

The Senedd and Administrative Justice (Part 2)

Constituency Work, Redress Design and Oversight

Research Briefing

July 2020



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Contents

1. Introduction	1
2. Elected Officials, Constituency Work and the Grassroots of Administrative Justice	2
3. Advice, Information and Assistance	4
4. Administrative Justice: Redress and System Design and Oversight	6
4.1. Redress Design	7
4.2. Oversight	11

1. Introduction

This Report is the second of two reports from my Senedd Academic Research Fellowship 2019/20 focusing on the role of the Senedd in administrative justice. In this first Report I explained the concept of administrative justice, and examined how it has been approached in Wales, in contrast to broader UK approaches. I focused on the Senedd's law-making role, including the principles underpinning Welsh public administrative law, and the potential for further clarification and consolidation of such administrative law. I also addressed where administrative justice fits alongside key political concepts in Wales including human rights, equality and sustainability. In this second (Part 2) Report I explain how Members of the Senedd constituency work is also an important factor in administrative justice alongside other sources of advice, information and assistance for people who are dissatisfied with particular public body decisions or concerned about the provision of local services. I then consider how the Senedd can scrutinise the design of redress mechanisms in the Welsh administrative justice system, and also how the Senedd can scrutinise and oversee the development of that system as a whole.

2. Elected Officials, Constituency Work and the Grassroots of Administrative Justice

Members of the Senedd are at the coalface of administrative justice, often being the first port of call (or indeed the final port of call when all others have failed) for people seeking information, advice and assistance. Research suggests that Members of the Senedd can be particularly effective when it comes to raising awareness of individual and community concerns about public administrative bodies.¹ Members of the Senedd are in a unique position to witness the problems caused by complexities in the administrative justice system, and to act to change the law to reform and improve that system. However, Members of the Senedd receive no specific training on 'administrative justice' as a concept, or on redress mechanisms and on how to sign-post people to appropriate mechanisms, advice and assistance can be variable. Researchers have noted that designing redress is a discrete and specialist activity that benefits from full engagement with the perspective of potential users of those mechanisms. Members of the Senedd are in a good position to feed those 'user' perspectives into the scrutiny of proposals for redress design, but to do so effectively requires a general understanding and appreciation of administrative justice and the principles that can be promoted through the concept and system.

In addition to Members of the Senedd, the c. 1,250 local councillors in Wales play a vital role advising and assisting people concerned with the decision-making of local authorities in relation to issues such as education, health, housing and other local services and matters. As with Members of the Senedd, that advice and assistance is not regulated and there is no specific training on administrative justice.

Ongoing research supports the recommendations on administrative justice awareness raising and training made in the Legacy Report of the Committee for Administrative Justice and Tribunals Wales (CAJTW).² For example, in its Report to Welsh Ministers CAJTW invites the Welsh Ministers to communicate various recommendations to the Senedd including Recommendation 32:

1 S Nason, A Sherlock, H Pritchard and H Taylor, *Public Administration and a Just Wales* (Bangor University/Nuffield Foundation 2020).

2 Committee on Administrative Justice and Tribunals Wales, *Administrative Justice: A Corner stone of Social Justice in Wales; Reform priorities for the Fifth Assembly* (2016) ['Legacy Report'] <<https://gov.wales/docs/cabinetstatements/2016/160729cornerstoneofsocialjustice.pdf>>.

We invite the Welsh Ministers to communicate the following recommendations to the National Senedd and the Senedd Commission: Professional development in administrative justice issues should be made available for Committee chairs and supporting commission staff. Cross-party focus groups should be offered for AMs (re links between constituency work and the operation of the administrative justice system in Wales).

Research also supports extending relevant training to local councillors.³ Training for councillors could be made available through *Academi Wales*, in association with academics/other experts. Training for MSs could be delivered in association with members of the UK Administrative Justice Council Academic Panel, Public Law Wales and other academics and experts.

