

# A Research Roadmap for Administrative Justice



University of Essex

The Roadmap has 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.

Except for the chalkboard and cogs images, all graphics have been produced by Ricardo Vernaglia.

The authors thank all those who responded to our consultation on the roadmap and who have contributed to the work of UKAJI.

## About UKAJI

UKAJI is based at the University of Essex and has been funded in phase 1 (2014-17) by the Nuffield Foundation. More information on UKAJI, including its people, blog and other resources, is at [www.ukaji.org](http://www.ukaji.org).

## About the Nuffield Foundation

The research upon which this report is based was funded by the Nuffield Foundation. The Nuffield Foundation is an endowed charitable trust that aims to improve social well-being in the widest sense. It funds research and innovation in education and social policy and also works to build capacity in education, science and social science research. The views expressed in this report are not necessarily those of the Nuffield Foundation. More information is available at [www.nuffieldfoundation.org](http://www.nuffieldfoundation.org).

January 2018

## Contents

Background	4
Summary	5
Section 1 – Where we've been	10
Section 2 – Where we are now	22
Section 3 – Where we need to go	33
Appendix – contributors to the consultation	46



## Background

This Research Roadmap for Administrative Justice was developed following a consultation undertaken by UKAJI during the second half of 2017. We are grateful to all those who contributed to the consultation. Among the consultation exercises were:

- A workshop with researchers (May 2017)
- Meetings with our Advisory Board (June and November 2017)
- Meeting with our Wider Core Team (October 2017)
- Discussions/presentations at conferences, including the Hart Workshop (July 2017) and the Public Law Project's Judicial Review conference (October 2017)
- Direct emails to all UKAJI contacts
- Direct engagement with funders (Aug-Nov 2017)
- A SurveyMonkey online survey (Aug-Sept 2017)
- Distribution of the consultation paper via the UKAJI website, blog and Twitter
- Distribution of the consultation via other online channels including the Litigants in Person Network
- Telephone interviews (Sept-Oct 2017)
- Roadmap launch event at the University of Essex (December 2017)

We received 40 responses from a range of stakeholders, including academic researchers, the advice sector, legal practitioners, funders, government departments, and others. Individuals are listed in the Appendix.

### How to use this roadmap

This paper is organised in sections covering 1) Where we've been (concentrating on past research); 2) Where we are now (the current context and challenges); and 3) Where we need to go (the research priority areas). We identify four broad themes running through the research: principles, people, processes and information. These themes underpin the research priorities we identify: **better information, new technologies, and users and non-users**. The table at the end of Section 3 sets out suggested **action points for stakeholders** to help us take forward this roadmap with the aims of getting projects off the ground in order to develop a healthy research environment that will bring us closer to the longer term vision of improved decision-making and good design of processes leading to just outcomes for people, especially the most vulnerable.

## Summary

### Administrative justice matters

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 the term 'administrative justice' can sound vague, distant and academic, in reality administrative justice is concerned with matters of direct and immediate importance to people. Later in the report we shall consider many other examples, but two can be given here.

The roll-out of **Universal Credit** presents an example of the extraordinary impact of administrative justice on the day-to-day lives of people. The evidence accumulating from the advice sector and food banks, for example, indicates that waiting periods leave individuals without funds for significant periods of time and that many struggle with a 'digital by default' claim system.

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, and the potential implications of cuts to local authority budgets and de-regulation. The decision to have a public inquiry into the fire, its causes and the wider context, and the design of that inquiry, are also matters of administrative justice.

Such examples show that the quality of administrative justice matters and is greatly affected by broader developments, including the austerity agenda; wider reforms to the justice system; developments in new technologies; broader constitutional changes such as devolution; and the implications of Brexit.

### Why research is needed

A fundamental purpose of research is to provide evidence and improve understanding of how the systems of administrative justice 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, that systems are working as intended, and that if changes are needed, they will be made in ways that are most likely to be effective.

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.

## Challenges

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

**Research in administrative justice is not well coordinated:** much 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, to share that learning within and across systems and ultimately to increase trust and fairness and to improve outcomes.

**The complex and poorly understood landscape:** 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. 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.

**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.

**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 and that there are new opportunities to overcome challenges facing researchers. For example:

- Increased digitalisation provides opportunities to increase access to, and analysis of, data.
- 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,<sup>1</sup> 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'<sup>2</sup> 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.

## Overview of findings

**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 to ensure the best systems possible.

A key learning point from our work is that a fresh approach is required to research across administrative justice. In particular, while there is a rich and varied body of research, 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, public decision-making and systems of redress. 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 as 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 coordinated planning of administrative justice research

Technologies Project based at Essex: <https://www.hrbdt.ac.uk/>

2 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>

1 See e.g. work of the Human Rights Big Data and New



## Research Priorities

**Information:** There is a need for better information and a need to make better use of existing 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 comwdispute 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. These 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.

## Conclusion

Arguably 'administrative justice' is too disparate and diffuse a concept to be limited to law and directed only to lawyers and legal academics. While people can understand what criminal justice or family justice covers, administrative justice is perhaps too rarefied to be readily recognised, including by advisers, government decision-makers, ombuds, tribunal members, and those people who are on the receiving end of government decisions. For these reasons, there is value in considering how to reposition administrative justice as an overarching set of principles and values governing individuals' interactions with the state rather than as being one of the four 'strands' of the justice system.

In this roadmap, we set out what we believe is the long-term destination shared by all: for the importance of administrative justice to be recognised and, more specifically, for well-designed processes and procedures that deliver quality justice for all users, particularly the most vulnerable, while also ensuring that government and public services resources are used most effectively on priority areas. In order to get to that destination, we describe the conditions that are needed – a healthy and robust research environment; shared learning across the administrative justice system; opportunities to experiment and collaborate; and doing more with less. For each of these conditions to be created, stakeholders need to work together and proactively, and to that end we have identified a number of action points that we think will help us get to our shared destination. These action points relate to developing a clear evidence base, through greater transparency, collaboration and access to data; developing a strong and thriving research community that can work pragmatically to overcome challenges; and ensuring that research evidence is used to improve decision-making by public bodies and to provide quality and just outcomes.

We welcome the establishment of the Administrative Justice Council as a new advisory and oversight council on administrative justice. We are particularly pleased 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 will help inform its work. We also hope that the roadmap will build on the work of UKAJI in creating a community of interest and expertise to invigorate administrative justice research.

## Section 1 – Where we've been

This paper sets out a roadmap<sup>3</sup> on the future research needs in administrative justice. It is derived from the work of the UK Administrative Justice Institute (UKAJI),<sup>4</sup> an independent research initiative established with funding from the Nuffield Foundation from 2014 to 2017. 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 researchers and research users, funders and commissioners of research and that **the current context imposes new and untested pressures** on those who use and work within administrative justice. We argue that administrative justice is an area that requires special attention and that the research terrain covered by administrative justice can be usefully presented under four heads: principles, people, processes and information. Using these headings, we identify three areas as research priorities: **better information** and the need to make better use of information; **new technologies** to improve the quality and effectiveness of administrative justice; and the needs and perspectives of **users and non-users**.

### 1.1 The importance of empirical research into administrative justice

Robust empirical research on administrative justice throws light on how systems are working and whether administrative justice is being achieved. But, 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'*.<sup>5</sup> 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.<sup>6</sup>

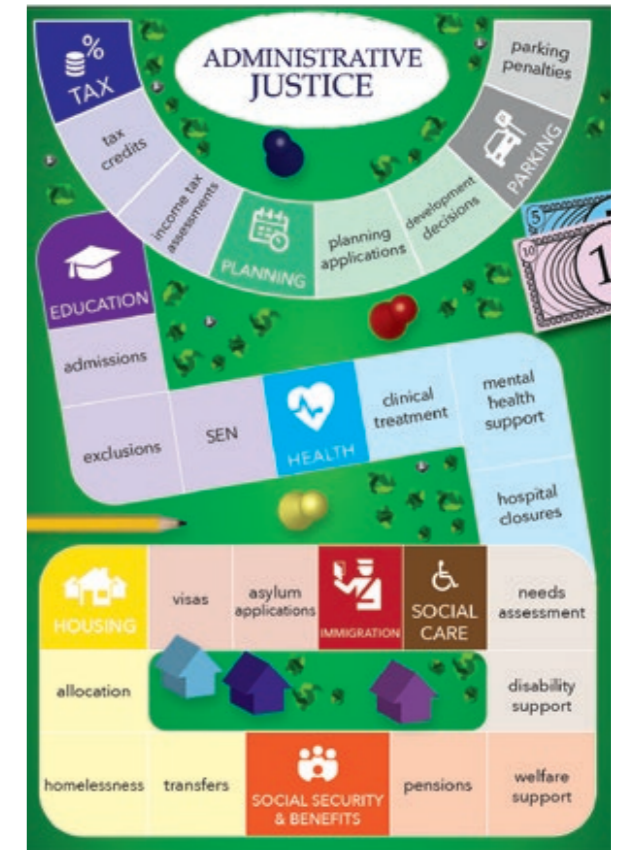
As well as being conceived as a system, administrative justice is an approach, a way of looking at the interaction between people and the governments and other public bodies that make decisions about a wide range of aspects of everyday life. It incorporates thinking about design of the landscape of the 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.<sup>7</sup> 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),<sup>8</sup> including tribunals, ombud schemes, complaints procedures and various hybrids 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.<sup>9</sup>

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, or on behalf of, a public body.

