Wider Core team meeting: 3 March 2015: Paper 1

What is administrative justice? A discussion paper

This paper sets out definitions of administrative justice in common use and approaches to defining the scope of the administrative justice landscape. The first section explores both descriptive definitions of the 'system' and conceptual definitions of administrative justice more broadly. The second section gives an overview of the administrative justice landscape. The third section explores possible priority areas for UKAJI and the reasons for these. The final section, including the Appendix, pose questions to help us refine our thinking.

The purpose of the paper is to help us to identify the appropriate scope for the UKAJI project based on priority areas and 'key issues'. With the resources available, UKAJI will not be able to cover all aspects of administrative justice in our work. Our focus is on a multidisciplinary approach to research and to developing research capacity. To that end, the priorities and interests of the project – as reflected in various activities including the blog, database, and research reviews – must be informed by expertise from a wide range of disciplines and perspectives.

PLEASE NOTE:
At the meeting it would be helpful for members of the wider core team to discuss how their area of interest and expertise can feature in the priorities agreed for UKAJI. It would also be helpful for members to consider in advance the discussion questions at the end of the final section of the paper, on pp.16-18, and the topic headings proposed in the Appendix.

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1. Some definitions

In an attempt to define administrative justice, we have considered a number of definitions that encompass descriptions of the institutions, the procedures, and the normative values of administrative justice. We need to consider whether UKAJI is to embrace these different understandings of administrative justice.

From a procedural or institutional perspective, administrative justice is generally considered to be made up of the decision-making bodies and the mechanisms for challenge and redress:

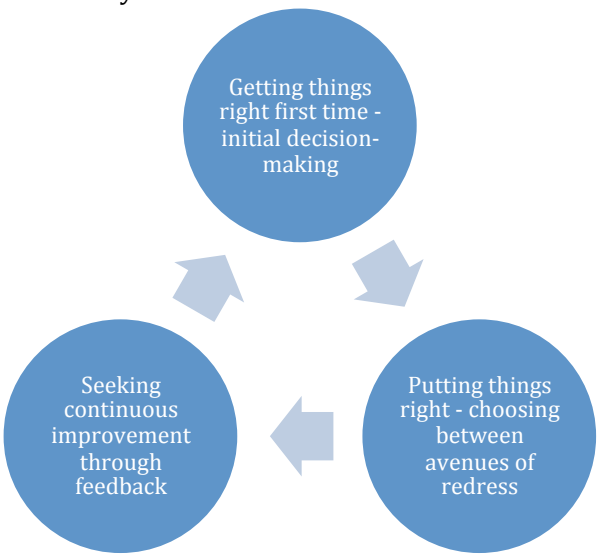
Tribunals, Courts and Enforcement Act 2007:

"...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." (TCEA 2007, Sched. 7, para. 14)"

Administrative Justice and Tribunals Council (AJTC) Landscape Paper:

"*Administrative justice is conventionally regarded as that aspect of the justice system that is concerned with disputes between the citizen and the state."*

The AJTC also proposes the 'system' as a virtuous circle:



Ministry of Justice, Administrative Justice and Tribunals: A Strategic Work Programme 2013–16:

"The administrative justice system encompasses a broad group of bodies, functions and processes which enable people to raise grievances, challenge and resolve disputes against administrative or executive decisions made by or on behalf of the state. The system is also concerned with the quality of original decision making and the routes for challenging maladministration."

Northern Ireland Administrative Justice Mapping Study:

"Administrative justice covers 'the administrative decisions by public authorities that affect individual citizens and the mechanisms available for the provision of redress.'
…
***Administrative law** is confined to considering the legality, procedural fairness and irrationality of the decisions and actions of public bodies in the exercise of their public law function.*
***Administrative justice** is broader, including issues of legality, procedural fairness and good administration; learning from mistakes with the aim of improving decision making."*

Administrative Justice in Scotland – The Way Forward. The Final Report of the Administrative Justice Steering Group:

"The term 'administrative justice' should be defined broadly to include:

- *initial decision-making by public bodies affecting citizens' rights and interests including the substantive rules under which decisions are made and the procedures followed in making decisions;*
- *systems for resolving disputes relating to such decisions and for considering citizens' grievances.*

The benefits of this broad definition are that it delimits a coherent field of inquiry and enables discussion of administrative justice to respond to the full range of citizens' concerns about their interaction with public services."

Nuffield Foundation:

"The Foundation's work will start on the basis of a distinction between 'justice in administration', where 'justice' may be in competition with other administrative criteria, and 'administrative justice', which we take to cover reactions to alleged deficiencies in first instance decision-making. 'Administrative justice' has at its core the administrative decisions by public authorities that affect individual citizens and the mechanisms available for the provision of redress."

