctness of their decisions, the fairness of their procedures and the opportunities people have to question and challenge decisions made about them.

While many talk about the 'system' of administrative justice, in reality there is no single system but instead a diverse range of processes and procedures concerned with a spectrum of issues, many of which are of key importance such as social security, education, housing, immigration, and health. It includes initial decision-making and the mechanisms for challenging those decisions through appeals. The bodies involved include legislatures, government departments, courts and tribunals, ombuds and complaint handlers across the jurisdictions of the UK. This is a complex, fragmented and poorly understood landscape. Although it features daily in news reports of people's frustrations with government decision-making, we know little about how these processes work and, more crucially, whether they work well.

A fundamental purpose of research is to improve understanding of how systems are used, how they work, whether they achieve their aims, and how they affect people. Such understanding is key to ensuring that justice is delivered in the interests of us all. We face several current problems: **research in administrative justice is not well coordinated; essential data on how things are working is unavailable or inaccessible**; and **research does not always have the 'real-world' impact it should**. These problems limit the opportunities to test new approaches, to learn from pilots, and to share that learning within and across systems; and ultimately to increase trust and fairness and to improve outcomes.

Scale, relevance and reach

The significance of research in this area is rooted in the scale, relevance and reach of administrative justice. 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, and others concerning fundamental rights. 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.

The urgency of administrative justice

This is an area that is greatly affected by matters such as the austerity agenda; current reforms to the justice system; developments in new technologies; and broader constitutional changes such as devolution. Events in 2017, not least the wide-ranging implications of **Brexit**, also highlight the fast-changing context within which administrative justice issues arise. The **Grenfell Tower fire** was a tragic incident with huge repercussions for its residents and surrounding neighbourhood. It is also an illustration of the interconnected nature of administrative justice and 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 have a public inquiry into the fire, its causes and the wider context, and the design of that inquiry, are also administrative justice matters. The roll-out of **Universal Credit,** and the evidence accumulating from the advice sector and food banks that waiting periods leave individuals without funds for significant periods of time and that many struggle with a 'digital by default' claim system, presents another example of the extraordinary impact of administrative justice on the day-to-day lives of people.

Furthermore, when UNISON successfully challenged the legality of the **new fees regime for using the employment tribunal**, the Supreme Court[1] stressed that the requirements of the rule of law and access to justice are not simply abstract values but fundamental requirements within the democratic framework that must be respected by government. Whether they are satisfied will be assessed by courts using robust empirical data.

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

Themes in administrative justice research

Among the themes identified in past research agendas, including that of the Administrative Justice and Tribunals Council, several resonate powerfully in the current context:

System design	Concerned with accountability in decision-making by public bodies and mechanisms to challenge those decisions, system design is an area of research focus that underpins comparative analysis across approaches and jurisdictions.
Principles	The values that are fundamental to the system and to peoples' trust in the worth of the system and its ability to provide justice include independence, fairness, transparency, accountability and respect for human dignity and human rights: issues central to the core requirements of the rule of law. Trust has emerged as a key challenge when individuals confront the state (and agents of the state) as adversaries. How trust can be established and maintained are key questions for administrative justice. Whether systems satisfy principles is of normative importance but, as recent events show, it is also of considerable practical importance, including in relation to the legality of government decision-making.
Policy	The relationship between policy and principle reflects the need to evaluate and understand, through testing and empirical research, whether policy is being delivered, 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.
Comparative studies	Research that compares systems is of growing importance especially as approaches across the different UK jurisdictions diverge.
Data	Collection of, and access to, data on the different parts of the administrative justice landscape furthers understanding and enables comparisons to be made.
Users	Users, and importantly potential users, are a key concern. Largely because of the difficulty of identifying and reaching those who do not access systems, 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 people who do not challenge decisions when they may gain by doing so.
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').[2] 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, more recently, by the Bach Commission in its Final Report.[3]

