



Virtual hub for administrative justice research and development: prospectus

1. SUMMARY AND BACKGROUND

The Nuffield Foundation wishes to invite applications for grant funding for a research team to provide a 'virtual hub' for the review, coordination and sharing of empirical research evidence relating to administrative justice and to build links between research, policy and practice communities. This grant would be for a maximum of three years and is explicitly intended to provide pump priming, after which the virtual hub (or alternative model identified during the grant) should plan to be self-supporting. The total grant funding available from the Foundation is £250k over three years.

Background and rationale for a Virtual Hub in Administrative Justice

The Nuffield Foundation has had a longstanding interest in research and evidence on administrative justice issues as part of its Law in Society programme, but has for some time been concerned about limited empirical research capacity in this and other areas of socio-legal studies¹.

Administrative justice is one of four substantive areas of interest within the Foundation's *Law in Society* programme. It relates to the law, procedures, and systems that individual members of society can use to challenge decisions, typically made by state institutions, which regulate their lives. The focus of our work in this area is not on public administration *per se* but on how dispute resolution may be improved from the point of view of the individual. To date, our work has focused on mechanisms for redress for citizens *via à vis* the state, especially in relation to the workings of tribunals. But forms of redress for consumers in the context of disputes with business – especially in sectors which were previously state functions or where the state plays a strong regulatory role – have the potential for useful comparison.

The administrative justice system is a key mechanism for individuals to hold the state, public services, and state regulated businesses to account, and as such is important to the overall legitimacy and accountability of the justice system. This in itself would be reason enough to

¹ The Nuffield Foundation funded an inquiry on empirical legal research and the final report and recommendations were reported in Genn et al (2006) – Law in the real world: improving our understanding of how law works.

justify the Foundation's continued interest in the topic, but it remains a priority for a range of additional reasons. A variety of policy reforms – for example in welfare entitlement, the role of local authorities in education provision, tightening of immigration and asylum, and relaxing of some employee protections - are in train which will fundamentally affect the basis of decisions that the state and others make in regulating private lives. At the same time other measures – such as changes in the scope of the legal aid scheme, and the introduction of fees across a range of services, including tribunals - are likely to affect whether and how individuals can access different forms of redress.

But despite the importance of the topic, administrative justice issues are relatively under-researched, especially using empirical methods on outcomes as well as processes. And although many refer to the administrative justice 'system', this is more a conceptual term than a physical reality. In practice the different mechanisms for redress have developed and continue to operate in isolation, with the result that there has been relatively little attention to comparative work. There is increasing interest in the potential for tribunals – which are high volume, involve a continuum of adversarial and inquisitorial approaches to adjudication, and whose users frequently represent themselves – to offer a potential 'test bed' for understanding and improving legal processes in a context where traditional assumptions about their value are being fundamentally challenged. At the same time, there are questions about the potential overlap in - and opportunities for cross-fertilisation between - the work of ombudsmen, tribunals and other mechanisms for dispute resolution. A particular issue is whether the wider systemic interventions that ombudsmen may offer (in the form of practice guidance, especially as developed in the consumer ombudsmen models) might be usefully further developed for application in the statutory systems.

In addition to providing 'responsive' grant funding for individual research projects addressing specific aspects of administrative justice, the Foundation is now considering the need for other types of investment which may help build capacity for further empirical work on this important topic. Our initial analysis and informal consultations with stakeholders suggest there are a range of reasons why there have been a relatively limited number of empirical and comparative studies undertaken in this area to date.

One set of reasons relate to the sheer complexity of the system, which covers more than 20 different tribunal jurisdictions as well as a range of ombudsmen schemes and other forms of redress which have largely developed separately. Although this is now changing, for example with the majority of English and Welsh tribunals having been brought together under single management with the Courts in the establishment of HMCTS, it remains difficult to get a clear sense of the system as a whole. This in turn makes it more challenging for researchers to keep abreast of key policy developments and innovations, and opportunities for comparative research.