Halliday and Scott (2010) describe 'two discrete ways in which the notion of "administrative justice" is employed within the broad field':

'*Empirical work which focuses on the application of law and policy in agencies interprets "administrative justice" as referring to the justice of the primary administrative process: what model(s) of justice is (are) implicit in agencies' administrative and rule-making operations? In contrast, empirical research which focuses on the machinery of redress and grievance-handling interprets "administrative justice" as referring to a sub-system of dispute resolution within the overall architecture of the legal system – on a parallel with criminal justice, or employment justice or family justice*.'

Our definition of *administrative justice* (as opposed to the administrative justice *system or landscape*) for research purposes should encompass an interest in normative issues. For example, Buck et al (2011) explicitly discuss the fact that administrative justice is referred to both descriptively (to describe the system) and normatively (to describe the ideas and values behind the system).

Michael Adler (2010) defines administrative justice as 'the justice inherent in decision making'. This broad view lends support for seeing administrative justice as encompassing primary decision making and, perhaps more importantly, seems to lay the primary emphasis on those decisions rather the systems of redress set up to correct them. This follows Mashaw's (1983) definition: 'those qualities of decision making process that provide arguments for the acceptability of its decisions'.

Mashaw and Adler's work calls the normative basis of decision making to attention and asks what legitimating principles are being applied within a system of administrative justice. According to Mashaw/Adler the administrative justice of any given decision process can be described in terms of the trade-offs between these normative models. In this view administrative justice is not just a set of processes (internal/external) or a set of things (decisions/actions) but an idea: an idea that is contested and that may be driven by distinct normative models.

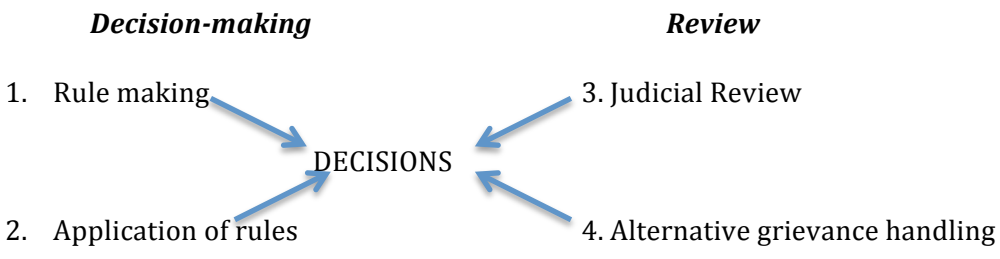
Gill (2014) has argued for administrative justice being seen as 'both a cross cutting and underpinning constitutional, and a spectrum of procedures and mechanisms, operating in each branch of the constitution, to give force to those principles'…and involving 'two elements: administrative justice as a fundamental constitutional principle, inhering that members of the public are entitled to good administration and, failing that, appropriate redress; and administrative justice as a spectrum of executive, judicial and political means by which good administration and appropriate redress may be realized within the state'.

Buck et al (2011) set out a tripartite working definition of administrative justice:

- *Getting it right*: all decisions made by public bodies impacting on citizens;
- *Putting it right*: all redress mechanisms available in relation to initial decision making
- *Setting it right*: the network of governance and accountability mechanisms surrounding initial decision making and redress mechanisms

'Setting it right' brings in the links between redress and initial decision making (learning), as well as the way in which other initial decision making and the modes of redress designed to supervise it are themselves regulated and governed – important given that different parts of the 'system' have fundamentally different bases for their legitimacy and accountability (e.g. ombuds – political, courts/tribunal – legal).

Within 'setting it right' is a stage prior to decision-making – rule-making, including external rule-making (eg legislation) and internal rule-making (eg circulars, briefings, policies) as well as the application of rules and use of discretion. Halliday and Scott (2010) write that "One empirically informed perspective suggests that discretion is endemic to decision-making, including the application of rules, and that any proper concept of administrative justice must treat all decision-making on this basis" (citing Sainsbury 1992). What shapes the decision-making of public officials? Halliday and Scott make this explicit in their conception of the four processes of administrative justice:



'Maladministration' (much of the work of complaint handlers and ombudsmen) can include circumstances in which no decision has been made (e.g. delays or failure to respond) or where the issue is the manner in which a service has been delivered. Halliday and Scott (2010), for example, state: '… there are many features of an administrative justice system which, although related to decision making, do not actually constitute the decision making process itself'.