3 Nason, Sherlock, Pritchard and Taylor (n 1).

3. Advice, Information and Assistance

CAJTW's 2016 Legacy Report emphasised that whilst 'good law and effective scrutiny' are key components of administrative justice, advice services are crucial to enabling people to navigate redress systems and understand their rights and entitlements.⁴

The Commission on Justice in Wales [the Justice Commission] found that Welsh Government has played a significant role in facilitating access to justice and ameliorating some of the worst effects of legal aid cuts.⁵ The Justice Commission also concluded that determination and delivery of legal aid policy in Wales would facilitate overall coordination of the provision of legal aid and advice services to meet people's needs. It recommends that 'funding for legal aid and for the third sector providing advice and assistance should be brought together in Wales to form a single fund under the strategic direction of an independent body'.⁶

Whilst I agree with the Justice Commission's view that funding for advice services should be better co-ordinated in Wales, the practicalities of structuring and overseeing the fund will need further detailed development. For example, the advice sector responds to a variety of need profiles, and in my view the fund would have to be flexibly allocated, administered and overseen. Strategic direction should be independent from the third sector to a degree. The composition and expertise of the directing body will be crucial, alongside its reporting duties to Government and the Senedd. A 'two-tier' service should not be allowed to develop where some people receive full 'legal aid style' funding, with others receiving lesser support through third sector bodies despite their needs. The fund should be 'person led' wherever possible, based upon the specific needs of individuals (and the 'clusters' of problems they might have) rather than on a defined level of service (be that just information, support, or full legal representation) in relation to particular subject areas (such as housing, debt and so on).

Recent research by colleagues and I into Welsh housing and education law and dispute resolution⁷ discloses that some people using advice services, and

4 CAJTW (n 2).

5 Commission on Justice in Wales, *Justice in Wales for the People of Wales (October 2019)* Chapter 3.

6 Justice Commission, Recommendation 1.

7 S Nason and H Taylor, 'Social Housing and Justice in Wales', A Sherlock and S Nason, 'Education and Justice in Wales' (Bangor University/Nuffield Foundation 2020): <http://admin.justice.bangor.ac.uk/research-report.php.en>

some sector professional representative organisations, have concerns about the perceived independence and impartiality of arrangements made by public bodies for the provision of information, advice and assistance (as sometimes encouraged, sometimes required, under Welsh law). The quality and accuracy of some of this advice has also occasionally been called into question. However, the most common difficulties have been around identification of correctly applicable Welsh law (with English law still regularly, and wrongly, relied on).⁸ The progress of consolidation, codification and raising awareness of Welsh law should be helpful here, but these are matters of which the Senedd must be cognisant.

8 See examples in Bangor Law School Welsh Law Research Group, *Response to Welsh Government Consultation on the Future of Welsh Law*.

4. Administrative Justice: Redress and System Design and Oversight

In its Report to Welsh Government in 2016 CAJTW developed a set of *Administrative Justice Principles for Wales* (annexed to this Report) and recommended that Welsh Government consult further on these with a view to formal adoption. CAJTW concluded: ‘We believe that a distinctive Welsh approach [to administrative justice] founded on a belief in social justice must rest on a clear set out principles. We offer the following as a template around which principles could be formed for Welsh Government to consider, offer its own proposals for consultation and, during the course of 2017, publicise a final version’.⁹

Welsh Government responded: ‘The proposed principles closely reflect existing values and legislative provisions that inform working practices’.¹⁰ In fact, the Principles were developed on that basis, and to take into account international best practice. They were intended to provide a checklist to educate and provide tools for those in leadership positions to promote consistency, including in conducting Justice Impact Assessments. Principles would also assist as providing a basis for monitoring and overseeing administrative justice institutions (and have been used as such in other legal jurisdictions and in terms of regional and international best practice). Comparative administrative law scholarship suggests that general principles already widely accepted (as Welsh Government characterises CAJTW’s Principles) are more appropriate for formal adoption, and even legislative codification, than developing norms.¹¹ This is discussed further in Bangor Law School Welsh Law Research Group’s response to the Welsh Government’s Consultation on the Future of Welsh Law.

CAJTW also recommended that Senedd Commission advice to Members supports a coherent, principle-based approach to monitoring existing redress and appeal mechanisms, and designing new ones, and that the Senedd consider nominating a Committee to scrutinise the operation of devolved Welsh tribunals and ad hoc Welsh appeal schemes.

9 CAJTW (n 2).

10 Welsh Government, ‘Response to CAJTW’: <https://gov.wales/sites/default/files/publications/2018-11/welsh-government-response-to-cajtw-report.pdf>

11 ‘Codification of Administrative Law’ workshop, Universität Zürich, 23rd & 24th January 2020 (publication forthcoming).