Another set of reasons is connected to the lack of data providing systemic information on the number and type of cases, parties to the cases, and their outcomes. Although some of this information is available for different parts of the system, data tend not to be collated on a consistent basis, nor are they usually in an easily analysable or anonymised format. This means that researchers have tended to rely on case-file analysis or observational studies which tend to be smaller scale. Studies using these methods also require more complex access arrangements via the courts, with gatekeepers rightly needing to balance the need to

protect sensitive information and scarce public resources against the value of research intelligence. The lack of overview data also makes it harder to determine what the focus of any smaller scale study should be.

A final set of reasons for the limited number of empirical studies relates to the relatively small field of researchers with an interest in rigorous empirical research on this topic, and the limited opportunities for dialogue and exchange between researchers and decision-makers in the administrative justice system. Individual seminars, events, and conference – including those organised by the Nuffield Foundation, AJTC, MoJ and others – have generated valuable discussion and ideas, but with little systematic follow-up. One of the things that the AJTC did as it prepared for dissolution, was to set out a possible future research agenda² which provides a useful reference document for past research reviews and a structure for thinking about future research. And the recently established Administrative Justice Forum (AJF) has been established to advise the Ministry of Justice on its oversight of the administrative justice system³.

What is needed now is greater momentum in ensuring that learning from objective evidence is applied, and that substantial new policy and practice developments are empirically tested. It is the Foundation's view that it would be useful to engage additional researchers and academics working in related fields and disciplines to complement the input of socio-legal researchers. This is particularly so insofar as we are interested in issues such as 'feedback loops' between tribunal etc decisions and early decision-making and how to improve the incentives for better early decision-making, where economic sanctions or understanding how to improve public administration may be useful. To that end, we welcome applications that include disciplines such as economics, psychology or public administration.

A new approach

The Foundation now wishes to commission a three year initiative which will kick start the expansion of empirical research - drawing on a range of disciplines, including but not confined to socio-legal studies – to address the following sets of issues and questions.

- The **operation of different administrative justice mechanisms** (including different tribunals, ombudsmen and mediation) - how they work, what their strengths and weaknesses are, and what principles might guide policy-makers when choosing between them. This includes an interest in the relevance and purpose of proportionate dispute resolution, the balance between inquisitorial and adversarial approaches, and the fitness for purpose of current structures and systems to hold to account state institutions, public service providers, and businesses in which the state plays a strong regulatory role. A particular issue is whether tribunals or ombudsman systems might be adapted to have a stronger role in issuing guidance and systemic rulings that reduce case-by-case adjudication.

² AJTC (2013): A Research Agenda for Administrative Justice. This can be found at http://ajtc.justice.gov.uk/docs/AJTC-RA-Mar2013_WEB.pdf

³ For more information about the ADF please see <https://www.gov.uk/government/policy-advisory-groups/administrative-justice-advisory-group>

- Incentives and structures for **encouraging good early decision-making** that could avoid disputes which may later require resolution in court or through other formal redress mechanisms. This will require an improved **understanding of system users**, as well as of types of cases, and the options for improving feedback to initial decision-makers with the aim of improving system design. Examples that might be worth reflecting on are the work of the 'Nudge Unit' in forms design (to encourage, for instance, the collation of relevant supporting information at the time of application), or 'apps' such as the 'Self Evident' work of Witness Confident to structure the collection and submission of evidence related to legal claims or witness statements.
- **Efficiency and effectiveness** Given the context of limited resources and increasing demand for redress, a key question is whether and how legal and other professional input can be 'designed in' the system so that a wider set of citizen's and consumers benefit, including increasing numbers who may not be able to access funded advice or representation? This is particularly timely at a time of constraint in the provision of legal aid, when policy-makers of all parties are going back to the original aims of tribunals that they should not always require legal advice and assistance. Could a more systematic or 'epidemiological' understanding of the patterns of cases, and how they progress, inform approaches to improve triage or tackle frequently occurring problems. Do Ombudsmen do something different in their systemic guidance and 'feedback' that Tribunals could learn from, or with suitable changes, adopt?
- **Access to justice.** What happens to those who do not have access to the formal legal system or legal advice, including non-court mechanisms for dispute resolution, alternatives to face-to-face provision and the role of non-legally qualified intermediaries.
- **Enforcement and outcomes** - looking at whether what is determined by a tribunal, ombudsman or other mechanism actually gets implemented; whether it is possible to improve feedback mechanisms; and the institutional options for improving monitoring and enforcement.