The procedural justice literature (Lind and Tyler 1988) and subsequent work on perceived justice – although not referring to administrative justice – is helpful in identifying all these dimensions. Three dimensions are highlighted: substantive, procedural and interactional justice. The review of interactional justice (how people perceive they have been treated in their interactions with state bodies) seems to be where there is a special and additional place in administrative justice for complaint handlers and ombudsmen.

A further use of concepts of 'administrative justice' can be found in constitutional discourse. Since the 1990s, several countries include a right to administrative justice in their national constitutions. These provisions provide evidence of high-level political understandings of the concept. For example, section 33 of Constitution of South Africa 1996 states:

> "(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
> (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
> (3) National legislation must be enacted to give effect to these rights, and must— (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal; (b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and (c) promote an efficient administration".

The Promotion of Administrative Justice Act 2000 'gives effect' to the constitutional right by adding more detail and creating procedures. On a constitutional level within the United Kingdom, the desirability of a right to administrative justice was debated in the context of work on a Northern Ireland Bill of Rights and a British Bill of Rights (though both of those projects have fallen off the current political agenda).

2. What's in, what's out – The landscape

Attempts have been made to identify the boundaries of the administrative justice landscape. What decision-making bodies, what areas of regulation and which grievance and redress mechanisms are in this landscape? What are the overlaps with other parts of the justice system – civil, family, criminal?

There are several strands to this issue of landscape when considering what to include:

- The nature of the decision-maker
- The nature of the subject matter of the complaint
- The nature of the complainant/appellant
- The learning from their work that is relevant

The AJTC and others argue that the landscape includes:

- initial decision-makers (eg central and local government, the NHS and a variety of government agencies)
- external complaint reviewers
- courts
- tribunals
- inquiries
- ombudsmen
- commissioners
- ADR (eg mediation) providers
- regulators

"The MoJ considers that administrative justice and tribunals system covers the following services and functions:

- *the overall system by which decisions of an administrative or executive nature are made by bodies within central, devolved or local government or their agencies and the law under which such decisions are made;*
- *publicly-funded regulators of the public and private sectors;*
- *planning inquiries taking decisions on behalf of the state;*
- *the internal review systems and various routes of redress against administrative or executive decisions, including dispute resolution, complaint processes, ombudsman schemes, tribunals, courts and judicial review of decisions; and*
- *tribunals that rule on party vs. party disputes, such as employment and property claims."* (MoJ Administrative Justice Strategic Work Programme)

*"In Northern Ireland administrative decisions are those made by officials in devolved and nondevolved public bodies. These include decisions of devolved and UK-wide Government departments, statutory agencies and arms length bodies; decisions made by local councils, housing authorities, Education and Health Boards as well as Health and Social Care Trusts." (*Northern Ireland Administrative Justice Mapping Study)

Other areas suggested are

a) access to justice, including:

- information (including public legal education (PLE))
- advice and representation
- advocacy
- legal aid

b) feedback from complaints to encourage continuous improvement in service delivery and initial decision-making.

Looking specifically at **initial decision-making, internal review/appeal and internal complaints**, there are questions about what's in and what's out in terms of subject matter and type of decision-maker – see discussion below under Scope of UKAJI.

Looking specifically at **grievance bodies**:

Tribunals:

"*It is important to note that some of these tribunals have jurisdictions that are not concerned with administrative justice as traditionally conceived, in that they deal with party and party disputes rather than disputes between citizen and state.* ***Employment tribunals*** *are the most prominent example. Others include the* ***Copyright Tribunal****, the* ***Lands Tribunal****,* ***agricultural land tribunals****, and the various tribunals constituting the* ***Residential Property Tribunal Service*** *(RPTS). The Lands Tribunal and the RPTS deal with both 'citizen and state' and 'party and party' disputes. A common characteristic of tribunals dealing with 'party and party' disputes is that they decide cases against the background of a special legislative regime that Parliament has entrusted to a specialist tribunal rather than the courts. This is a characteristic that they share with 'citizen and state' tribunals and it would be unhelpful to draw too rigid a line between the two sorts of tribunal."*

"Another type of tribunal, which for the most part has lain outside the remit of the Council on Tribunals and the AJTC, is that concerned with ***regulation and discipline in the professions****. Many of these are established under statute and there is a strong case for regarding those as being a part of the administrative justice landscape. How far this applies to non-statutory tribunals in the world of sport, for example, may be open to debate*." (AJTC Landscape Paper)

"In drawing up the Ministry of Justice (MoJ) work programme as set out in this document, we acknowledge that some tribunals do not fall within the definition of administrative justice since they deal with disputes between two parties, rather than party versus state. These matters could be strictly considered to fall outside the scope of our interest here, but since such cases are heard by tribunals we believe it important to consider their related issues as part of this strategic work programme." (MoJ Administrative Justice Strategic Work Programme)

