



Administrative justice briefing note 2:

FEEDBACK MECHANISMS AND ADMINISTRATIVE JUSTICE

1. As part of its initiative on administrative justice¹, the Nuffield Foundation wishes to fund further work on ‘feedback’: the variety of methods used by adjudicators to inform and educate ‘first tier’ decision-makers. The Foundation would hope to go beyond taxonomies and explore the types of feedback that might yield real improvements in different situations.
2. We start with various observations that any proposals would want to bear in mind. First, there is likely to be no one ideal way to provide feedback; since feedback mechanisms and methods rest on the structured relationships between decision-makers and adjudicators of various types, different means may be useful in different areas. Second, while there are of course legitimate concerns about the independence of adjudicators, there is no principled reason why provision of feedback about general or systemic problems should compromise the independence of either adjudicators or decision-makers. Third, for reasons stated in its initial announcement, the Foundation is focussing specifically on the issue of feedback and the role of adjudicators of various types, not on the wider panoply of training that public administration might involve.
3. The Tribunals Service has produced a very useful starting point for this work, in the form of a ‘Research Issues Paper’ on Feedback by Professor Martin Partington and Mr Ed Kirton-Darling, published on the Council on Tribunals’ web site.² That paper helpfully outlines a number of issues that arise in considering both formal and informal types of feedback. The Foundation is interested in both types of feedback and in a variety of ‘administrative justice’ settings. One issue highlighted there is that formal reporting mechanisms often benefit from being linked with select committee or other forms of oversight, while informal mechanisms often require commitment and cultural shifts on the part of the relevant Department or agency.
4. The Foundation is interested in funding two different types of work in this area.

Analytic Reviews

5. The first is **conceptual or analytic reviews of feedback mechanisms**. The Foundation is not however interested in taxonomies *per se* but rather in the light they might shed on

¹ The Foundation published its intent to fund a significant programme of work on administrative justice in January 2007. See http://www.nuffieldfoundation.org/go/grants/accesstojustice/page_382.html.

² See Council on Tribunals website, http://www.council-on-tribunals.gov.uk/adjust/07_1.htm#res1

existing practice and how to improve it. Proposals for reviews in this area are more likely to succeed if they:

- Start with a precise question or set of questions which the review is designed to answer or assess. That is, reviews should not be merely descriptive but also evaluate the strength or generalisability of any evidence.
 - Consider the effectiveness or usefulness of feedback for improving initial decision-making, as well as looking for other effects. Evidence could be gathered from previously published work or from desk research or interviews.
 - Consider the difficulties in defining improvements (from whose viewpoint? At what cost?); measuring improvements on more than one dimension might be one way to handle this.
 - Consider whether ‘telling comparisons’ would be useful. These might involve, for example: comparisons of audit and inspection regimes with adjudications or other forms of determination and how different regimes interact; comparisons of similar feedback mechanisms in different settings with different characteristics; comparison of feedback from processes where fact-finding is said to be the norm (such as ombudsmen), with feedback from other forms of adjudication or determination; comparison of systems used in other jurisdictions, including continental jurisdictions where ‘inquisitorial’ proceedings are more normal.
 - Consider the extent to which feedback can realistically counteract other pressures on initial decision-making, especially where there are cost-pressures or other reasons to make decisions in a particular direction, or in a particular way;
 - Consider possible negative effects of certain kinds of feedback, such as in encouraging defensive decision-making.
6. Where appropriate, partnerships between those with some understanding of the legal framework and those with other disciplinary skills in considering outcomes of public administration will be of particular interest. The Foundation thinks there could be special merit in partnerships between legal experts and political scientists or those involved in work on social and public administration.
 7. The Foundation would consider funding a number of such reviews but would prefer that these be complementary. **We would rather fund several reviews each with clear questions and a well-considered methodology than one over-arching review that may survey the literature but would be less likely to result in lessons for practice.** Our hope is though that this work will be of considerable analytic and conceptual importance too.
 8. Because we would like potentially to consider applications for these reviews in the round, we are proposing a time-limited initiative for this element of the work. **We would like to**

receive all outlines for this type of work by 18th June 2007. Outlines should take the normal form required by the Foundation and be no longer than 4 pages with an outline budget. We would then short-list applications and seek full applications in September for decision making at our November meeting.

Empirical research

9. The second type of work that the Foundation wishes to fund in this area is **detailed empirical studies** of the workings of particular feedback mechanisms.
10. Here too the focus should be on research that is not only of descriptive interest but that is likely to have implications for how to improve practice. To that end, many of the same considerations apply as in the case of the analytic reviews. Specifically, proposals for empirical work in this area are more likely to succeed if they:
 - Start with a precise question or set of questions which the research is designed to answer or assess. That is, research should not be merely descriptive but should also evaluate the strength or generalisability of any evidence that is gathered, and should consider how it will evaluate the link between feedback mechanisms and improvements in initial decision-making.
 - Consider the difficulties in defining improvements (from whose viewpoint? At what cost?); measuring improvements on more than one dimension might be one way to handle this.
 - Consider whether quantitative as well as qualitative data is needed and how to evaluate the effectiveness of feedback.
 - Consider whether ‘telling comparisons’ would be useful. These might involve, for example: comparisons of audit and inspection regimes with adjudications or other forms of determination and how different regimes interact; comparisons of similar feedback mechanisms in different settings with different characteristics; comparison of feedback from processes where fact-finding is said to be the norm (such as ombudsmen), with feedback from other forms of adjudication or determination; comparison of systems used in other jurisdictions, including continental jurisdictions where ‘inquisitorial’ proceedings are more normal.
 - Examine the extent to which feedback can realistically counteract other pressures on initial decision-making, especially where there are cost-pressures or other reasons to make decisions in a particular direction, or in a particular way;
 - Look for evidence about possible negative effects of certain kinds of feedback, such as in encouraging defensive decision-making.
 - Consider whether use of innovative methodologies – methodologies other than surveys or qualitative interviews – would be useful. The Foundation is also interested in seeking

evidence using, for instance, methods such as peer review or other methods appropriate for measuring improvements in public service.

11. Where appropriate, partnerships between those with some understanding of the legal framework and those with other disciplinary skills in considering outcomes of public administration will be of particular interest. The Foundation thinks there could be special merit in partnerships between legal experts and political scientists or those involved in work on social and public administration.
12. The Foundation would consider funding a number of empirical research projects in this area. **We would rather fund several projects each with clear questions and a well-considered methodology than one over-arching empirical study.** The use of telling comparisons is likely to be crucial here, as our hope is that this work 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).
13. Because the Foundation has recently funded projects in the area of immigration appeals in both England and Wales and Scotland, we will only fund projects on immigration and asylum 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 and so on.
14. **Outline applications for empirical research on feedback can be considered at any of our normal outline dates over the next two years.**³ We will fund work in this area as and when applications arise. Outlines should follow the Foundation's normal guidelines⁴ 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:

15. **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) or by telephone on 020 7631 0566 or by writing to her at: The Nuffield Foundation, 28 Bedford Square, London WC1B 3JS.
16. 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.

³ See http://www.nuffieldfoundation.org/go/grants/accesstojustice/page_382.html

⁴ See http://www.nuffieldfoundation.org/go/grants/accesstojustice/page_57.html