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[2] Ministry of Justice (2012), 'Administrative Justices 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
[3] *The Right to Justice: Final report of the Bach Commission*, September 2017

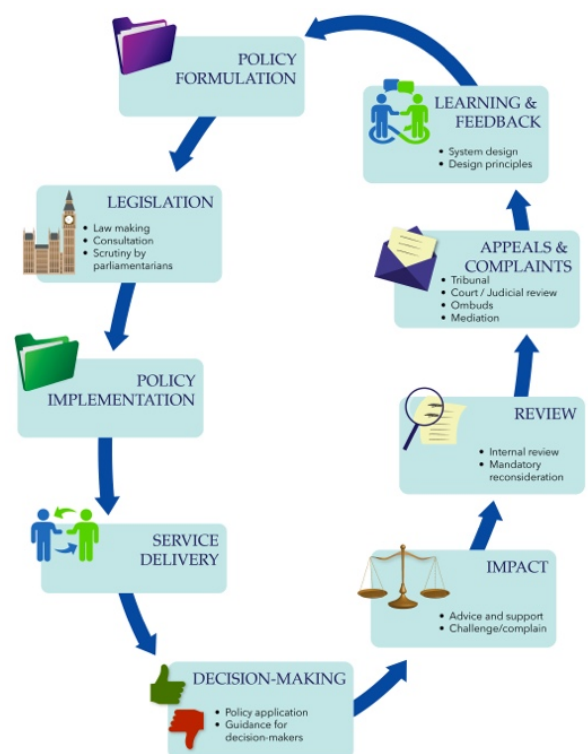|	
Ombuds	Research issues arising in relation to the work of ombuds include the need for greater harmonisation of their work; their relationship to other dispute resolution and redress mechanisms, and in particular tribunals and the Administrative Court; and comparative work on cost-effectiveness and users' experiences.
Legal aid and advice	It is to be expected that users in England and Wales 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.
Decision-making and internal review	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. Research on the DWP's process of Mandatory Reconsideration, 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.
Systemic learning	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.

Challenges

In the roadmap we identify and discuss the primary challenges facing researchers and the wider research environment: capacity, funding, data access, and access to users.

Capacity: 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.

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. 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 may also have a chilling effect.

Access to research data is also an important and very real constraint. Although some government departments identify a need for 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. Even where there is willingness to engage (and this is by no means universal), other obstacles arise, such as satisfying a 'business case' for access, obtaining judicial approval, and lack of coordination between various parts of the system.

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.

Opportunities

Our work with stakeholders confirms that the value of robust, empirically based research to help inform reforms and to test their effectiveness is widely recognised. There are new opportunities to overcome challenges facing researchers. For example:

- Increased digitalization provides opportunities to increase access to, and analysis of, data on the estimated 1.5 billion Government transactions with business and citizens. The co-author of a recent joint report by the Royal Society and British Academy on data ethics and governance suggested that 'Analysis of this administrative data can help reduce the cost of public services; increase understanding of socio-economic issues and make better policy.'[4]

- 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.

- There are opportunities to research 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,[5] errors and bias in the way algorithms work, and how much error in decision-making is tolerable: person-made decisions inevitably involve human error, arguably more than decisions by algorithm.

- Devolution, such as that of social security powers, highlights actual or potential 'points of divergence'[6] from the Westminster approach in administering social security in Scotland, Wales and Northern Ireland. These shifts offer opportunities for researchers and those interested in learning from comparative work and the experience of others.

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[4] Richardson, G (2017), 'Data management and use: Governance for the 21st Century', UKAJI blog post at
https://ukaji.org/2017/08/01/data-management-and-use-governance-for-the-21st-century/
[5] See e.g. work of the Human Rights Big Date and New Technologies Project based at Essex:
https://www.hrbdt.ac.uk/
[6] 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

VISION - A strategic and coordinated focus on empirical research on administrative justice that is grounded in principles of fairness and makes best use of resources, builds on existing capacity, and facilitates learning across jurisdictions.