The arguments made for including tribunals that deal with private parties and those outside the unified system are two-fold: they decide cases against the background of a legislative regime Parliament has entrusted to tribunals or they are established under statute. Furthermore, some tribunals outside the 'unified system' appear to be relevant for administrative justice – an example is the Office of the Schools Adjudicator. This tribunal deals with school admission disputes – specifically, its team

of adjudicators who *"resolve differences over the interpretation and application of legislation and guidance on school admissions and statutory proposals concerning school organisation."*

There is an argument for excluding employment tribunals on the basis that they (and others such as Copyright, Parking Adjudication) deal with disputes between private parties and not involving the state as a party. It could also be argued that the Lands Tribunal and RPTS should be excluded on the same basis, although they deal with citizen v state disputes as well as those between private parties. There is also the question of professional bodies' disciplinary tribunals and other regulatory tribunals that remain outside the tribunals 'system' – eg Solicitors' Disciplinary Tribunal.

On the other hand, these other tribunals might be engaging in work (such as pilot projects on proportionate dispute resolution) that holds useful learning for those within the administrative justice 'system'.

Courts:

These include:

- Administrative Court (JR, statutory appeals)
- Court of Session (JRs and some tribunal appeals, Scotland)
- County Court (eg homelessness)
- Court of Protection? (eg deprivation of liberty)

"*in a review of the administrative justice landscape it is important not to forget the role of other courts, such as the county courts in homelessness and other cases, the Crown Court and magistrates' courts in some of their non-criminal jurisdictions, and the sheriff court in Scotland. Also noteworthy is the provision in the TCEA 2007 for the Upper Tribunal to hear judicial review cases, subject to certain conditions being met.*

28. The jurisdiction of the courts in the administrative justice landscape is not confined to 'public law' in a narrow sense. The courts also deal with cases based on tort (delict in Scotland) and contract that have a strong administrative justice content. This was the subject of a recent Law Commission Report to which further reference is made below." (AJTC Landscape Paper)

Inquiries:

"*Most ad hoc inquiries, whether statutory inquiries under the Inquiries Act 2005 or non-statutory inquiries, are outside the AJTC's inquiry remit, but in so far as they are concerned with good administration and learning lessons from the past they too can be regarded as part of the administrative justice system*." (AJTC Landscape Paper)

"*While not usually providing resolution for individual complaints, public inquiries can play an important role in investigating matters which have caused public concern*." (Law Commission Administrative Redress Consultation Paper)

Ombuds and complaint handlers/ADR bodies:

This is likely to include the public-sector ombudsmen:

- Parliamentary and Health Service Ombudsman
- Local Government Ombudsman
- Scottish Public Services Ombudsman
- Public Services Ombudsman for Wales
- Northern Ireland Ombudsman
- Housing Ombudsman (England)

The remit of most of the above, although focusing on decisions by public bodies, encompass some private-sector bodies (eg private adult social care providers, water companies).

Other ombudsmen are statutory bodies operating in a regulated environment but overseeing complaints about private-sector bodies. Some in the above category are not called 'ombudsmen' but are in effect ombuds. Other ombudsman are voluntary, non-statutory ones that oversee complaints about private-sector bodies that are not regulated.

There are also a number of complaint reviewers that bridge the internal/external divide, such as the Independent Case Examiner (DWP), and those that fall into the category of tribunals, such as the Schools Adjudicator discussed above.

Within this category might be ADR provision (specifically mediation but not exclusively) that has a statutory basis and involves complaints about decisions by public bodies.

An argument can be made that consumer ombuds and ADR bodies should be included (at the least those that are statutory). In many respects they share similarities with public-services ombuds, some carry out functions previously carried out by the state, and learning from these bodies can be shared across the administrative justice landscape (eg pilot projects in proportionate dispute resolution). Furthermore, where there is such a significant power imbalance or potential for the unfair treatment of citizens at the hands of large companies or professional groups (bearing in mind we are in an age of mass consumption and global capital) that the state is required to intervene, such areas could be seen as aligned with administrative justice. Does a dispute with a mortgage provider affect an individual's fundamental substantive and procedural rights (housing, fair treatment) any less than a dispute with the local authority over an individual's council flat?

Parliament:
The UK Parliament and its members have individual redress, accountability and rule making (legislative) roles in the administrative justice landscape.

Individual redress
Individual MPs often deal with issues of maladministration through their constituency casework. The problems of constituents may also be the subject of written and oral questions to Ministers.