3 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/>

4 UKAJI is based at the University of Essex. More information on UKAJI, including its people, blog and other resources, is at [www.ukaji.org](http://www.ukaji.org).

5 Tribunals Courts and Enforcement Act 2007, Sch 7 para 13(4).

6 For more discussion of what is administrative justice, see <https://ukaji.org/what-is-administrative-justice/>

7 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](http://www.adminjusticescotland.com/documents/Event%20Documents/Making_decisions_fairly.pdf)

8 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.

9 *Ibid.*



## 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'.<sup>10</sup> Thomas 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.'<sup>11</sup> 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'.<sup>12</sup> 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'.<sup>13</sup>

## 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? Do reforms achieve their desired ends or do they have unwelcome and unintended consequences? Is policy and the processes by which it is delivered 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 gains and who loses in the process.

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. Two studies are of particular pertinence here.<sup>14</sup> One was the Nuffield Foundation's 2006 inquiry *Law in the Real World*. The other was the Administrative Justice and Tribunal Council's (AJTC's) 2013 Research Agenda.



## 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.'

## 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**

10 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](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/>

11 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/>

12 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://ukconstitutionalaw.org/>)

13 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.

14 For an early study see: *Grievance Procedure and Administrative Justice: a review of socio-legal Research*, Richard Rawlings, ESRC (1987).

## 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 empirical research in the field. It also assists identification of some of the challenges that we consider later in the paper.

**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 both handle citizen grievances and enable the quality of public bodies' decision-making to be monitored.<sup>15</sup> The study produced valuable recommendations setting out key principles for designing redress. Bondy and Le Sueur have also explored models of redress and proposed principles to underpin redress design; they have noted that initiatives intended to improve the coherence of the system have sometimes had the opposite effect: 'institutional restructuring can be seen as both a response and a contributing factor to fragmentation'.<sup>16</sup>

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.<sup>17</sup> Tomlinson has noted that design thinking methodologies are being used in the HM Courts and Tribunals Service's digitalisation programme, although he notes: 'It is difficult to be clear, without empirical investigation, about the extent to which design approaches are consciously being adopted across the administrative justice work of the Ministry of

Justice and HMCTS'.<sup>18</sup> As part of researchers' attempt to analyse the risks and benefits of this major reform, 'we must develop a critical understanding of the new political and policy dynamics surrounding digitalisation. So, for instance, we must ask: is the expanding use of design thinking approaches good for tribunals and for administrative justice?'<sup>19</sup>

**Comparative studies within the UK and beyond**, 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,<sup>20</sup> although no equivalent mapping project has been undertaken for England or UK-wide. Each of these projects reflects different mapping methodologies and approaches. While these are valuable resources they will lose relevance without commitment to keep them up to date. Other recent comparative research includes Drummond's work on special educational needs tribunal decision-making, which studied accessibility of tribunals in Northern Ireland and Wales with the aim of identifying similarities, differences, and areas of efficient and progressive practice<sup>21</sup> and Creutzfeldt's work on trust and legitimacy of ombuds in the EU, in which she identified cultural differences in complainants' expectations.<sup>22</sup>

An analysis of administrative justice in Wales, Australia, the Netherlands, and Belgium has explored common themes across those jurisdictions, including the accessibility of underpinning legislation, design considerations, and developing a modern understanding of how the different parts of an administrative justice system can work together.<sup>23</sup> A study of asylum adjudication in Europe is an example of comparative work that explores overlapping themes of tribunal decision-making, fairness and consistency.<sup>24</sup>

**Collection of, and access to, data** on the different parts of the administrative justice system furthers understanding and enables comparisons to be made. Increased digitalisation provides opportunities to increase access to, and analysis of, data on the estimated 1.5 billion Government transactions with business and citizens.<sup>25</sup> The co-author of a recent report 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'.<sup>26</sup> Understanding what administrative data exists, and how to access it, is a challenge, as a recent pilot study commissioned by UKAJI shows in relation to data on social security and benefits.<sup>27</sup> Concerns about data from the Department for Work and Pensions, for example, have hampered researchers' ability to shed light on mandatory reconsideration – of particular concern given that, as Thomas has noted, the data that is available 'highlights the

high number of administrative justice decisions now being taken within government itself – as opposed to traditional administrative justice institutions such as tribunals'.<sup>28</sup>

Even when access is obtained, researchers do not always have the expertise or capacity to undertake analysis of datasets. A recent project explored developing a tool for analysis of patient complaints data in order to improve service monitoring and organisational learning.<sup>29</sup> There is also increasing recognition that lack of consistent data hampers comparisons and evaluation among redress mechanisms within administrative justice. A report commissioned by Citizens Advice<sup>30</sup> 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.<sup>31</sup>

**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

15 Bondy, V and Le Sueur, A (2012), 'Designing Redress: a study about grievances against public bodies', *ibid*.

16 Bondy, V and Le Sueur, A (2012), 'Designing Redress: a study about grievances against public bodies', Public Law Project, p.4, available at <http://www.publiclawproject.org.uk/resources/123/designing-redress-a-study-about-grievances-against-public-bodies>

17 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>

18 Tomlinson, J (2017), 'The Policy and Politics of Building Tribunals for a Digital Age: How 'Design Thinking' Is Shaping the Future of the Public Law System', UK Constitutional Law Association blog at <https://ukconstitutionallaw.org/2017/07/21/joe-tomlinson-the-policy-and-politics-of-building-tribunals-for-a-digital-age-how-design-thinking-is-shaping-the-future-of-the-public-law-system/>

19 *Ibid*.

20 Anderson, M, McLroy, 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/>

21 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-orka-drummond.pdf>

22 Creutzfeldt, N (2016), 'Trusting the Middleman', <https://www.law.ox.ac.uk/trusting-middle-man-impact-and-legitimacy->

ombudsmen-europe

23 Nason, S, editor (2017), *Administrative Justice in Wales and Comparative Perspectives* (University of Wales Press).

24 Gill, N and Burrige, 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>

25 Royal Society and British Academy (2017), 'Data management and use: Governance in the 21st century', <https://www.britac.ac.uk/sites/default/files/Data%20management%20and%20use%20-%20Governance%20in%20the%2021st%20century.pdf>

26 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/>

27 Chatsiou, K (forthcoming), Administrative data resources – social security and benefits; see <https://ukaji.org/2017/03/10/data-sources-for-administrative-justice-research-a-toolkit-for-researchers/>

28 Thomas, R (2016), 'Mandatory reconsideration: what do the latest stats tell us?', UKAJI blog at <https://ukaji.org/2016/06/16/mandatory-reconsideration-what-do-the-latest-stats-tell-us/>

29 Gillespie, A and Reader, T (2016), 'The Healthcare Complaints Analysis Tool: development and reliability testing of a method for service monitoring and organisational learning', *BMJ Qual Saf* Published Online First: 06 January 2016. doi: 10.1136/bmjqs-2015-004596.

30 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/>

31 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>



on users includes a study of users' journeys across the justice systems commissioned by HMCTS;<sup>32</sup> Gill and Creutzfeldt's work on legal consciousness and online critics of ombuds;<sup>33</sup> and McKeever's work on litigants in person.<sup>34</sup> 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<sup>35</sup> and the 2014-15 *Legal Problems and Resolution Survey*.<sup>36</sup> Emerging work concerns the linguistic challenges of litigants in person<sup>37</sup> and makes innovative use of oral history techniques to explore the experiences of unrepresented court users.<sup>38</sup>

Specific settings and contexts present particular difficulties, an issue explored in a 'What do we know?' review of the research on indefinite immigration detention commissioned by UKAJI.<sup>39</sup> Conducting research in (and about) detention centres and prisons presents obvious challenges, most notably negotiating

cooperation from detainees and ex-detainees (many of whom will have been 'removed' from the UK) and access to the institutions. The institutions – not least those that are privately operated – are likely to be suspicious of the motivation of researchers, whether academics, representatives of NGOs (both charities and campaigning organisations), or members of Parliament conducting their own research. Despite challenges, researchers have managed to gain access to detainees, or have made use of interviews conducted by campaigning bodies, such as detainee support organisations. Academic researchers have also been able to conduct interviews with representatives of the Ministry of Justice and the independent reviewers, and with legal professionals whose experiences shed light on barriers to access to justice within immigration detention.<sup>40</sup> In addition to qualitative interview based research, researchers have drawn from publicly available data on immigration detention including publications produced by the Home Office, the Office of National Statistics, Her Majesty's Inspectorate of Prisons and Hansard texts of Parliamentary debates and formal questions. Nonetheless, the review identified that significant gaps exist, including on ethnic origins of detainees and the individual trajectories of detention, release, and re-detention.

Research issues arising in relation to **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 complaint-handling schemes. Draft legislation proposing reforms to the public-sector ombuds in England and in Wales<sup>41</sup>

presents a number of questions about the role of the ombud institution in relation to administrative justice and ombuds' ability to produce more meaningful and far-reaching impact. In light of the proposed reforms, a pilot study of the Scottish Public Services Ombudsman's role in setting complaint standards across public services provides useful insight.<sup>42</sup> It also draws lessons for wider administrative justice policy based on early experiences of this new approach in Scotland. Research has explored the use of informal resolution techniques by ombuds;<sup>43</sup> the range of models of higher education ombud schemes;<sup>44</sup> the evolution of the ombud institution using the Legal Services Ombudsman as a case study;<sup>45</sup> the language of complaints made to ombuds;<sup>46</sup> and action research focused on the work of investigators in the offices of the Scottish, Irish and English Information Commissioners.<sup>47</sup> Research on the experiences and perspectives of users of ombuds includes work applying a legal consciousness approach to analysing users' perceptions reflected in the websites of 'ombuds watchers' – online critics of public service ombud schemes.<sup>48</sup> Other research

highlights the gap between users' expectations and experiences.<sup>49</sup> In addition to providing useful insights for ombud practitioners, these studies should be considered in the wider context of justice policy and redress design.