2. SCOPE

Given the analysis in the previous section, the Foundation believes there may be value in providing initial funding to encourage a more systematic and coordinated approach to the development of empirical research evidence; and to stimulate new work that is cross-disciplinary and addresses the policy and practice challenges of those responsible for system design. The overarching aims of this initiative are therefore to:

- Develop a coordinated research agenda, and stimulate new inter-disciplinary work
- Strengthen links between policy/practice and research communities
- Identify and tackle capacity constraints

A range of synthesis, review, dissemination and engagement activities are likely to be needed to meet these aims, and we refer to these collectively as a 'virtual hub'. In part, this label is designed to signal that we start with an assumption that the establishment of a new institution or centre is not needed as part of this initiative, especially since we wish to foster a plurality of approaches and expertise. The proposed scope of these coordinating and reviewing activities is set out below. However, we welcome suggestions from potential grant applicants for alternative or additional approaches which would better meet the needs for improved research infrastructure for administrative justice.

Develop a co-ordinated research agenda

A core activity in the grant will be to clarify priority research questions, synthesise and repackage existing material to answer them and consider how the remaining gaps might be addressed. Likely activities might include:

- Stakeholder workshops to identify and build consensus around priority research questions and gaps in the medium term. These need to involve both researchers and practitioners to ensure that any new research agenda builds on any practice developments and innovations in different parts of the administrative justice system.
- Undertake updated review(s) of national and international research in this area⁴. Applicants should identify specific themes they propose to address, and clarify what questions and hypotheses their reviews would seek to address, and how the outcomes might inform practice.
- Undertake methodological work to identify and develop innovative approaches to addressing research gaps, for example using big data, experimental approaches or inter-disciplinary projects.
- Propose pilots or trial activities that might be tested with policy-makers and that could lead, in the longer term, to empirical trials of improvements to the system, especially those not dependent simply on the provision of more legal aid in individual cases.

Link the policy, practice and research communities

Our consultations with stakeholders suggest it would be valuable to strengthen the capacity of the existing research community engaged in administrative justice issues – by making links with international researchers, and encouraging a wider range of disciplines to participate in research in this area.

- Undertake stakeholder mapping of key groups – covering England, Wales, Scotland and Northern Ireland - with an interest or role in using, undertaking, commissioning or facilitating research on administrative justice issues and set out their key contribution and needs. The Administrative Justice Forum provides a useful gateway to the wider community of interest.
- Establish links with international researchers, academics and practitioners with an interest in administrative justice. These are likely to include those in

⁴ See, for example, the earlier review undertaken by Martin Partington et al (2007) which can be found at <http://ajtc.justice.gov.uk/docs/EmpiricalResearch.pdf>

Europe as well as common-law jurisdictions such as Canada, Australia, New Zealand and the US with similar tribunal systems to the UK.

- Consider whether there are stakeholders, especially researchers, who may not identify themselves primarily as administrative justice specialists, but who may have relevant expertise and interest to offer this subject.
- Develop and maintain a searchable database of researchers active in the field and their key interests. It would be especially useful to ensure that this captures and separately identifies early and mid career academics, from a range of disciplines, as well as international academics.

There is also a desire to find ways of sharing information about research and practice developments across research and policy/practice communities so that future research can have greater impact.

- Develop and maintain distribution lists for communication activities
- Test a range of mechanisms (including seminars as well as written or electronic briefings) for communicating information about developments in ongoing research, statistics, policy and practice to non-academic audiences.

Identify and tackle capacity constraints

We know that two limiting factors in undertaking empirical research are difficulties in negotiating research access, and limited availability of consistent data about numbers and types of cases going through the 'system'. A virtual hub could help scope the issues and make recommendations for addressing them, for example by:

- Undertaking a review/mapping exercise on the current data on specific aspects of 'administrative justice' and how they might be improved, including: coverage and any key gaps; comparability across tribunals, ombudsmen and other mechanisms; structure and format of data (on cases, individuals, processes, outcomes and costs); and availability and accessibility of key data.
- Consider whether there are ways of improving research access to data, case-files, complainants and adjudicators for research and analysis purposes. This might result in useful structural changes to make empirical research more straightforward if capacity were there to carry it out.