A more proactive and coordinated approach to research planning is needed: One of the key learning points from our work is that a fresh (or perhaps a refreshed) institutional approach is needed to research across administrative justice. In particular, while there is a rich and varied body of research already being undertaken, a more proactive and coordinated approach to research planning is needed in order to ensure that:

- the value of research is fully recognised, including its potential contribution to peoples' trust in, and understanding of, the system as well its contribution to the effectiveness of the system. Research may help improve efficiency and save costs to the taxpayer, but the worth of research clearly extends beyond its contribution to efficiency, cost saving and 'business' value;
- limited research resources, including funding for research, are targeted at priority research needs;
- a holistic approach can be taken to research so that evidence-based learning occurs across jurisdictions and systems, a factor of particular importance given the developments in Northern Ireland, Wales and Scotland, as well in particular sectors of administrative justice;
- research can throw light on the effectiveness of whole systems so that, for example, a better understanding is obtained of the implications of changes to one part of the system for other parts of the system;
- interested parties, including academic researchers, practitioners, user groups and officials have greater opportunity to engage with each other to improve dialogue and to achieve greater mutual understanding;
- a forum exists to address challenges facing independent researchers, including barriers to gaining access to relevant decision-makers and data;
- research, including piloting and robust evaluation, is built into system design, planning and reform as a matter of routine.

PROBLEMS – Lack of coordination, data access, and 'real world' grounding

- Lack of coordination of research leads to gaps in evidence, lack of awareness of evidence, and failure to use evidence to improve outcomes in initial decision-making, complaints and appeals. It also inhibits opportunities to share and apply learning across the administrative justice landscape.
- Research may be insufficiently grounded in the 'real world' by not reflecting peoples' actual experience, leading to a failure to deliver findings of clear relevance to policy and processes.
- Data needed for research is unavailable or inaccessible, and existing data is not being used, thus limiting understanding of what works and what does not.

SOLUTIONS AND ACTIONS

Research priorities - information, new technologies and people
The need for a body concerned with administrative justice research

Research Priorities

Information: There is a need for better information and the need to make better use of information on the use, operation and outcomes of the systems that deliver administrative justice. While a large volume of data is collected by advice groups such as Citizens' Advice, by government departments, ombuds, and courts and tribunals, there is no overall picture of what information does and does not exist. Even within government it may be unclear what information is available and whether it exists in a form that can be used by internal government analysts, let alone independent researchers.

New technologies: While many of the opportunities and risks presented by new technologies are likely to be common to other aspects of the justice system, some are particular to administrative justice, not least because this is the point at which people directly experience government. So, for example, it is here that concerns about the ability of people, including the most vulnerable, to navigate online systems in complex areas such as social security and the so-called digital divide are likely to be most apparent. It is also in areas such as social security that automated decisions may have the greatest potential to save costs and streamline processes. However, past experience has highlighted the vulnerabilities of computer-based mass systems. Issues such as 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) illustrate that new technologies potentially offer considerable opportunities, including for researchers, but they also raise serious ethical issues. Such factors point to the need for particular attention to be paid to the implications of new technologies for administrative justice not only in relation to matters of process, such as whether systems are user friendly, but also in relation to the quality of outcomes.

People: How do people access, experience and engage with the administrative justice systems, and why do people not engage, sometimes to their detriment? This includes the availability or non-availability of advice and support, the various barriers people face, and their experience of procedures such as mediation and different forms of hearing (paper, oral, and online). There is also a need to improve understandings of how administrative justice systems (and reforms) impact on different groups: who may gain in the process and who may lose, and what is the cumulative effect of this?

While it is important to understand more about the experience of people who access the system as users (and those who do not access the system), there is also a need for research on decision-makers across administrative justice, including those responsible for initial decision-making, those undertaking administrative reviews, and tribunal decision-makers. There is also a continuing need to develop work on the value of feedback and how organisations can learn from mistakes.