People may make a complaint to the Parliamentary and Health Service Ombudsman (about non-NHS matters) only if an MP refers their case.
Accountability functions
The House of Commons Public Administration Select Committee (PASC) 'examines the quality and standards of administration within the Civil Service and scrutinises the reports of the Parliamentary and Health Service Ombudsman'. Other House of Commons select committees with scrutiny oversight over government departments also regularly conduct inquiries on the quality of administration and policy-making. These include the Health Committee, the Work and Pensions Committee, and the Home Affairs Committee. The Justice Committee is of potentially of special significance because of its scrutiny role in relation to the Ministry of Justice.

Rule-making (legislative) functions
Rules relating to administration are contained in primary legislation (bills, which on receiving Royal Assent become Acts of Parliament) and secondary legislation (rules, regulations, orders, etc). In relation to both types of legislation, the UK Parliament has a role in scrutinising government proposals.

All bills are debated in both Houses of Parliament, where amendments may be made. The House of Lords Constitution Committee and the Joint Committee on Human Rights, which scrutinise all government bills for compliance with constitutional principles and human rights norms, carry out additional scrutiny. They may draw attention to bills that, in relation to administrative decision-making, raises issues of concern.

Secondary legislation is rarely debated on the floor of the House of Commons or House of Lords (though some of especially importance, such as the Prison Rules and Immigration Rules are). Detailed scrutiny is carried out by the Joint Committee on Statutory Instruments, which reviews draft secondary legislation for its compliance with a range of technical criteria.

Other:

"*other organisations closely concerned with administrative justice, whether in the field of advice and representation, public legal education or ADR provision…*" (AJTC Landscape Paper)

This category might include, for example, Citizens Advice, Youth Access, Law Centres Federation, Public Law Project, Law for Life, etc. Consumer Scotland suggests advocacy also be included (eg Independent Parental Special Educational Advice, IPSEA).

3. Scope of UKAJI

Below we consider what is or might be defined as the scope of UKAJI in particular.

Alternative definitions of administrative justice:

We considered that, for UKAJI, it might be useful to have a short and snappy definition of administrative justice that will be more meaningful to our audiences, especially those outside the discipline of law. It might be that we want more than one and to use one or the other depending on the specific context.

Some proposals:

- "The interaction between citizen and state, from rule-making to decision-making to challenge to resolution."
- "Decision-making by public bodies."
- "Citizen-versus-state conflicts."
- "Administrative justice includes initial decision making, dispute resolution, and feedback processes related to the interaction between citizen and state."
- "The means by which good administration is ensured for citizens."
- "The idea that citizens should be treated fairly by those in power and the processes that make this aspiration a reality."

We might also want to consider, given UKAJI's focus on research, a snappy definition of 'administrative justice research' along the lines proposed above:

- "The study of good administration by state bodies, including decision making, dispute resolution, and feedback processes."

Territorial questions:

The edges of the administrative justice landscape are blurry, not sharp. Halliday and Scott (2010) suggest that two main issues arise when defining the territory of administrative justice – the divide between public and private agencies and decision-makers, and the exclusion of criminal justice within the landscape. For UKAJI, there are additional questions as to which jurisdictions and which areas of decision-making to include.

Five key questions are discussed in the section below:

a) **Citizen v state only?**
b) **Public only? Or also private?**
c) **Civil justice only, or also criminal?**
d) **All jurisdictions within the UK? What about other jurisdictions?**
e) **Which subject/sector areas to cover?**

a) Citizen v state only?

"From the user's perspective, the concept of the administrative justice system should be one which seeks to emphasise links, not only amongst the various redress mechanisms seeking the best match between those mechanisms and disputes to be resolved, but also between the redress mechanisms and the decision making which gave rise to the dispute, so as to get things right first time. This needs to be understood in the context of ***a developing concept of administrative justice that is not limited to disputes between citizen and state but includes principles and ideas about fair treatment and transparency which are relevant in many areas of life where there are imbalances of power****."* (AJTC Landscape Paper)

The suggestion here is that administrative justice should cover not only citizen v state interactions but other 'principles and ideas' relevant in areas of life where there are imbalances of power.

