



## Administrative justice briefing note 1

### **PATHWAYS: FROM INITIAL HANDLING AND FILTERING TO SORTING AND SETTLEMENT**

1. As part of its initiative on administrative justice<sup>1</sup>, the Nuffield Foundation wishes to fund further work on the initial selection, filtering and handling of grievances, complaints, claims and appeals that take some step beyond the initial decision<sup>2</sup>. One aim is to understand why some cases go forward while others – equally good – are not pursued. Conversely, we are interested in why some cases that should not be pursued do in fact go forward. We are also interested in studies that might shed light on alternative means of handling some kinds of complaints or problems. Finally, we are interested in how starting points or turning points affect outcomes and results.
2. In any of the projects that it funds in this area, the Foundation would hope to go beyond purely descriptive work to projects that might yield recommendations to bring about real improvements in different situations.
3. For the reasons given in our summary announcement<sup>3</sup>, the Foundation will not fund work starting with a population screen of initial claims to consider ‘unmet need’. This would involve consideration of a wider range of issues involved in public administration, going beyond ‘administrative justice’, and is therefore beyond the scope of this initiative.
4. In addition, proposals should consider issues such as proportionality and resources, and the benefits of early resolution or the early determination of weak claims.

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<sup>1</sup> The Foundation published its intent to fund a significant programme of work on administrative justice in January 2007. See our website, [www.nuffieldfoundation.org](http://www.nuffieldfoundation.org).

<sup>2</sup> We will call these ‘cases’ from here on, but we do not mean to imply that all of these become ‘cases’ in the legal sense: just that they have been taken some subsequent step after the original decision has been made.

<sup>3</sup> These concerns were: that it was unclear what would be gained analytically from bringing together a disparate range of issues from the first claim; that in this case many of the claims did not start as clear problems or grievances but were actually requests for a service or benefit to which applicants might not be entitled; that the concept of ‘unmet need’ was in this area rather elastic, and partly a function of resources and variable social norms; and that work of this sort would be difficult to do practically. All of these difficulties would be substantially mitigated by starting with samples of those who had already taken some first step or by looking at a particular type of claim and seeking to understand what makes some go forward while others do not.

5. The Foundation is interested in funding a number of projects in this area. Proposals for research in this area are more likely to succeed if they:
  - Start with a precise question or set of questions which the empirical study is designed to answer or assess. Issues of interest might include: the difference that access to advice or representation, either legal or non-legal, might make (especially in particular kinds of cases); how the material importance of the claim or its evident merit might be distinguished from the claimant’s sense of grievance or determination to pursue the claim (again, for particular kinds of cases);
  - Consider whether ‘telling comparisons’ would be useful. These might involve, for example: comparisons of outcomes for seemingly “equally deserving” cases (perhaps using innovative methods, such as peer review, to judge these); comparisons of similar cases proceeding with and without advice or representation; comparison of otherwise similar cases with different starting points (different agencies or advice centres); comparison of outcomes in different problem areas or with different adjudicating regimes but where other aspects of cases are similar. Comparisons should be chosen to shed light on how different processes might improve outcomes or where different processes (for instance, those with greater emphasis on early fact-finding) might improve decision-making. Comparison of the links between initial steps and final determinations in other jurisdictions may also be of interest, including continental jurisdictions where ‘inquisitorial’ proceedings are more normal.
  - Consider whether evaluations of procedural innovations would be useful, and if so, consider whether these should compare outcomes with those using ‘standard’ procedures. For instance, in the areas of special educational needs or benefit appeals, it might be useful to compare outcomes for otherwise similar cases using some form of early dispute resolution (for instance, early neutral evaluation of disability living allowance) and those not using it.
  - Consider whether a focus on ‘turning points’ or a longitudinal study design might help determine effective interventions or determinants of outcomes.
  - Consider whether the use of innovative methodologies – methodologies other than surveys or qualitative interviews – could be useful. The Foundation is interested in proposals using, for instance, methods such as peer review to judge the ‘similarity’ or complexity of cases, or whether they might require representation. Studies of levels of agreement among peer reviewers might also be of interest in particular circumstances.
  - Consider convening expert but diverse advisory groups to consider what implications any empirical findings might have for policy or practice in particular areas. Ideally such advisory groups should include not only academics but

- practitioners, and should include those with different types of experience (for instance those who represent cases, adjudicators, and initial decision-makers).
6. Where appropriate, partnerships between those with some understanding of the legal framework and those with other disciplinary skills will be of particular interest. The Foundation thinks there could be special merit in research teams including both legal experts and political scientists or those involved in work on social and public administration.
  7. The Foundation will consider funding a number of research projects in this area. Each project should start with a set of clear questions and a well-considered methodology. The use of telling comparisons is likely to be crucial, as our hope is that all projects will be of considerable analytic and conceptual importance in setting an agenda for studies in this area, as well as providing findings with implications for practice (and not just further research).
  8. Because the Foundation has recently funded projects in the area of immigration appeals in both England and Wales and Scotland, we will fund projects on immigration and asylum only if they complement these existing studies. **Otherwise, any area of administrative justice is potentially of interest:** these can affect matters ranging from education to benefit or pensions entitlement to mental health to lands registry and so on.
  9. **Outline applications for research on pathways can be considered at any of our normal outline dates over the next two years<sup>4</sup>** We will fund work in this area as and when applications arise. Outlines should follow the Foundation's normal guidelines<sup>5</sup> and should be two to four pages long, with a clear statement of the questions animating the research, a concrete description of the work that would be carried out, and a rough outline budget. We do not need full budget details at the outline stage.

### Contacts:

10. **For further information about any work in this area**, please contact Sharon Witherspoon, Deputy Director of the Foundation or her PA, Rocio Lale-Montes. Sharon can be reached by email via her PA ([rlale-montes@nuffieldfoundation.org](mailto:rlale-montes@nuffieldfoundation.org)) or by telephone on 020 7631 0566 or by writing to: The Nuffield Foundation, 28 Bedford Square, London WC1B 3JS.
11. This briefing note is being widely mailed to lawyers, political scientists, sociologists, and academics from social administration and social welfare departments. We have also notified the relevant learned societies. .

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<sup>4</sup> See [http://www.nuffieldfoundation.org/go/grants/accesstojustice/page\\_382.html](http://www.nuffieldfoundation.org/go/grants/accesstojustice/page_382.html)

<sup>5</sup> See [http://www.nuffieldfoundation.org/go/grants/accesstojustice/page\\_57.html](http://www.nuffieldfoundation.org/go/grants/accesstojustice/page_57.html)