The need for a body concerned with administrative justice research

In addition to the areas of research priority, there is a clear need for a body able to develop a coordinated approach to research planning across the field of administrative justice in the UK. Our consultees agreed that a body is required to bring interested people together to share knowledge, identify research needs and encourage and support research initiatives. Many also expressed concern about the lack of an independent body with oversight of research in administrative justice.

We therefore recommend that a national centre concerned with administrative justice research should be established. Its roles would include to:

- take an overarching perspective and champion the value of research on administrative justice;
- develop cross-system perspectives to research that respond to new challenges and identify evolving strategic priorities over time;
- share knowledge and experiences of initiatives taken by devolved administrations;
- collaborate with funding bodies with a view to using resources to meet priority research needs;
- bring together academics and other researchers across disciplines and develop ongoing relationships and promote trust between independent researchers and bodies researched;
- help support research networks that will facilitate sharing of research knowledge, methodologies and practice;
- encourage 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;
- facilitate independent input to assess what data is collected (and what is not) and ensure that data for monitoring quality of decision-making and redress/outcomes is sufficient;
- help government and other public bodies to audit the data they collect and share this information with researchers;
- promote government commitment to transparent independent evaluation of pilot initiatives, with such matters as clear explanation of targets, monitoring arrangements, and success measures.

We welcome the recent announcement that the Administrative Justice Council is to be established as a new advisory and oversight body on administrative justice. Its draft terms of reference indicate that one of its aims will be to identify areas of the administrative justice system that would benefit from research. This is a positive step, and we hope that this roadmap and the national research-focused centre that we propose will help to inform and support its work.

EXAMPLES OF PROJECTS ON RESEARCH PRIORITIES

Our approach has been to identify priority areas for research and potential projects in a call for action on collaboration, creativity, transparency and funding flexibility to harness resources and expertise toward a shared vision of a healthy research environment.

THEME	PROJECT IDEAS
INFORMATION	Understanding (through audit) what data is collected by departments and on tribunal appeals and judicial review, including statistics, decisions and guidance, and how transparency can be improved through access to datasets and permissions
	How datasets are established, accessed, shared and analysed
	Using data to set standards across the system, in decision-making and review and appeals
	Information on costs and cost-benefits – comparative across departments and mechanisms, and studies of costs of not getting decisions right first time
	More granular management information on users of tribunals
	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
NEW TECHNOLOGIES	Attitudes toward digital services, and more in-depth knowledge of the digital divide and how this affects access to justice in the reformed system
	How automated decision-making can be undertaken in accordance with human rights requirements and principles of accountability and open justice, and what the implications are of increased automated decision-making by government departments
	Opportunities offered by digitalisation for greater transparency and open justice and for improving sharing of good practice, standards, and guidance for decision-makers. What are the risks and threats posed by digitalisation in the context of administrative justice, and how those risks can be overcome.
	How will increased digitalisation of tribunal work affect outcomes, and will this lead to less inquisitorial practices by tribunal judiciary? Do new technologies such as AI improve the quality of outcomes, for example, are decisions likely to be more accurate and reliable?
	How will access to support and advice work in digital processes?
	Analysis of cost savings generated by 'digital by default'
	How to identify and address the various effects of planned digitalisation on the above aspects of users' engagement with administrative justice

PEOPLE	Who is accessing the administrative justice system? Knowing more about the demographic characteristics of users and their geographical locations would shed light on key access issues
	Identifying and addressing unmet need and the needs of those who do not challenge decisions ('the furthest')
	Work on understanding levels of trust in the system, what factors increase or undermine trust and how these can be addressed
	Early decision points and influence, including 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
	Mapping the availability of remedies to, and their use 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
	Understanding the impact on users' experiences and on outcomes of the increased use of paper-based appeals rather than in-person hearings
	Experiences of redress for individuals with mental health problems, including the operation of initial decisions (e.g. on sectioning) and their consequent impact on tribunals
	Experiences of users across administrations e.g. using the Social Fund as a case study for comparative research

Actions and actors

The table on the following pages summarises the key outcomes to be achieved, the actions required and those who are likely to be best placed to help secure their delivery.