A key feature of the administrative justice system (which perhaps distinguishes it from the civil and criminal justice system) is that it is inherently a mass system of justice; the AJTC, for example, frequently pointed out that the system dealt with far more cases than the other branches. As a result, there are extremely strong parallels between administrative justice and that part of the civil justice system which is concerned with consumer to business interactions, including:

- A mass market for redress – where high volumes of decisions are taken on a daily basis;
- An area which affects the lives of all citizens and may have a particular impact on the vulnerable;
- An area where there is significant power imbalance between the parties;
- An area where government is substantially involved/ has a special responsibility for protecting the basic rights of individuals;
- An area where – although the source of rights and entitlements are different, public v contract law – securing those rights and entitlements may similarly involve obtaining fundamental rights – e.g. administrative justice referring to rights to social welfare, whereas in the consumer-business field referring to the right to basic utilities.

Another aspect of this question is the focus on an individual citizen. Some public law issues involve businesses, voluntary organisations and local government as claimants rather than individual citizens.

b) Public only? Or also private?

"Although administrative justice is usually thought of as being mainly concerned with the interaction between the citizen and the state, a recurring theme emerging from the description of the landscape is that it presents a complex and changing aspect and ***boundaries between "public" and "private" are becoming increasingly fluid****."*

"It would be wrong to take too narrow a view of what constitutes the state. For example, the privatisation of a range of public utilities led to the establishment by Parliament of a range of regulatory bodies that may properly be regarded as

emanations of the state. There are other regulatory bodies that have been established in such fields as charities, financial services or gambling to which the same applies. Furthermore, as more of central and local government business is privatised or contracted out to private agencies, a wider view must be taken of what constitutes administrative justice. Indeed, the Health Bill currently

*before Parliament would extend the remit of the Local Government Ombudsman to consider complaints from people who have arranged their own adult social care." (*AJTC Landscape Paper)

Some decisions taken by private bodies are relevant, such as those by private companies contracted to provide public services. Also, some private bodies operate in the public sphere in a different way contractually – eg Free Schools, which now must comply with statutory guidance on special educational needs. There are also private bodies that carry out work that formerly was carried out by the state – eg complaints about utilities that formerly were dealt with by the regulator – or in which the state is involved.

Some 'public' issues, such as local authority possession proceedings, come within private law. Other areas fall within public law and relate to decisions made by public bodies but might not be considered administrative justice – eg actions by police.

c) Civil justice only, or also criminal?

Administrative justice is usually understood as relating to the civil area of the legal system. Halliday and Scott (2010) question this assumption. The distinction between criminal and civil justice, they say, 'breaks down if we concern ourselves with the justice inherent in the relationship between citizens and agencies that administer law and policy in relation to those citizens.' Examples they give are the treatment of criminal suspects and prisoners and the use of detention in immigration law. They suggest that this is an under-researched area.

d) All jurisdictions within the UK? What about other jurisdictions?

"*It should be noted that there are complexities across the various jurisdictions of the United Kingdom and what is true of one part is not necessarily true of another*." (AJTC Landscape Paper)

Our primary focus is to be on the UK. There is a question, however, of to what extent we look to non-UK jurisdictions where lessons may learned from elsewhere – for example, comparative research (comparing a UK jurisdiction with one outside the UK) or research focusing on non-UK jurisdictions (eg Buck's work on tribunals and ADR in Australia).

In particular, administrative justice at European Union level is potentially of interest because:

- significant areas of English/UK administrative law and practice – e.g. environmental standards and regulation of consumer safety – stem from rules made at EU level that are implemented by UK public bodies (such as local authorities);
- there are networks of academic experts (e.g. ReNEUAL, the Research Network on EU Administrative Law) with well-developed research projects, which may shed light on aspects of purely domestic practice.

e) Which subject/sector areas to cover?

The appendix provides a list of possible 'topic headings', including subject areas.

It is worth considering the focus of various administrative justice oversight bodies when identifying the focus for UKAJI.

For example, the **Ministry of Justice** has identified several themes on which to focus in its current work programme (MoJ Annual Administrative and Tribunals Performance Report 2013-14):

- New appeal rights
- Funding of tribunals
- Improving initial decision making
- Enhancing proportionality
- Maintaining a user focus

The **Administrative Justice Forum** focuses its main activities on issues in relation to which it can make the most impact for the least cost. It has focused so far on:

- Improving initial decision making
- User signposting
- Feedback mechanisms
- Judicial review reform

The **AJTC** identified, in its *Research Agenda for Administrative Justice*, three priority areas for future research:

- Structural – Research that focuses on the nature of the administrative justice system as a whole – whether at UK or devolved levels – and how, and to what extent, the different aspects of the system fit together. Specifically:
  - Framework of dispute resolution
  - Comparative studies
  - Outcomes and enforcement
  - Users
- Procedural – Research that focuses on the procedural cross-cutting issues and how the system works in practice. Specifically:
  - Legal Aid
  - Right First Time
  - Polluter Pays
  - Complaint Handling
  - Mediation
  - Inquisitorial procedures and models
  - Information Technology
- Sectoral – Research that focuses on specific sectors within the system. Specifically:
  - Ombudsmen
  - Tribunals
  - Employment tribunals
  - Social security
  - Health

Priority areas identified in the **UKAJI hub proposal** are:

a. ***the nature of the system****, including achieving better understanding of the implications of tensions between coherence and fragmentation in the delivery of administrative justice;*
b. ***the place of the system*** *in the context of developments in the provision, availability and funding of advice;*
c. ***the working and effects of the system****, including issues relating to the availability of information to achieve better understanding of how and why matters flow through the system*.