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').<sup>50</sup> 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.<sup>51</sup> Noting the Government's 'bland' response to a 2015 recommendation by the House of Commons Justice Committee that departments be penalised for poor decisions, Thomas suggests that 'polluter pays continues to attract support. It should be possible to devise systems by which departments incur additional costs for allowed appeals. This would have to be supported by the right mix of incentives imposed upon front-line decision-makers and by seeking to instill a culture of continuous improvement'.<sup>52</sup>

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.<sup>53</sup>

32 See presentation by Luc Altmann at <https://ukaji.org/2017/02/15/researching-users-perspectives-report-from-a-ukaji-workshop/>

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

34 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>. See also Adler and Gulland Adler, (Michael and Gulland, Jackie (2003) Tribunal Users' Experiences, Perceptions and Expectations: A Literature Review, London: Council on Tribunals, available at [http://www.research.ed.ac.uk/portal/files/22199441/Adler\\_Gulland\\_2003\\_literature\\_review.pdf](http://www.research.ed.ac.uk/portal/files/22199441/Adler_Gulland_2003_literature_review.pdf)

35 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>

36 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596490/legal-problem-resolution-survey-2014-to-2015-findings.pdf)

37 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>

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

39 Marshall, O (2015), 'Rapid response: What do we know about immigration detention?', <https://ukaji.org/2015/09/07/rapid-response-what-do-we-know-about-immigration-detention/>

40 Lindley, A (2017), 'Injustice in Immigration Detention: Perspectives from legal professionals', Bar Council.

41 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/>; and see Draft Public Services Ombudsman (Wales) Bill, <http://senedd.assembly.wales/mglIssueHistoryHome.aspx?IId=13719>

42 Mullen, T, Gill, C, Vivian, N (2017), 'Scotland's Model Complaint Handling Procedures: Exploring recent developments and the usefulness of complaint data for administrative justice research', University of Glasgow/Queen Margaret University, available at <https://administrativejusticeblog.files.wordpress.com/2017/10/scotlands-model-complaint-handling-procedures-report-26-october-2017.pdf>

43 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>

44 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/>

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

46 IFF Research (2017), 'The Language of Complaints', a report for the Legal Ombudsman, available at <http://www.legalombudsman.org.uk/wp-content/uploads/2014/09/Language-of-complaints-Report-.pdf>

47 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.

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

49 Creutzfeldt, N (2016), 'Trusting the Middleman', <https://www.law.ox.ac.uk/trusting-middle-man-impact-and-legitimacy-ombudsmen-europe>

50 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217315/admin-justice-tribs-strategic-work-programme.pdf)

51 Bach Commission (2017), 'A Right to Justice', Fabian Policy Report, [http://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission\\_Right-to-Justice-Report-WEB.pdf](http://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB.pdf)

52 Thomas, R (2017), 'Current Developments in UK Tribunals: Challenges for Administrative Justice', available at [https://www.academia.edu/21814381/Current\\_Developments\\_in\\_UK\\_Tribunals\\_Challenges\\_for\\_Administrative\\_Justice](https://www.academia.edu/21814381/Current_Developments_in_UK_Tribunals_Challenges_for_Administrative_Justice)

53 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.

A review of new disagreement resolution arrangements for special educational needs and disability disputes in England<sup>54</sup> assessed the value and costs of mediation in relation to tribunal appeals and evaluated a pilot extending the powers of the tribunal. A two-year national trial of a single route of redress in England (again in the area of special educational needs and disabilities) is due to start in April 2018, and it has been confirmed that this will be independently evaluated.<sup>55</sup> Addressing the fundamental tension between fairness and efficiency that underpins administrative justice is evident in such experimentation in tribunal procedures.<sup>56</sup>

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. 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<sup>57</sup> 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 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.<sup>58</sup> 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.

The Bach Commission, both in its interim<sup>59</sup> and final reports,<sup>60</sup> identified key problems with accessing justice. 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. Among its recommendations are that legislation is required to enshrine a right to justice for individuals. Lord Willy Bach, chair of the Commission, emphasised the value that access to justice holds for society:

'It is, after all, fairly simple: unless everybody can get some access to the legal system at the time in their lives when they need it, trust in our institutions and in the rule of law breaks down. When that happens, society breaks down.'

In addition to establishing this right and a Justice Commission to monitor and enforce it, the Bach report recommends establishing a set of principles to guide interpretation of this new right covering the full spectrum of legal support, from information and advice through to legal representation. Related to costs, the Commission proposes a 'polluter pays' principle for appeals in which government decisions are overturned: 'cross-charging the costs of justice that are associated with decisions made by arms of the state'. The oral and written evidence supplied to the Commission, and an analysis of this evidence produced by Sir Henry Brooke,

are available in appendices to the final report, as is a history of legal aid in England and Wales from 1945-2010. The appendices are a rich resource for researchers exploring the facts and figures of post-LASPO life and the everyday stories of its impact. We have noted that researching users, especially the most vulnerable who are 'hard to reach', is difficult and raises ethical and methodological challenges. In this area, the *Legal Problems and Resolution Survey 2014-15 (LPRS)*<sup>61</sup> 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.<sup>62</sup> A 'Paths to Justice' study on legal needs in Scotland was conducted by Genn and Paterson in 2001.<sup>63</sup> An innovative study in Wales has modelled the prevalence of legal problems and the need for social welfare advice using data sourced from the Civil and Social Justice Survey and drawing on the National Survey for Wales and Official for National Statistics data.<sup>64</sup>

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.<sup>65</sup> 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),<sup>66</sup> 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 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 relationship 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

54 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>

55 Letter announcing the national trial to Directors of children's Services from Robert Goodwill MP, Minister of State for Children and Families, dated 24 October 2017: 'The single route of redress national trial will expand the powers of the First-tier Tribunal SEND to enable it to make non-binding recommendations on the health and social care aspects of Education, Health and Care (EHC) plans alongside the educational aspects.'

56 See, eg, Thomas, R (2011), *Administrative Justice and Asylum Appeals: A Study of Tribunal Adjudication*, Hart Publishing.

57 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/>

58 Legal Action Group, <http://www.lag.org.uk/magazine/2013/11/paths-to-justice.aspx>

59 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](http://www.fabians.org.uk/wp-content/uploads/2016/11/Access-to-Justice_final_web.pdf)

60 Bach Commission (2017).

61 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596490/legal-problem-resolution-survey-2014-to-2015-findings.pdf)

62 Genn, H (1999), *Paths to Justice: What People Do and Think about going to Law*, Hart Publishing.

63 Genn, H and Paterson, A (2001), *Paths to Justice Scotland: What People in Scotland Do and Think about going to Law*, Hart Publishing.

64 Wavehill Ltd in partnership with The Civic Research Initiative et al (2017), 'Modelling the need for advice on social welfare topics', Government Social Research and Welsh Government, Social research number: 31/2017, available at <http://gov.wales/docs/caecd/research/2017/170627-modelling-need-advice-social-welfare-topics-en.pdf>

65 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/>

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



who feel mistakes have been made, the quality of ongoing routine administration, and the administration of the redress system itself.<sup>67</sup>

**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<sup>68</sup> 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, 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.<sup>69</sup> 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'.<sup>70</sup> 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 impact of the current reform programme.<sup>71</sup> Lord Justice Briggs, in the interim report on his Civil Justice Structure Review,<sup>72</sup> 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<sup>73</sup> have argued that digitalisation can potentially deliver greater transparency. Smith has argued that digitalisation 'will not alter underlying unfairness of procedure – though it may make it more visible'.<sup>74</sup> In his interim report, Briggs contrasted the secrecy of the existing small claims mediation service with the process of conciliation/early neutral evaluation proposed for stage 2 of the Online Court, for which 'some element of transparency vis-à-vis the public' will need to be considered.<sup>75</sup> It is possible too that digitalisation will bring greater access to court and tribunal data. The goal of greater transparency is challenged

by lack of openness about trials and pilots, however; HMCTS has attempted to open up its testing process to practitioners through its 'reform roadshows',<sup>76</sup> but much experimentation and piloting is not in the public domain. One consultation respondent suggested that open justice in asylum appeals raises concerns: HMCTS's current plan is to have proceedings viewable from remote terminals set in court buildings so that access and use can be controlled. However, in some instances this is problematic, such as where disclosure of information could increase the risk to an individual, including on return to a country of origin, or where an individual has requested an all-female (or all-male) tribunal, for religious or other reasons. Whilst in theory this is also an issue with the current 'open court' proceedings, the significant difference is that in open court the judge is able to see who is viewing the proceedings and thereby get an indication of whether it is appropriate for that person to do so. Without that ability in virtual hearings, the judge would be unable to prevent information falling into the wrong hands and appellants (and witnesses) are more likely to self-censor what they say out of fear of who might be viewing the proceedings. Concerns also exist around the potential relative ease of recording and wider distribution of video material compared with 'open court' proceedings.