4.1. Redress Design

Administrative justice is inescapably political, and this is true especially of designing redress. Professor Andrew Le Sueur has argued that ‘designing redress is a constitutionally significant activity’, as redress mechanisms condition individual-state relationships.¹² However, he concludes that designing redress has not received sufficient attention in the UK, nor has it been recognised as a discrete activity. Research, evidence submitted to the Justice Commission, and the Commission’s conclusions and recommendations show that redress design has received limited attention in some aspects of Welsh law, policy and administrative practice.¹³

At UK level, there have been concerns about central Government’s contemporaneous design, operation and participation (as defendant) in core administrative justice redress processes.¹⁴ There are concerns too about past, and anticipated future, attempts to limit access to judicial review.¹⁵

The Welsh approach is different, and more rights-based, but one cannot be certain that this situation will continue. Safeguards (especially from constitutional principle) ought to be built into the redress design and oversight process. Welsh Government is not immune from the potential criticism that legislating for promotive duties, and not for enforceable rights, allows it to isolate itself from costly individual challenges (such as through judicial review and other Administrative Court claims).

There are various options for redress that Welsh Government and the Senedd may consider in relation to public body decision-making. Many of these options have been considered (and adopted) in various legislation, regulations and guidance,

12 A Le Sueur, ‘Designing Redress; Who Does it, How and Why?’ (2012) 20(1) *Asia Pacific Law Review* 17.

13 See e.g., Justice Commission, Evidence submitted by Bangor Law School Public Law Research Group: <https://gov.wales/sites/default/files/publications/2018-06/Submission-from-bangor-law-school-public-law-research-group.pdf>

14 R Thomas and J Tomlinson, ‘A Different Tale of Judicial Power: Administrative Review as a Problematic Response to the Judicialisation of Tribunals’ [2019] *Public Law*.

15 See for example, V. Bondy and M. Sunkin, ‘How Many JRs are too many? An evidence based response to ‘Judicial Review: Proposals for Further Reform’ UK Const. L. Blog (26th October 2013) (available at <http://ukconstitutionallaw.org>); T. Hickman, ‘Public Law’s Disgrace’, U.K. Const. L. Blog (9th Feb 2017) (available at <https://ukconstitutionallaw.org/>); and T. Hickman, ‘Public Law’s Disgrace: Part 2’, U.K. Const. L. Blog (26th Oct. 2017) (available at <https://ukconstitutionallaw.org/>).

but in my view there could be more specific evidence-based examination of a range of alternative methods in the legislative process. For information, the various options include (but may not be limited to):

- A new outsourced scheme,
- A new scheme administered by Welsh Government or local government,
- Giving new powers to the Public Services Ombudsman for Wales (or indeed creating a new Ombud),
- Creating a new Commissioner or giving new powers to an existing Commissioner,
- New powers for the Auditor General for Wales or some other regulatory body,
- Adding jurisdiction to an existing devolved Welsh tribunal,
- Creating a new devolved Welsh tribunal,
- Adding a new jurisdiction to a court or tribunal in the England and Wales system,
- Administrative review/reconsideration,
- Mediation or other ADR methods,
- Digital/online dispute resolution,
- Creating a new body purely to 'promote' good decision-making,
- A combination of two or more of the above,
- Do nothing.

Various research provides more detail on how some of these routes have been so far adopted and developed in Wales.¹⁶

The Justice Commission concludes that there is 'a tendency in the legislation passed by the Senedd for it to specify that dispute resolution should take place in the County Court or in the non-devolved courts and tribunals'.¹⁷ The Justice Commission found the minimal use of devolved Welsh tribunals to be anomalous given their specialist competence and capacity. It recommends that: 'The Welsh tribunals should be used for dispute resolution relating to future Welsh legislation'.¹⁸ Implementing this recommendation will have impacts on dispute resolution mechanisms in legislation currently passing through the Senedd, as well

16 S Nason, *Understanding Administrative Justice in Wales (Bangor University 2015)*. S Nason, A Sherlock, H Pritchard and H Taylor (n 1).

17 Justice Commission, para 6.59.2.

18 Justice Commission, Recommendation 27.

as on much future legislation.