We need to consider the limits of the resources available to UKAJI. Clearly, we will not have the time and resources to produce a comprehensive mapping or research review of all the areas listed in the table. We might want to describe a core focus (sector areas, bodies, redress mechanisms) for UKAJI but note that the project is also interested in aligned issues as well, e.g.:

Core – citizen/state tribunals; public services grievance procedures
Of interest, but not core – party-party tribunals; regulated privates sector grievance mechanisms and statutory ombudsmen

4. Discussion questions

1. **Definition:**
   1.1. Should the definition of administrative justice for UKAJI develop the existing consensus by clarifying that administrative justice is not just about securing a right to legal entitlements (procedural and substantive) but about securing a right to fair treatment in citizens' interactions with the state (good administration)? In other words, is UKAJI concerned about fair treatment or only about legal entitlements?
   1.2. What do you think of the proposed 'short' definitions for UKAJI purposes?

2. **Scope of landscape:**
   2.1. There appears to be consensus that administrative justice includes rule-making and application of rules, initial decision-making, review of decisions, internal complaints, and external review/redress. Do you agree?
   2.2. There appears to be consensus that external review/redress includes tribunals, courts, ombuds (but which, to be discussed below), and other relevant forms of dispute resolution. Do you agree?
   2.3. There is also an argument to be made to include access to justice in terms of access to advice and representation, advocacy as well as funding, and to include feedback and learning from complaints. Should advice and assistance and legal aid, at one end, and feedback and continuous improvement, at the other end, be included? What about Public Legal Education?

3. **Grievance mechanisms:**
   3.1. Should party-party tribunals be included within scope of administrative justice?
   3.2. Should tribunals not within the unified structure be included?
   3.3. Should tribunals set up by professional bodies to determine allegations of professional malpractice/misconduct be included?
   3.4. Which courts to include?
   3.5. Do we include inquiries within the scope of administrative justice? If so, all, or only those that relate to decision-making by public bodies (eg child sexual abuse inquiry (esp concerning local government decision-making) but not Leveson inquiry (concerning private bodies, ie the press)?
   3.6. Include all possible categories of ombuds/ADR/reviewers? Or only those that relate partly or fully to decision-making by public bodies, or all those with a statutory basis and/or where the state has a role in regulating behavior by private providers/bodies?

4. **Parliament:**
   4.1. Do we include the work of Parliament within the scope of administrative justice? If so, do we look at all the functions described above or only some? What should be our priorities?
   4.2. Should there also be focus on the work of the Scottish Parliament, the National Assembly for Wales, and the Northern Ireland Assembly in relation to administrative justice?

5. **Also include:**
   5.1. Regulators?
   5.2. Commissioners?
   5.3. Arm's length bodies/NDPBs?
   5.4. Private bodies carrying out functions formerly carried out by state bodies?
   5.5. Private contractors delivering services on behalf of government?

6. **Territory:**
   6.1. To what extent do we include private law issues that may be relevant?

6.2. To what extent do we include bodies not within administrative justice but with relevant work or initiatives?
6.3. What about grievances by organisations (public or private) against the state and state decision-making?
6.4. Should the landscape as we describe it encompass primarily interactions between individuals and the state but also those interactions between individuals and non-state bodies where the state has a significant responsibility in regulating those interactions (eg social housing, pensions, financial services, utilities, employee rights?
6.5. What about areas such as consumer rights and protection, where there is often an imbalance of power but which focuses primarily on relationships between citizens as consumers and businesses? Other such areas are higher education and the private rental sector.

7. Jurisdiction:
7.1. To what extent do we want to include non-UK jurisdictions (EU, international)? Only in comparative studies? Or when relevant to 'our' jurisdictions?

8. Topic headings (Appendix):
8.1. What's missing? (Need to consider other disciplines in particular.)
8.2. Which are the priority topics? Are the ones proposed the right ones?

