

A Research Roadmap for Administrative Justice

Summary

This is a summary of the findings and recommendations contained in UKAJI's Research Roadmap for Administrative Justice. The full roadmap can be found on UKAJI's website at www.ukaji.org and a hard copy can be requested at ukaji@essex.ac.uk or sunkm@essex.ac.uk

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.

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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.

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.

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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,¹ 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'² 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**

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

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 GAFAs: 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.

The full Research Roadmap is available at www.ukaji.org.