CAJTW concerned itself with the creation of ‘ad hoc’ redress mechanisms. It included in this category decision-making and dispute resolution under the Discretionary Assistance Fund for Wales; the NHS Continuing Care Review process; and school admissions and exclusions appeal panels convened by local authorities. The Justice Commission concluded that the last of these operate without any judicial scrutiny and that they should be subject to review by the President of Welsh Tribunals.¹⁹

It is routinely suggested that resort to judicial review in the Administrative Court in Wales is adequate to provide people with an avenue to vindicate their rights and to enforce public body duties where there is no specific redress mechanism. However, research demonstrates that judicial review is not accessible as a route to redress for most ordinary people, and that rates of claim per head of population from people in Wales have generally been lower than the England and Wales Administrative Court average.²⁰

Judicial review is largely not accessible as an individual remedy in Wales,²¹ and public interest litigation is also limited. However, there have been notable recent attempts by the Equality and Human Rights Commission, and groups of public lawyers and legal academics in Wales working together, to develop proposals for so-called ‘strategic litigation’.

The Administrative Court in Wales has been a success in terms of constitutional symbolism, and partially successful in jurisdictional terms, but the number of claims issued by litigants with addresses in Wales, and by solicitors based in Wales, has fallen in recent years (coinciding with cuts to legal aid and judicial review reforms).²² Fewer claims (both in number and as a proportion of all Administrative

19 Justice Commission, para 6.47: ‘We are concerned that school admissions and exclusions appeal panels operate without any kind of judicial scrutiny...We consider that a thorough appraisal of the operation of local authority appeal panels and oversight by the President of Welsh Tribunals of their decision making processes is required’.

20 See references at (n 15) and S Nason and D Gardner, ‘Ten Years of the Administrative Court in Wales: Success or Failure?’ UK Administrative Justice Institute Blog (19 October 2019): [https://ukaji.org/2019/10/15/ten-years-of-the-administrative-court-in-wales-success-or-failure/amp/](https://ukaji.org/2019/10/15/ten-years-of-the-administrative-court-in-wales-success-or-failure/)

21 PLP and S Nason, Evidence to the Commission on Justice in Wales: <https://llyw.cymru/sites/default/files/publications/2018-11/submission-to-the-justice-commission-from-public-law-project-sarah-nason.pdf>

22 PLP and Nason (n 21) and Nason and Gardner (n 20).

Court judicial reviews) now originate with Welsh claimants than was the case two years before the Cardiff Court began operating. Overall, the proportion of so-called 'regional' judicial reviews across England and Wales is lower than it was when regional Administrative Courts (Cardiff, Birmingham, Leeds and Manchester) were first established in 2009. I argue that judicial review cannot be relied on as a central avenue for administrative justice.

If this is so, it is for Welsh Government and the Senedd to consider whether other more explicit routes to redress (for example, through devolved Welsh tribunals) should be created. Le Sueur notes some factors for and against the creation of an express process (which could be an appeal, review or complaint):²³

Factors in favour of an express mechanism are: providing a process may enable proportionate dispute resolution (especially if an aggrieved person is steered away from judicial review); it is important that grievances are handled by people with appropriate subject-matter expertise; the Human Rights Act 1998 requires an express grievance process; and public confidence in the administrative scheme could be enhanced by express provision.

Factors against the creation of an express process are: that it would be expensive to set up and run; that it could risk delay in the implementation of an administrative scheme; that providing interested parties with opportunities to make representations before a decision is made is an adequate substitute for a right to challenge the decision after it has been made; the public body action that might be challenged is not itself a decision or a determination; the public body should be allowed to innovate (this could also perhaps include innovation in developing its own internal complaints mechanisms).

Academics such as Le Sueur, and charities promoting access to justice and the rule of law (notably the Public Law Project), recommend 'a presumption in favour of all administrative decision-making schemes making express provision in legislation for an effective pathway and remedies for addressing disputes and grievances'.²⁴

In broader administrative justice research my colleagues and I recommend that the Senedd use the following checklist in its scrutiny of redress mechanisms:

23 Le Sueur, 'Designing Redress' (n 12).

24 Le Sueur, 'Designing Redress' (n 12) and see V Bondy and A Le Sueur, *Designing redress: A study about grievances against public bodies* (Public Law Project 2012).

1. There should be a presumption in favour of all administrative decision-making schemes making an express provision in legislation for an effective pathway and remedies for addressing disputes and grievances.
2. Institutional design should respect constitutional principles.
3. There should be public accountability for the operation of grievance handling.
4. Evidence and research should inform the creation of new redress mechanisms and the reform of existing ones.
5. There should be opportunities for grassroots innovations.
6. Mechanisms should ensure value for money and proportionality.
7. There should be a good 'fit' between the type of grievance and the redress mechanism.
8. Fair and rational criteria and processes should be used to 'filter' inappropriate grievances.
9. As well as dealing with individual grievances, redress mechanisms should contribute to improvements in public services.
10. Whenever new issues arise that need to be dealt with by the administrative redress system, consideration should first be given to allocating them to an existing redress institution under an existing procedure.
11. Redress mechanisms should be designed primarily from the user's perspective.