An example of missed opportunities on digitalisation 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.<sup>77</sup>

Citizens Advice has reported on the many challenges facing the roll-out of Universal Credit (UC).<sup>78</sup> 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.

67 Cowan, D *et al*, (2017) 'Reconsidering Mandatory Reconsideration', [2017] *Public Law* 215-234, 234.

68 '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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604139/detailed-response-from-the-government-to-the-ssac-mandatory-reconsideration-report.pdf)

69 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>

70 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*.

71 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553261/joint-vision-statement.pdf)

72 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>

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

74 *Ibid*.

75 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>, para 6.65.

76 Acland-Hood, S (2017), 'Successful reform roadshows – more dates announced...', Inside HMCTS blog, <https://insidehmcts.blog.gov.uk/2017/12/20/successful-reform-roadshows-more-dates-announced/>

77 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.

78 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 emerging evidence of 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. 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, and the potential implications of cuts to local authority budgets and de-regulation. The decision to have a public inquiry into the fire, its causes and the wider context, and the design of that inquiry, are also matters of administrative justice.

Furthermore, when UNISON successfully challenged the legality of the new fees regime for using the employment tribunal, the Supreme

Court<sup>79</sup> 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. This is an important indication of the need for and value of empirically based information.

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 undertake or assist research. JUSTICE has noted that the system 'is reeling from the impact of ongoing state retrenchment'.<sup>80</sup> One consequence has been the decline in central government funding for research of direct importance to government departments. Until 2010, the Lord Chancellor's Department and its successor, the Ministry of Justice, commissioned regular independent research projects.<sup>81</sup> In the past five to seven years, however, government departmental budgets for commissioning or conducting research have been severely cut.

### 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<sup>82</sup> as the most ambitious reform since the 1870s – a £1 billion investment project aimed at bringing far-reaching efficiencies and improved access.<sup>83</sup>

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. HMCTS is testing out, among other innovations, virtual hearings in tribunals, starting with immigration and asylum. Through blog posts by its Chief Executive, the HMCTS is providing updates on developments in the transformation project.<sup>84</sup>

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'.<sup>85</sup> 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,<sup>86</sup> 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.<sup>87</sup>

The current programme of court and tribunal reform raises significant research needs and

<sup>79</sup> *R (on the application of UNISON) (Appellant) v Lord Chancellor (Respondent)*, 2017, <https://www.supremecourt.uk/cases/docs/uksc-2015-0233-judgment.pdf>

<sup>80</sup> 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> 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, see: 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.

<sup>81</sup> 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.

<sup>82</sup> 'Transforming our Justice system', September 2016, <https://www.judiciary.gov.uk/wp-content/uploads/2016/09/narrative.pdf>

<sup>83</sup> 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](#)

<sup>84</sup> 'Transformation - Courts and Tribunals 2022', <https://insidehmcts.blog.gov.uk/category/transformation-courts-and-tribunals-2022/>

<sup>85</sup> Guy Kirkwood, 'The Government's Big Opportunity', 22 March 2017, <http://www.reform.uk/reformer/the-governments-big-opportunity/>

<sup>86</sup> See e.g. work of the Human Rights Big Data and New Technologies Project based at Essex: <https://www.hrbdt.ac.uk/>

<sup>87</sup> 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](https://www.theguardian.com/technology/2017/jan/27/ai-artificial-intelligence-watchdog-needed-to-prevent-discriminatory-automated-decisions?CMP=share_btn_tw)

opportunities, including those around the user experience, digitalisation and online dispute resolution (ODR).<sup>88</sup> 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, for example, the online civil resolution tribunal in British Columbia,<sup>89</sup> the Rechtwijzer in the Netherlands in a project on divorce,<sup>90</sup> and in Australia in an attempt to use machine learning to enable people to access tailored legal advice via an online avatar.<sup>91</sup> 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.'<sup>92</sup> 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.<sup>93</sup>

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.<sup>94</sup> 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 Scotland, for example, the transfer of all reserved tribunals into the Scottish tribunals structure is likely to lead to greater divergence. In Northern Ireland, 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 has introduced a reserved powers model of devolution to Wales.<sup>95</sup> It has been noted that the shift toward 'de-tribunalising' (eg increasing use of internal decision-making in social security and immigration appeals) is not as evident in devolved tribunals. Furthermore, 'the smaller scale of governance makes

partnership working between government, tribunals, and ombudsman more feasible and potentially more effective, and so-called "silo-mentalities" are not so evident'.<sup>96</sup> Draft legislation proposes reforms to the role and powers of the Public Services Ombudsman for Wales, including own-initiative investigations, complaints standards, and jurisdiction over private medical providers.<sup>97</sup>

The devolution of social security powers also highlights actual or potential 'points of divergence'<sup>98</sup> from the Westminster approach in administering social security in Scotland, Wales 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.<sup>99</sup> 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? Researchers at Ulster University have carried out research, commissioned by the Equality and Human Rights Commission, into the meaning of the terms 'dignity' and 'respect' in the context of social security in order to inform the approach taken by the Scottish Government.<sup>100</sup> Other work in this area includes

that by Adler on assessing the policy of benefit sanctions against the principles of the rule of law<sup>101</sup> and the development of guidance for ombuds caseworkers to help them identify human rights issues arising in complaints.<sup>102</sup>

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'.<sup>103</sup> 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 failures'.<sup>104</sup> On the process of requesting a review of an unfavourable decision via

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

89 <https://www.scl.org/articles/3784-the-online-justice-experience-in-british-columbia>

90 <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>

91 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/>

92 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](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)

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

94 An example is the way the former Social Fund has been handled in the devolved administrations and in England, where completely different systems have been established.

95 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/>

96 Nason, S (2017), 'Administrative Justice in Wales and Comparative Perspectives', <https://ukaji.org/2017/09/22/administrative-justice-in-wales-and-comparative-perspectives/>

97 Public Services Ombudsman (Wales) Bill, <http://senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=20012>; see also Bennet, N (2017), 'A Case for Change', <https://ukaji.org/2017/10/18/a-case-for-change/>

98 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>

99 See <https://consult.scotland.gov.uk/social-security/social-security-in-scotland/>; in January 2018 the Scottish Government announced its intention to establish a statutory Scottish Commission on Social Security to provide scrutiny of the Government's commitment to human rights in the administration of social security; see <https://news.gov.scot/news/scottish-commission-on-social-security>

100 Simpson, M, McKeever, G, Gray, A M (2017), 'Social security systems based on dignity and respect', a report for the Equality and Human Rights Commission. In January 2018 the Scottish Government announced its intention to establish a statutory Scottish Commission on Social Security to provide scrutiny of the Government's commitment to human rights in the administration of social security; see <https://news.gov.scot/news/scottish-commission-on-social-security>

101 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/>

102 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/>

103 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/>

104 *Ibid.*



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.’<sup>105</sup>

### 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.<sup>106</sup> A new body, the Administrative Justice Council, has recently been established and will be hosted by JUSTICE. While its role is to include identification of areas of the administrative justice system that would benefit from research, it is likely that the new Council will have limited, if any, capacity to commission its own research.<sup>107</sup> One consequence is that the Council will look to work with others to identify research needs, especially in relation to strategically or generically important matters that cross systems and jurisdictions. It is to be hoped that the Administrative Justice Council will encourage and facilitate opportunities 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.

As noted above, the increasing divergences in administrative justice across UK jurisdictions will need to be taken into account. While commissioning and producing research was not specifically included within the (fairly wide-

ranging) remit of the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC), in its consultation on its future it recommended that any future administrative justice committee for Scotland should have commissioning and coordinating research as an explicit part of its role. STAJAC did, however, take a proactive approach in commissioning its own research. Over its two-year lifespan, despite its limited resources, STAJAC published two research reports: *Making Decisions Fairly: Developing excellence in administrative justice* and *Mapping Administrative Justice in Scotland*.<sup>108</sup>

### The need 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. We broadly support the increased emphasis now placed on the ‘impact’ of research, not least because this helps to underscore the value of empirical approaches and highlights the contributions of academic research to real-life issues. Nonetheless, many respondents to our consultation warned us of risks flowing from research priorities that are dictated by instrumental considerations or by policy agendas set by government. Such risks include that research on broader and deeper normative concerns, on speculative issues, or that uses innovative approaches will be less favoured. The need to show impact may also be making it more difficult for lone researchers or early career researchers who have yet to achieve a track record in empirically based funded research.

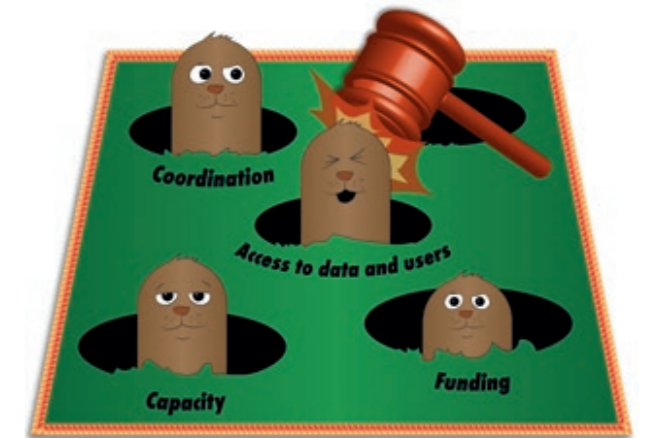
## 2.2 Challenges and obstacles

### Capacity

Based on the wide range of research topics and researchers featuring in UKAJI’s Current Research Register<sup>109</sup> and on our contacts with early career researchers over the past three years, capacity – in terms of the number and seniority 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 and the number of early career researchers becoming involved in this area, 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 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.<sup>110</sup>

In addition to improving future research capacities through teaching and the development of relevant expertise at all levels (including PhD and beyond) in ‘big’ areas of administrative justice, and building network and research communities of early career researchers, it might also be possible to increase capacity through international collaboration on comparative work. In social security, for example, there would 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.