OUTCOME	ACTION POINT	ACTOR/S
A healthy and robust research environment	Establish a national centre whose remit is to coordinate and facilitate research on administrative justice.	• **Government departments** • **Private funders (trusts, foundations) and Research Councils** • **Universities** • **Researchers** • **Third-sector bodies**
	Consider the ways that government departments, public bodies and the judiciary can benefit from cooperation with researchers and allow researchers access to data and people.	• **Government departments and public bodies** • **Administrative Justice Council, Justice Commission for Wales**
	Recognise the broader social value of research rather than taking a narrow 'business' case approach that focuses only on potential cost savings	• **Government departments and public bodies**
	Work with independent researchers on data audits to assess what data is collected (and what is not) and to ensure that there is sufficient data to enable monitoring of decision-making and redress	• **Government departments and public bodies** • **Ombuds and redress bodies** • **Third-sector bodies**
	Collaborate to enable a holistic approach to research in order to address lacunae or potential duplication of projects within the same research area	• **Government departments and public bodies** • **Administrative Justice Council, Justice Commission for Wales** • **Private funders (trusts, foundations) and Research Councils** • **Researchers** • **Third-sector bodies**
Shared learning across the administrative justice system	Build research and evaluation into system design	• **Government departments and public bodies** • **Judiciary** • **Ombuds and redress bodies**
	Commit to transparency in research activity, including publishing research reports	• **Government departments and public bodies** • **Ombuds and redress bodies**
	Learn from approaches taken to developing administrative justice within all UK administrations	• **Government departments and public bodies** • **Administrative Justice Council, Justice Commission for Wales**
	Continue to explore initiatives through pilots and commit to independent evaluation of those pilots, with clear explanation of targets, monitoring arrangements and success measures, and publication of evaluation reports in order to share findings and learning.	• **Government departments and public bodies** • **Ombuds and redress bodies** • **Third-sector bodies**

Opportunities to experiment and collaborate	Fund projects that use experimental methodology for areas that are hard to research, such as the perspectives of users, non-users and those who work in the system.	• **Government departments and public bodies** • **Private funders (trusts, foundations) and Research Councils**
	Recognise that impact may not always be possible to demonstrate, especially in projects that attempt experimental methodology, that focus on the health of the research infrastructure, such as data audits, or that are concerned with addressing challenges faced by the 'furthest' when needing access to justice	• **Private funders (trusts, foundations) and Research Councils** • **HEFCE** • **Universities**
	Consider a spectrum of funding opportunities, including small grants for developmental or pilot work, mid-range and large grants for research teams and consortia	• **Private funders (trusts, foundations) and Research Councils** • **Universities**
	Support the development and maintenance of cross-disciplinary and multi-institution networks around administrative justice issues, and explore opportunities to examine administrative justice issues from cross-disciplinary perspectives	• **Universities** • **Administrative Justice Council, Justice Commission for Wales Private funders (trusts, foundations) and Research Councils** • **Researchers** • **Third-sector bodies**
	Support initiatives to bring academic researchers and other stakeholders together to identify research needs and design and facilitate research on administrative justice	• **Private funders (trusts, foundations) and Research Councils** • **Researchers** • **Third-sector bodies**
	Contribute to networks, including those directed at early career researchers, concerned with administrative justice	• **Researchers** • **Universities** • **Private funders (trusts, foundations) and Research Councils**
More can be done with less	Consider creative approaches to funding possibilities, and consider whether some types of research can be done without funding	• **Researchers** • **Third-sector bodies**
	Engage with practitioners and third-sector bodies to facilitate use of existing data for projects reflecting shared interests	• **Researchers**
	Make more use of existing rights to information e.g. Freedom of Information requests	• **Researchers** • **Third-sector bodies**
	Explore consultation processes and public engagement with decision-making as key research areas	• **Researchers**