Evaluation and sustainability

The other main dimension to capacity building is the need to assess whether the virtual hub initiative has achieved a self-sustaining change in the approach to administrative justice research. The Foundation will lead on an evaluation of the success of the initiative, this work but is likely to require some supporting activity from the grant holder(s). The Foundation has identified the following criteria in evaluating the success of the initiative and applicants will need to consider what information they would be able to contribute to the Foundation's assessment:

- Extent to which the initiative has yielded specific new insights or avenues for further research;
- Extent to which it has increased capacity by bringing in additional disciplines;

- Extent of user engagement: this needs to extend beyond attendance and feedback at events and might include development of ideas for practice experiments/trials, or improvements data infrastructure and/or research and data access;
- Likely sustainability of activities, including whether there are clear plans for self-funded activities in the two years following the end of the grant.

SELECTION PROCESS, TIMESCALES AND OUTCOMES

The Nuffield Foundation invites applications from one or more existing institutions with an interest in administrative justice research. Collaborative bids (across institutions and jurisdictions) are welcomed, where this would help ensure the availability of the full range of skills and experience to deliver the range of proposed activities. Alternatively, individual organisations may decide to bid for only part of the work. Bidders are encouraged to offer additional activities to those suggested in the previous section, which they feel may better address the issues identified in the rationale for setting up a virtual hub.

It is expected that an Advisory Group will be established to oversee and advise the development and delivery of the virtual hub. This is likely to draw on representatives of the tribunal judiciary, HMCTS, MoJ, and equivalents in the devolved administrations, ombudsmen, legal practitioners, researchers in the field, and other bodies with an interest in administrative justice. Applicants should make recommendations for the proposed membership of their advisory group.

In terms of financial administration, a grant will be given to a host institution under specific headings, which should also be used to structure costs in the submitted application (see Annex 1). Payments will be made quarterly in arrears, following submission of a suitable invoice. 6-monthly progress reports will be required from the Principal Investigator throughout the life of the grant, setting out progress in the last 6 month period, proposed activities in the next 6 months and an updated financial statement.

Applications should be submitted using the application form at Annex A, to Alison Rees, Grants Administrator for the Nuffield Foundation's Law in Society Programme (arees@nuffieldfoundation.org) by 5pm, Tuesday 11 February 2014. Decisions are expected to be made in early May 2014. The Foundation's usual terms and conditions will apply to this grant.

Assessment process & criteria

Submitted applications will be independently peer reviewed by a minimum of three referees (national and international researchers and practitioners working in related fields). Reviewers will score applications against the criteria below and provide a narrative commentary. A Selection Panel will be convened to consider the applications and peer review comments, and recommend to the Foundation's Trustees which bid or combination of bids should be funded. The Selection Panel will be recruited to cover a range of subject, practice and research expertise relating to administrative justice, and will include two of the Foundation's Trustees.

The bids will be scored and compared according to the following criteria, which – together with cost information – will inform funding decisions.

- 1) **Skills and experience** of the proposed project team, including: understanding of the issues; a track record in collating and analysing empirical data; breadth of disciplinary input; and an ability to take an objective view and separate evidence from advocacy.
- 2) **Approach and delivery**: concrete content of the proposed programme of reviews and assessment of research barriers; range and feasibility of coordinating activities (including supporting information technology).
- 3) **Stakeholder engagement**: including range of proposed stakeholders, and approaches to engagement and dissemination.
- 4) **Added value** – including creativity and innovation in suggesting additional research outcomes or activities
- 5) **Sustainability** – extent to which the proposed activities are likely to lead to positive outcomes according to the success criteria set out by the Foundation, including any specific plans for the period (up to 2 years) following the end of the grant.

While the intention is to award a grant to a single applicant (including consortia) the Foundation reserves the right to make an award for any combination of the work outlined above, including offering separate grants to more than one organisation. The Selection Panel may decide not to make any award should it conclude that none of the bids meet the quality threshold.