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 are likely to gain from independent insights, from expertise in research methodology as well as negotiating the research funding maze.



### Funding

Capacity and funding are linked. Undertaking empirically based research is costly both in terms of time and financial resource, and securing adequate funding is a constraint, in particular for early career researchers. 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 has researched 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. We have found that few funders identify their priorities as relating to administrative justice, although they may work in areas of primary importance to it including poverty reduction, access to justice, social exclusion and inequalities. There is work to be done to broaden the understanding of the fundamental role that administrative justice plays in these concerns.

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

<sup>105</sup> *Ibid.*

<sup>106</sup> 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.

<sup>107</sup> See <https://justice.org.uk/justice-host-successor-administrative-justice-forum/>, 6 December 2017.

<sup>108</sup> Both are available here: <http://www.adminjusticescotland.com/2015eventreports.htm> and the mapping report is also available at UKAJI’s website at <https://ukaji.org/2016/02/11/mind-the-gap-mapping-the-administrative-justice-landscape/>

<sup>109</sup> See <https://ukaji.org/current-research-register/>

<sup>110</sup> 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](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/>



following distribution: The ESRC funds 10 of the projects, Nuffield funds nine, and two 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; the Department for Education; the Intra European Fellowship; the Northern Ireland Legal Services Commission; the Socio-Legal Studies Association; the former Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC); the Jersey Law Commission; the Strategic Legal Fund; the Trust for London; and Wellcome. 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 and funding research that assists with their development but also has wider implications for a sector and its users.<sup>111</sup> 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.

These could be the focus of specific pilots using sampling techniques, with potential to develop and to produce learning that relevant to other areas of administrative justice.

### 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 better data, and while there remain examples of excellent cooperation between departments and academics, 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.<sup>112</sup>

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. At the same time 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 access in this context.<sup>113</sup>

There are many reasons why departments avoid engagement in research, such as political sensitivity; concerns over issues of security, confidentiality and data protection; 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; lack of appreciation of the need for the research; and general pressures on time. 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.

Researchers find the 'mass transactional' departments and agencies such as DWP and Home Office tend 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 suspicious of external researchers generally. In contrast, departments that are policy-heavy but relatively light on 'transactional' functions tend to be experienced as more amenable to engaging with researchers. For example, a researcher reported 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 the lack of coordination between various parts of the system and need to obtain judicial approval. A researcher in Scotland experienced resistance on the part of the Scottish Courts and Tribunals Service to accessing tribunal users. Permission to carry out research into tribunal users' views and experiences was refused, with no clear reason given for this refusal, following concern by some members of the judiciary that questions about users' perceptions of the fairness of the process and its outcome could be viewed as 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.<sup>114</sup>

One researcher experienced the Ministry of Justice (MoJ) and HMCTS to be very approachable in their response to data

111 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.

112 Bondy, V, Platt, L and Sunkin, M (2015), 'The Value and Effects of Judicial Review', <http://www.publiclawproject.org.uk/data/resources/210/Value-and-Effects-of-Judicial-Review.pdf>

113 Smith, R (2017), <https://law-tech-a2j.org/odr/online-courts-the-unintended-consequences/>

114 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](http://epapers.bham.ac.uk/3014/1/cepler_working_paper_2_2017.pdf)

requests. Where there was delay in responding, it was often because of the many layers of approval necessary for obtaining access to certain data. 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. This is part of a larger problem that departments themselves often do not collect data that could be useful both to external researchers and internally; or if they do collect the data, collection may not be consistent or in a form that is readily usable.

In its Administrative Justice Strategy for 2013–16, for example, 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.’<sup>115</sup>*

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 department is assessing the effectiveness of a new policy’.<sup>116</sup> This may be

a reasonable reaction to pressures on public-sector finances, but it does not allow for the type of system-wide analysis identified by the MoJ in its strategy document.

The National Audit Office (NAO) published a report<sup>117</sup> 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.’<sup>118</sup>*

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.<sup>119</sup>

115 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217315/admin-justice-tribs-strategic-work-programme.pdf)

116 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-](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/601481/administrative-justice-tribunals-final-progress-)

report.pdf

117 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>

118 *Ibid.*

119 Bolt, D (2016), Independent Chief Inspector of Borders and

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, and there are indications that the devolved administrations are more open to working with academic researchers – for example, empirical work on social security in Northern Ireland and Scotland, which successfully involved both politicians and policymakers.<sup>120</sup>

### Researcher-friendly local government, ombud schemes and devolved administration

Several researchers told us that their research directions have been affected by the anticipated ‘impregnability’ of central government with regard to cooperation in research and that they have chosen to ‘gravitate to more open institutions – local government and tribunals’. Several researchers indicated that they had found local authorities to be relatively easy to work with. 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.

Particular sectors have coordination that researchers can tap into. The Ombudsman Association, for example, presents a positive example of an organisation that works to share learning across ombud schemes and complaint handlers, through its annual conferences, interest groups, and occasional seminars.<sup>121</sup> 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.<sup>122</sup> The SPSO also asked for bodies under their jurisdiction to take part in a study of the impact of complaints on those complained about.<sup>123</sup> Researchers, however, 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,<sup>124</sup> 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

122 Mullen, T, Gill, C, Vivian, N (2017), ‘Scotland’s Model Complaint Handling Procedures: Exploring recent developments and the usefulness of complaint data for administrative justice research’, University of Glasgow/Queen Margaret University, available at <https://administrativejusticeblog.files.wordpress.com/2017/10/scotlands-model-complaint-handling-procedures-report-26-october-2017.pdf>

123 Gill, C, Hirst, C, Sapouna, M, Williams, J (2017), ‘How do complaints affect those complained about? An empirical investigation into the effects of complaints on public service employees’, University of Glasgow/Queen Margaret University, available at <https://administrativejusticeblog.files.wordpress.com/2017/12/effects-of-complaints-report-15-december-2017-final.pdf>

124 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>

Immigration, ‘An Inspection of the Administrative Review processes introduced following the Immigration Act 2014’.

120 See, for example, <https://www.ulster.ac.uk/staff/m-simpson>

121 One such seminar, in March 2016, focused on current research and followed a UKAJI-led workshop at the Ombudsman Association’s Biennial Conference which aimed to strengthen links between practitioners and the academic community.



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 and to outcomes. 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 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'.<sup>125</sup>

Researching aspects of users' experience has been achieved through the filter of a third party, such as legal advisers, who can themselves relay their understanding of their clients' experiences.<sup>126</sup> 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.

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 and distinguish the more accessible, 'softer' seams in the rocks from the less accessible, 'harder' seams, perhaps by 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.

We are aware that untapped data resources exist. Ombuds and dispute resolution services, for example, have expressed an interest in working with researchers to help analyse the data these services 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, by establishing informal liaison groups that enable officials and researchers to work with each other over time. In doing so, they can jointly identify common interests and opportunities to improve understanding of the system while at the same time maximising opportunities for beneficial research within existing constraints.

## Section 3 – Where we need to go

### 3.1 Preliminary Comments

#### **Administrative justice is an area with distinct characteristics and requires particular attention.**

Although some research needs are common across justice systems, administrative justice is an area with distinct characteristics that requires particular attention. These characteristics lie in what we have referred to as the scale, relevance, and reach of administrative justice. Administrative justice starts with decisions made by public or private bodies exercising public functions, whereas other aspects of civil justice start with a dispute between parties. Administrative justice is also distinct from other aspects of the justice system in the diverse range of remedies and procedures used to redress grievances extending beyond adjudication. As one respondent to the consultation commented, administrative justice is concerned with protecting citizens from state power and securing trust in government. As such, administrative justice links law, justice and policy in ways that civil justice typically does not and encompasses much that is beyond other aspects of the justice system.

#### **We need a more strategic approach to research and to identifying priority themes and needs, but we must not lose innovation and diversity.**

One of our primary conclusions is that a more strategic approach to research and to identifying research priorities is required in this area. Having said this, we do not intend to diminish the importance of traditional researcher-led initiatives. Administrative justice is a rich area for research, and innovative and important work should continue to be done by those driven by their own interests, experiences, expertise and concerns. We agree with those who told us that it is important to encourage a variety of socio-legal approaches; to retain routes to funding for piloting work; and to facilitate work that is more theory based than empirical and work that simply does not fit prevailing priority areas but which may have significant longer term value including

to the development of theory. In presenting this roadmap, we do not intend to diminish the value of pluralistic approaches to research on administrative justice. On the contrary, we hope that in this road map we have drawn priority areas and issues in a manner that is sufficiently broad to accommodate diversity in focus, approach and scale of research work.