9. Criteria:
9.1. Can we identify criteria for including sectors and/or themes in UKAJI priorities?

Possible criteria for inclusion are:

Anything subject to judicial review is in – ALL?
- What about JRs made by private companies/NGOs/public bodies?
- What about statutory appeals?

Citizen v state but not JR-able if about public body decision-making – ALL?
- What about private bodies carrying out public functions?
- What about private body decisions made under state regulatory framework?

Anything that was formerly within remit of the AJTC – ALL?
- What about tribunals that deal with citizen v citizen or citizen v private body?

Anything that relates to state decision-making involving ordinary citizens and an element of power imbalance?
- Even where it falls within private, not public, law?

10. Priorities:
10.1. Can we agree on how to prioritise our planning in terms how we see things develop e.g. Years 1-3, Years 4-6?

11. Proposed scope for UKAJI:

Based on the considerations set out above, we propose that UKAJI focus on:

1) Citizen v state issues (ie not private party v party, consumer).

2) Three core aspects of administrative justice: initial decision making, internal review and external review/redress (ie not advice provision, regulatory or governance issues, feedback and continuous improvement).

3) Core mechanisms of external redress: judicial review, tribunals and ombudsmen (ie not inquiries, professional regulatory bodies).

4) Initial decision-making in areas which a) attract the highest levels of potential detriment and/or b) attract the highest levels of complaint and appeal (ie not areas in which potential detriment is objectively low or volumes of complaint and appeal are low).

Do you agree?

APPENDIX: Topic headings

This appendix lists proposed administrative justice topic headings for research reviews and to inform the UKAJI blog strategy, as well as to define the priority areas for UKAJI's focus. We are aiming for initially 24 topics for research reviews.

The list incorporates 'principal themes' identified in Partington's annotated review (2007); the AJTC research agenda ideas; and the civil JR types list.

Topics in **bold** are proposed as priority areas of focus for UKAJI. Topics in ***bold and italic*** are proposed as headings for research reviews.

NOTE: There are many different ways of segmenting elements of the administrative justice 'system'. We have grouped them into the following themed categories:

Bodies	Access to Justice
System design	Organisational
Process/stages of decision-making and review	Subjects/sectors
Complainants/appellants	Jurisdictions
Redress mechanisms	Research

The topic headings below can be juxtaposed - eg 'ombuds and user experience'; 'local government and complaint handling'.

Theme category	Topic headings	Comments
System design:	**1. Structure**	
	2. Principles	
	3. Designers	
	4. Issues affecting design	
	5. Human rights/equalities	
	6. Quality assurance	
Process/stages of decision-making and review:	**7. Rule-making**	
	8. Initial decision-making	
	9. Internal review	
	10. Appeal	
	11. Outcomes	
	12. Learning from feedback	
	13. Complaint handling	
	14. Funding models	***(eg fee structures, polluter pays)***
	15. Triage/filtering	
	16. Early dispute resolution	
	17. Case management	
	18. Feedback	
	19. Outcomes and enforcement	
Complainants/ appellants:	20. Consumers	(eg consumer rights but with overlap btwn citizen users of admin justice 'system')
	21. User views and experiences	
Redress mechanisms:	***22. Judicial review***	
	23. Tribunals	

	24. Ombuds and reviewers	
	25. Mediation and other ADR	***(eg SEN)***
	26. Inquiries	
	27. Judiciary	(eg selection, support and training)
Access to justice:	**28. Advice provision**	
	29. Information provision	
	30. Advocacy	
	31. Representation and self-representation	
	32. Funding	**(eg costs/fees/legal aid)**
Organisational:	33. Psychology of decision-making	
	34. Leadership	
	35. Staff training	
	36. Use of IT	
Subjects/sectors:	**37. Community / social care**	
	38. Consumer	
	39. Education	
	40. Employment	
	41. Health	**NHS bodies only? Private providers contracted by CCGs?**
	42. Homelessness	
	43. Housing (other)	(eg social housing, private rented sector)
	44. Immigration and asylum	
	45. Land	
	46. Mental health	
	47. Parking	
	48. Pensions	
	49. Planning	**Public only? (eg compulsory purchase)**
	50. Policing	
	51. Prisons /detention centres	
	52. Public funding	**(eg legal aid, self-funders of services)**
	53. Regulation	**(eg Ofgem) and (eg General Medical Council)**
	54. Social Security and welfare benefits	
	55. Taxation	
Jurisdictions:	**56. Local government**	
	57. England	
	58. Northern Ireland	
	59. Scotland	
	60. Wales	
	61. UK	
	62. EU	
	63. International	
	64. Comparative studies	
Research:	**65. Research methods**	
	66. Big Data	
	67. Literature reviews	

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