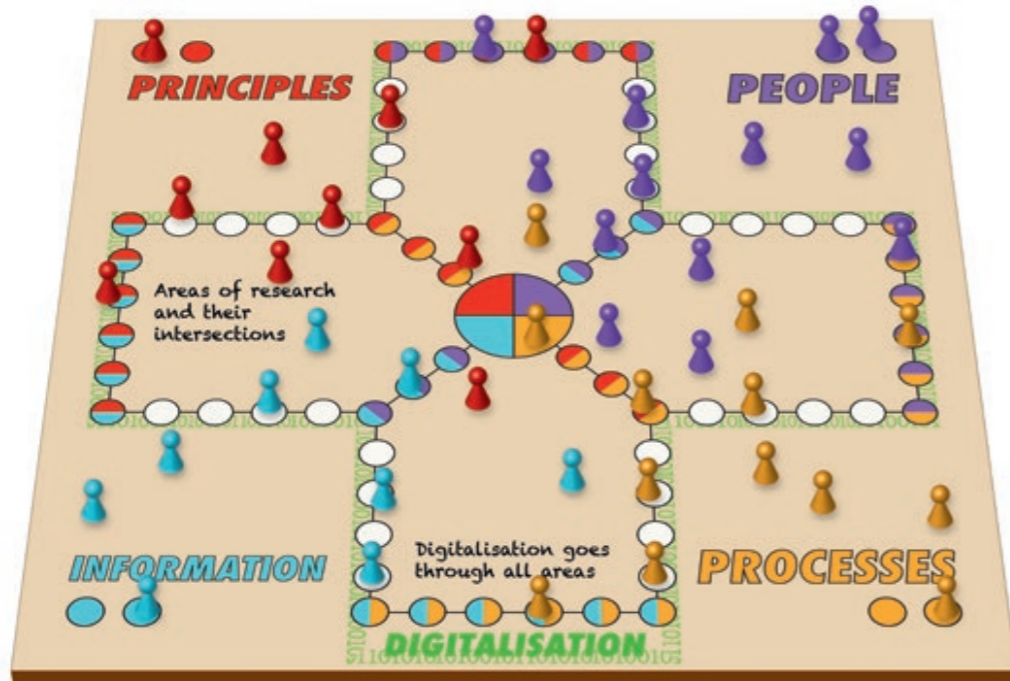
#### **Principles, people, processes and information**

In our consultation paper we considered research priorities using four overlapping themes or heads – principles, people, processes and information – while noting the cross-cutting importance of developments such as digitalisation and the potential implications of new technologies, including artificial intelligence (AI) and automated decision-making. Respondents who commented on these headings found them helpful in understanding the overall research terrain in this area. While the headings do not constitute discrete and clearly demarcated research topics, we think they provide useful points of reference for the roadmap.

<sup>125</sup> 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](http://epapers.bham.ac.uk/3014/1/cepler_working_paper_2_2017.pdf)

<sup>126</sup> 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>; and see Lindley, A (2017), 'Injustice in Immigration Detention: Perspectives from Legal Professionals', Bar Council.





**Principles:** By principles, we mean the values that are fundamental to the system and to peoples' trust in the worth of the system and its ability to provide justice. Such principles include independence, fairness, transparency, accountability and respect for human dignity, equalities and human rights, matters that are central to the core requirements of the rule of law. As Nick O'Brien has noted, human rights are integral to identifying a set of shared values and to engendering trust in institutions;<sup>127</sup> he argues for 'the need to think increasingly in terms not so much of isolated human rights and administrative justice institutions but of interlocking "networks of accountability", in which first-instance decision makers, case reviewers, ombuds, human rights institutions, regulators and the courts all have a distinctive part to play.'<sup>128</sup>

Whether, and to what extent, systems satisfy principles is of normative importance. As recent events have shown, it is also of considerable practical importance, including in relation to the legality of government decision making. In

*UNISON* Lord Reed, speaking for the UKSC, stressed the need for greater understanding, including by implication within government, of the importance of these foundational principles both to users of the justice system and to society as a whole:

*'The constitutional right of access to the courts is inherent in the rule of law. The importance of the rule of law is not always understood. Indications of a lack of understanding include 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. The extent to which that viewpoint has gained currency in recent times is [...] epitomised in the assumption [in government consultation papers and reports] that the consumption of ET and EAT services without full cost recovery results in a loss to society, since "ET and EAT use does not lead to gains to society that exceed the sum of the gains to consumers and producers of these services".'*<sup>129</sup>

<sup>129</sup> R (on the application of UNISON) v Lord Chancellor [2017] UKSC 51, per Lord Reed, para 66.

This judgment sends a clear message that compliance with fundamental principles is not optional but must be taken seriously by policy makers. It also highlights the importance of empirically based evidence in determining whether appropriate attention is paid to principles.

**People:** The second head, people, overlaps with principles and is concerned with how individuals (including those with particular vulnerabilities) access, experience and engage with administrative justice, as well as those who fail to access it 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). As we have noted, there has been long and well-established interest in research on these issues, and they are especially important during a period of radical change to legal aid and support and to the wider justice system. As several respondents to our consultation argued, there is also a need to improve understandings of how administrative justice systems (and reforms) impact on different groups, for example, 'who may gain in the process and who may lose, and the cumulative effect of this'.

Once again, the *UNISON* decision, and Lady Hale's judgment in particular in relation to the indirect discriminatory consequences of the fees regime, underscores the very real importance of being able to draw on robust evidence to assess such matters.

Users are not the only people of concern. As Michael Adler stressed in his response to the consultation, the user:

*'... is NOT the only perspective that should attract the attention of researchers. In addition to looking 'down' at users, researchers should also look 'up' at decision makers. There has been an almost complete absence of research on administrative (and judicial) decision makers and, in spite of the obvious difficulties associated with this ... I don't think that we should give up on that.'* (emphasis in the original)

Others highlighted similar themes, arguing for the need for research on decision-makers across administrative justice, including those responsible for initial decision-making, those undertaking administrative reviews, and tribunal decision-makers. While stressing the importance of such work, Robert Thomas also pointed out the obstacles:

*'From my experience, perhaps the biggest practical obstacle to administrative justice research is getting research access – not just to data, but to interview decision-makers/judges or even to get a copy of a tribunal decision.'*

**Processes:** There is much to be done on the operation of systems themselves. Such work inevitably touches on many of the issues we have already considered under principles and people. One respondent, for example, said that:

*'A very large proportion of the injustice caused by bad administration comes in my view from, in no particular order, poor procedures, poor decision making, inadequate internal review and inadequate or politically skewed policy making or implementation. Putting those things right is of course financially virtuous as well as naturally just and ought to be welcomed by efficient government. ... good administrative justice is as much or more about good administration as it is about good adjudication.'*

<sup>127</sup> O'Brien, N (2018), 'Administrative Justice in the Wake of I, Daniel Blake', *The Political Quarterly* (forthcoming) Volume 89 Issue 1, available at <https://ukaji.org/2017/09/25/administrative-justice-in-the-wake-of-i-daniel-blake/>

<sup>128</sup> O'Brien, N (2016), 'Ombuds and national human rights institutions: Still learning to speak the same language?', UKAJI blog 1 June 2016, <https://ukaji.org/2016/06/01/ombuds-and-national-human-rights-institutions-still-learning-to-speak-the-same-language/>

Research concerning processes could be concerned with filtering processes and triage; alternatives to adjudication; the use of pilot initiatives; relationships between complaint and redress mechanisms including tribunals, judicial review, ombuds and mediation. There is also a continuing need to develop work on how organisations can learn from mistakes and the value of feedback. There are cultural issues about an organisation's willingness to consider and apply potential learning from earlier actions. These issues remain of importance.

**Information:** There is now greater opportunity than ever to acquire and use information – about, for example, who is accessing systems, initial decision-making, redress mechanisms and outcomes – but this opportunity needs to be approached with some care. Given the courts and tribunals reform programme, including 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 compliance with the law relating to data protection; researchers' access to data (and indeed departments' access to data managed by private contractors and issues relating to data sharing more widely); what data is collected and how researchers know what is recorded; consistency of data across systems (including, for example, consistency of data collected and published by different tribunals); and how data is used by providers and decision-makers. Important issues also arise in relation to how information is obtained and used in relation to particular complaints and disputes, given the requirements of data protection.

In addition, there are issues around how users and decision-makers discover information and use evidence, and how providers such as local authorities use information about tribunal decisions, for example concerning decisions of the Special Educational Needs and Disability (SEND) Tribunal. 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 there has been little, if any, robust analysis of the data concerning this. Similar issues arise in relation to ombuds' 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.

### 3.2. Priority needs

The above survey of issues, while far from exhaustive, provides a sense of the breadth and diversity of potential research needs concerning administrative justice in the UK. A case could be made for priority to be given to many of the issues mentioned, and no doubt to others not mentioned. The following, however, are the priorities that we have identified based on comments and feedback received, their relevance to reform agendas, our assessment of the gaps in the research, and our view of the importance and urgency of the issues and of where resources and capacity may be best used.

#### The need for better information and the need to make better use of information

There is a basic need to improve the quality of information that is available 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 not always be clear what information is available and whether it exists in a form that can be used by internal government analysts, let alone independent researchers. To take one example, at present there appears to be little if any consistency in what data is collected across systems, including across tribunals. This makes it difficult, if not impossible, to compare how systems are used and function. It points to a need for standards intended to achieve greater consistency in the nature of the data collected, the manner

of its collection, whether and, if so, how it is published.<sup>130</sup> As well as improving the ability to make comparisons across systems, a 'whole system' approach to information collection is needed to improve ability to examine systems themselves, including such matters as the effects of internal review mechanisms on access to administrative justice and the relationship between decisions, reviews and appeals.

These are areas of work that could benefit from greater collaboration between academic experts and advice groups, government departments and ombuds. For example, UKAJI has started work scoping data on social security, and similar scoping work would be valuable in relation to other areas of administrative justice such as tribunals and courts and immigration decision making and redress. Discussions with the MoJ have shown the MOJ to be interested in developing this work with a view to improving its own ability to analyse the data it collects.

Priority issues relating to information include:

- Understanding (through audit) what data is collected by departments and on tribunal appeals and judicial review, including statistics, decisions and guidance
- Understanding how datasets are 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
- Identifying what information exists on key matters such as costs and how this can be improved and greater consistency achieved in order to enable better comparison across departments and mechanisms, and facilitate research including studies of costs of not getting decisions right first time
- Achieving more granular management and demographic information on users of tribunals and ombuds in order to help identify

non-users

- 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)
- Working to improve consistency of available operational and outcome data across ombuds systems and data sharing

#### New Technologies and Administrative Justice

At various points in the report we have highlighted the importance of understanding the implications of new technologies for administrative justice. This is clearly a priority area. Indeed, a claim could be made that this is the single most important field for investigation across the justice system, and that this is where research resources should be concentrated.

These technologies 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). The use and development of new technologies potentially offer considerable opportunities, including for researchers. However, they also raise serious ethical issues, pose potential threats to human rights and the quality of justice<sup>131</sup> and raise new issues of data governance.<sup>132</sup> New technologies also have potential to transform how law is developed and scrutinised, matters of interest to constitutional lawyers but also important to the

<sup>130</sup> One Scottish tribunal (First-tier Tribunal for Scotland (Housing and Property Chamber)) presents an example of transparency that assists research – all its decisions are published on the tribunal's website, as is an annual report with statistics on case numbers and outcomes; see <https://www.housingandpropertychamber.scot/previous-tribunal-decisions>

<sup>131</sup> See ESRC project on Human Rights Big Data and New Technologies (HRBDT) based at the University of Essex: [www.hrbdt.ac.uk](http://www.hrbdt.ac.uk)

<sup>132</sup> *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>



empirical study of accountability for new policy initiatives.<sup>133</sup>

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 on-line 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. 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.

Priority issues relating to new technologies and administrative justice include:

- Achieving better understanding of attitudes to digital services, and more in-depth knowledge of the digital divide and how this will affect access to justice in the reformed system
- Exploring whether, and how, initiatives such as automated decision-making can be undertaken in accordance with principles of accountability and open justice
- Assessing the opportunities offered by digitalisation for greater transparency and open justice and the risks and threats posed by digitalisation in the context of administrative justice, and how these risks may be overcome
- Assessing whether digitalisation can help

in sharing of good practice, standards, and guidance for decision-makers

- Evaluating the effects of increased digitalisation of tribunal work on outcomes, and the processes adopted by tribunals, and whether, for example, it will discourage inquisitorial approaches
- Assessing how access to support and advice will work in digital processes
- Identifying what are the costs and benefits generated by 'digital by default' in the context of administrative justice
- Identifying and addressing the various effects of planned digitalisation on users' engagement with administrative justice
- Considering whether new technologies such as AI will improve the quality of outcomes by, for example, making decisions more accurate and reliable

Across these areas there is scope for a variety of research approaches. These might include qualitative work examining users' experience of, and attitudes to, new technologies; independently evaluated pilot studies into the effects of digital approaches on procedural justice and outcomes in particular contexts; and more focused work examining the experience of particular sectors. An example of the latter might focus on the use of new technologies in relation to medical evidence in tribunals, including assessment of the effectiveness of the technologies and associated ethical and human rights risks such as those related to privacy and consent.

### Users and non-users

There is a need to build on the existing research on users and their 'journey' through the justice system to improve understanding of how people engage with administrative justice and the barriers they confront, both financial and non-financial. It is clear from our discussions with stakeholders that these continue to be of profound importance to trust in and effectiveness of systems especially during this period of major reforms.

As many have argued, and as has long been recognised, there also remains a need to know more about those who are not using systems. This includes understanding why people,

and especially the most vulnerable, might not complain about or challenge decisions that adversely affect them. It also includes work on broader demographic factors. An example is work which mapped the use of judicial review (JR) showing that litigation was unevenly spread and not closely associated with needs.<sup>134</sup> For the most part, the key factor determining whether people made JR claims was whether they had access to specialist legal advice. Resort to JR was very rare across vast tracts of the country where little or no specialist legal advice was available, highlighting the extent to which access to justice is likely to be dependent on factors other than legal need. This type of work illustrates the value of research on the broader demographic factors that throw light on barriers faced by populations and groups in relation to accessing the system.

Possibly the most challenging approach to researching such access issues is to start with those who are the most difficult to reach and engage with: those who are 'the furthest' from the system. This would include those most likely to be left behind by the digital agenda.<sup>135</sup> As one respondent explained:

*'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.'*

People in these groups are likely to be amongst the most dependent on administrative justice and the most affected by it. This is an area where the development of cross disciplinary qualitative research would be particularly fruitful. In this context, Grainne McKeever stressed to us the importance of developing and drawing on good stakeholder networks, including those concerned with giving advice, in order to gain access. She advised that networks will not be exclusively strategic:

*'Keeping in contact with stakeholders working in the systems you are interested in, and working with the users of those systems, will give ... additional opportunities to identify gaps and exploit them for mutual benefit. In social security, for example, working with the voluntary sector on a regular, sustained basis provides insight into systemic problems in the social security system, whether in the administration of benefits or in dispute resolution. Partnership working depends on building good relationships....'*

In an area such as this it is vitally important to develop close collaboration with those who are actively engaged with local communities and able to help to bring people together to engage with researchers. There are funders with experience supporting work with those who are likely to be furthest from the system, including, for example, the Trust for London's support for projects around peoples' 'lived experience', such as engaging with disabled people about their experiences of various decisions, and working with unemployed people to strengthen their voice and get them involved in speaking directly to JobCentre Plus managers about their experiences.<sup>136</sup> Such work provides models that may enable engagement of those who are furthest from the administrative justice with a view to better identifying and overcoming challenges to access. Various related research models have been suggested to us. Simon Halliday, for example, has suggested establishing a national network of researchers interested in doing longitudinal qualitative work with one or two individuals/families who are in a relationship with welfare state agencies in order to build up a dataset of rich accounts of ordinary people's engagements with the welfare state – the claiming and receiving of benefits, grievances, engagement with administrative justice mechanisms (or failure to do so). The aims would be to learn more, and at greater depth, about the lived realities of citizens' experiences and perceptions of the administrative state and the administrative justice system – looking at these institutions

<sup>134</sup> Sunkin, M, Calvo, K, Platt, L, and Landman, T (2007), 'Mapping the use of Judicial Review to Challenge Local Authorities in England and Wales', *Public Law* 545-567.

<sup>135</sup> Doteveryone, 'Why Better Digital Commissioning?', <https://projects.doteveryone.org.uk/improvingcare/pages/commissioning.html>

<sup>136</sup> <https://www.trustforlondon.org.uk/issues/work/moving/>; <https://londonunemployedstrategies.com>; <https://www.inclusionlondon.org.uk/campaigns-and-policy/act-now/>

<sup>133</sup> Richard Susskind recently proposed two areas of research needed in relation to the 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, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/constitution-committee/legislative-process/written/43991.pdf>

from the bottom up and in real time over a period of two or three years.<sup>137</sup>

Priority issues relating to users and non-users include:

- Identifying who is accessing the administrative justice system, such as by knowing more about the demographic characteristics of users and their geographical locations in order to shed light on key access issues
- Identifying and addressing unmet need and the needs of those who do not challenge decisions ('the furthest')
- Understanding levels of trust in the system, what factors increase or undermine trust and how these can be addressed
- Pinpointing early decision points and influence, including the role of the advice sector, information on routes to redress and choices made by complainants
- Exploring 'problem' complaining, such as persistent or vexatious complainants and how to encourage smarter complaints
- Modelling elasticity of demand for redress 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)
- Exploring the experiences of, and outcomes achieved by, those who use 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
- Exploring the 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
- Exploring the experiences of users across devolved administrations e.g. using the Social Fund as a case study for comparative research

### 3.3. A strategic, coordinated approach to administrative justice research

Meeting research needs across administrative justice involves many challenges. Some of the most immediate, concerning capacity, funding and access, have been identified earlier in this report. These need to be considered against the background of the sheer scale and diversity of administrative justice across the UK, and the large number of stakeholders affected, including government departments and other bodies involved in different aspects of the system. In addition, this is an area that often touches upon sensitive issues of government policy.

Given these considerations, our experience shows that there is a fundamental need for a fresh strategic approach to administrative justice research, founded upon far greater collaboration and knowledge sharing. In particular, while there is a rich and varied body of research, a more proactive and coordinated approach to research planning is required in order to ensure that:

- the value of research is fully recognised, including its potential contribution to peoples' trust in, and understanding of, public decision-making and systems of redress. 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 as 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.

In our consultation, we raised the possibility of establishing a new national body or centre responsible for identifying research needs and driving a national agenda for research on administrative justice. Various models and funding possibilities were posited. Our consultees agreed that there would be value in a body able to bring people together to share knowledge, identify research needs and encourage and support research initiatives. While some, including some research funders, suggested that such a body should be financed by government and industries as the beneficiaries of research, there was also a broader argument for public funding. The Public Law Project (PLP), for example, argued that:

*'any possible body would also be designed to be durable for a long period of time (with bodies such as this having a long history of having relatively short life spans). In that ideal world there might also be public funding available, recognizing the wider societal value of justice and the value of getting it right.'*

One concern with reliance on government funding was said to be the existence of potential conflicts in such an arrangement, including, for instance, the need to encourage research on its merits whether or not it serves government policy goals.

Given the limitations on public finances and the likely absence of enthusiasm for establishing a publicly funded body, PLP and others pointed to the possibilities offered by alternative funding models, for example, 'a charity, academic institution or organisation with a clear governance structure, lines of accountability to its funders and stakeholders, guarantees of independence, and with strong academic credentials. Funders might include charitable/grant-giving trusts and foundations, and/or academic institutions.'

We agree that there would be considerable value in establishing a national body or centre for research in administrative justice in the longer term. Having considered the various responses to our consultation, however, we consider the funding and institutional challenges to be such that in the short- to medium-term a more organic approach is preferable, but one that is structured and targeted on agreed priorities. Such an approach allows for more joint thinking about how challenges can be met in the current context and near future and for the development of a more collective vision. We suggest, therefore, that what is needed is continued coordinated engagement among the stakeholders from government, from academia, from practitioners and from voluntary organisations.

Our call for a more strategic approach echoes past and current initiatives, including the Administrative Justice and Tribunals Council's Research Agenda; the Ministry of Justice's Strategic Objectives; the mapping work in Northern Ireland, Scotland and Wales; and the recommendations of the 2015 Nurse Review of the UK Research Councils.<sup>138</sup> What we suggest in terms of next steps is in keeping with the prevailing mood and reflects the needs of government and of people. It should be possible to build on the Government's acceptance of the Nurse Review recommendations to provide a more strategic approach to departmental research and development programmes; a more sophisticated dialogue with academia; and documents that set out the most important research questions facing each department.<sup>139</sup> In light of financial and capacity constraints, departments need to work

<sup>137</sup> This could be funded or Halliday suggested it may be possible to share work across the network such that each linked researcher has only a minimal time commitment and is able to contribute on a pro bono basis.

<sup>138</sup> Nurse, P (2015), 'Ensuring a successful UK research endeavour: A Review of the UK Research Councils', Department for Business, Innovation and Skills, <https://www.gov.uk/government/publications/nurse-review-of-research-councils-recommendations>; Tom Sasse of the Institute for Government has noted that despite departments committing to publishing their Areas of Research Interest, 'government departments need to develop more comprehensive strategies for accessing the evidence and research they need'; Sasse, T (2018), 'Government still lacks a strategic approach to research', The Constitution Unit blog, 22 Jan 2018, <https://constitution-unit.com/2018/01/22/government-still-lacks-a-strategic-approach-to-research/>

<sup>139</sup> See Cabinet Office, Areas of Research Interest, <https://www.gov.uk/government/collections/areas-of-research-interest#departments'-areas-of-research-interest>



better with researchers, including those in academia; as has been noted, the Research Excellence Framework (REF) 'offers a huge potential resource for policy makers if they understand how to make better use of it'.<sup>140</sup> In turn, researchers need to better understand Government's priorities and research needs.

Over the coming year, UKAJI will seek to establish a partnership based around interested researchers in universities and others, including the new Administrative Justice Council, to flesh out the agenda set out in this roadmap and to stimulate research that will inform the quality of administrative justice in the UK. We plan to focus on engagement and collaborative activities to take forward the research priorities we have identified and to build consensus on administrative justice research strategy. In doing so we will work with partners (researchers, policy makers, practitioners, users) to encourage creative and pragmatic solutions to the challenges we have identified.

Building on the community of expertise established by UKAJI, we hope that this roadmap will further stimulate discussion and invigorate interest amongst academics and others in administrative justice research. It is our view that no research centre, organisation or department can take sole responsibility for progressing the priorities identified, just as the priorities themselves are the product of many minds and many consultation respondents. At the end of this report we have identified a number of action points and actors to take them forward. We are calling on all stakeholders to join in this effort.

### 3.4. 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. In setting out these actions we want to encourage a collaborative initiative that involves coordinated planning and making use of funding opportunities to improve the quality of research, with the ultimate shared aim of improving the quality of justice.

OUTCOME	ACTION POINT	ACTOR/S
<b>A healthy and robust research environment, in order to improve the quality of decision-making</b>	Take an overarching perspective and champion the value of research on administrative justice	<ul style="list-style-type: none"> <li>Government departments</li> <li>Administrative Justice Council, Justice Commission for Wales</li> <li>Private funders (trusts, foundations) and Research Councils</li> <li>Universities</li> <li>Researchers</li> <li>Third-sector bodies</li> </ul>
	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.	<ul style="list-style-type: none"> <li>Government departments and public bodies</li> <li>Administrative Justice Council, Justice Commission for Wales</li> <li>Judiciary</li> </ul>
	Recognise the broader social value of research rather than taking a narrow 'business' case approach that focuses only on potential cost savings	<ul style="list-style-type: none"> <li>Government departments and public bodies</li> </ul>
	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	<ul style="list-style-type: none"> <li>Government departments and public bodies</li> <li>Ombuds and redress bodies</li> <li>Third-sector bodies</li> </ul>
	Collaborate to enable a holistic approach to research in order to address lacunae or potential duplication of projects within the same research area	<ul style="list-style-type: none"> <li>Government departments and public bodies</li> <li>Administrative Justice Council, Justice Commission for Wales</li> <li>Private funders (trusts, foundations) and Research Councils</li> <li>Researchers</li> <li>Third-sector bodies</li> </ul>
	Promote and fund the development of research proposals	<ul style="list-style-type: none"> <li>Funders</li> <li>Researchers</li> <li>Universities</li> </ul>
<b>Shared learning across the administrative justice system</b>	Build research and evaluation into system design	<ul style="list-style-type: none"> <li>Government departments and public bodies</li> <li>Parliament</li> <li>Judiciary</li> <li>Ombuds and redress bodies</li> </ul>
	Commit to transparency in research activity, including publishing research reports	<ul style="list-style-type: none"> <li>Government departments and public bodies</li> <li>Ombuds and redress bodies</li> </ul>
	Learn from approaches taken to developing administrative justice within all UK administrations	<ul style="list-style-type: none"> <li>Administrative Justice Council, Justice Commission for Wales</li> <li>Government departments and public bodies</li> </ul>
	Use research in system design reform, in individual decision-making and in ongoing monitoring of system	<ul style="list-style-type: none"> <li>Government departments and public bodies</li> <li>Parliament</li> <li>Ombuds and redress bodies</li> </ul>
	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.	<ul style="list-style-type: none"> <li>Government departments and public bodies</li> <li>Ombuds and redress bodies</li> <li>Third-sector bodies</li> </ul>

<sup>140</sup> Sasse, T (2018), 'Government still lacks a strategic approach to research', The Constitution Unit blog, 22 Jan 2018, <https://constitution-unit.com/2018/01/22/government-still-lacks-a-strategic-approach-to-research/>

OUTCOME	ACTION POINT	ACTOR/S
<b>Opportunities to experiment and collaborate</b>	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.	<ul style="list-style-type: none"> <li>Private funders (trusts, foundations) and Research Councils</li> <li>Government departments and public bodies</li> </ul>
	Facilitate access to people and data	<ul style="list-style-type: none"> <li>Government</li> <li>Judiciary</li> </ul>
	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	<ul style="list-style-type: none"> <li>Private funders (trusts, foundations) and Research Councils</li> <li>Universities</li> </ul>
	Consider a spectrum of funding opportunities, including small grants for developmental or pilot work, mid-range and large grants for research teams and consortia	<ul style="list-style-type: none"> <li>Private funders (trusts, foundations) and Research Councils</li> <li>Universities</li> </ul>
	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	<ul style="list-style-type: none"> <li>Universities</li> <li>Administrative Justice Council, Justice Commission for Wales</li> <li>Private funders (trusts, foundations) and Research Councils</li> <li>Researchers</li> <li>Third-sector bodies</li> </ul>
	Support initiatives to bring academic researchers and other stakeholders together to identify research needs and design and facilitate research on administrative justice	<ul style="list-style-type: none"> <li>Private funders (trusts, foundations) and Research Councils</li> <li>Researchers</li> <li>Universities</li> <li>Third-sector bodies</li> </ul>
	Contribute to networks, including those directed at early career researchers, concerned with administrative justice	<ul style="list-style-type: none"> <li>Researchers</li> <li>Universities</li> <li>Private funders (trusts, foundations) and Research Councils</li> </ul>
	<b>More can be done with less</b>	Consider creative approaches to funding possibilities, and consider whether some types of research can be done without funding
Engage with practitioners and third-sector bodies to facilitate use of existing data for projects reflecting shared interests		<ul style="list-style-type: none"> <li>Researchers</li> </ul>
Make more use of existing rights to information e.g. Freedom of Information requests		<ul style="list-style-type: none"> <li>Researchers</li> <li>Third-sector bodies</li> </ul>
Explore consultation processes and public engagement with decision-making as key research areas		<ul style="list-style-type: none"> <li>Researchers</li> </ul>

## Appendix – Contributors to the consultation

UKAJI is grateful to all those individuals who contributed feedback to the consultation on this roadmap between May and December 2017. They include:

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