4.2. Oversight

On broader systems of administrative justice, the Justice Commission concluded:

The processes of the court and tribunal system are not easy to understand without advice. Many courts and tribunals have come about in part as a matter of history and in part out of a desire to provide simpler and cheaper means of dispute resolution...The system has never been rationalized, it is unduly complex and it should be better aligned with legal aid...Our analysis is that the current structure for resolving disputes demonstrates that there is a need to unify courts and tribunals, both for civil justice and administrative justice.²⁵

25 Justice Commission, para 5.56.

The Commission's recommendations for judicial oversight of the justice system (including administrative justice) in Wales include oversight by a new body to be chaired by a senior judge and oversight by the President of Welsh Tribunals. Research provides a more detailed examination of the challenges and opportunities of implementing these recommendations.²⁶

The Justice Commission also recommends that: 'The Welsh Tribunals Unit should have structural independence which it currently lacks, and be placed under judicial control'.²⁷ In research into public administration and a just Wales (funded by the Nuffield Foundation) colleagues and I recommended that:

Welsh Government examines developing the Welsh Tribunals Unit as an independent statutory non-Ministerial body, with a Board and Board Chair, and Chief Executive, that this body should be founded on a principled approach recognising the distinctive character of administrative justice, and that it should be scrutinised by the Assembly.²⁸

The President of Welsh Tribunals has a statutory obligation to represent the views of members of the Welsh Tribunals to the Welsh Ministers and to other Members of the Senedd. At a meeting between the First Minister, Counsel General and President of Welsh Tribunals in February 2018 it was agreed that the President of Welsh Tribunals would discharge this obligation by presenting an Annual Report to the First Minister and to the Senedd's Presiding Office. The First Annual Report of the President of Welsh Tribunals,²⁹ was laid before the Assembly in March 2019. The Report does not subsequently appear to have been discussed in the Senedd, either in Plenary or in any Committee, and is not referred to anywhere in the record of Senedd proceedings. Some Presidents of individual devolved Welsh tribunals have noted anecdotally to administrative justice researchers that they have not been called to discuss their Annual Reports with any relevant Senedd

26 The Justice Commission recommends (at para 5.55) that: 'Dispute resolution before courts, tribunals, alternative dispute resolution and ombudsmen, as well as dispute resolution in respect of administrative law, should be promoted and coordinated in Wales through a body chaired by a senior judge'. It also recommends (at para 6.50) that: 'All public bodies, ombudsmen and other tribunals which have been established under Welsh law or by the Welsh Government, which make judicial or quasi-judicial decisions, and are not currently subject to the supervision of the President of Welsh tribunals, should be brought under the supervision of the President'.

27 Justice Commission, para 6.59.1 and Recommendation 27.

28 Nason, Sherlock, Pritchard and Taylor (n 1).

29 President of Welsh Tribunals, *First Annual Report (31 March 2019)*.

Committees, when they might have expected that to be the case.

In this Report I have noted various aspects of administrative justice that could be overseen by the Senedd LJC Committee, and also by the broader Senedd. Aspects of administrative justice fit across the remits of various Senedd Committees. There may also be cause for occasional joint inquiries. For example, any future inquiry into administrative justice in housing (redress and a potential housing tribunal for Wales) could be conducted jointly by the LJC Committee and the Equality, Local Government and Communities Committee.³⁰ Any inquiry into administrative justice in school admissions and exclusions could be joint between the LJC Committee and the Children, Young People and Education Committee.

A further question is whether the Senedd alone can sufficiently oversee administrative justice. The UK Administrative Justice and Tribunals Council (AJTC) (including its Welsh Committee) had a statutory duty to keep under review and report on the constitution and working of tribunals within its jurisdiction. It was also able to comment on legislation affecting tribunals, including procedural rules. Members had a right to attend and observe any tribunal proceedings, even when held in private or in a format other than a 'hearing'. The Tribunals Courts and Enforcement Act 2007 (TCEA) provided for the AJTC to have between 10 to 15 members, plus the Parliamentary Commissioner for Administration (the Ombudsman) as an ex officio member. The Lord Chancellor, Welsh Ministers and Scottish Ministers could each appoint two or three members. The AJTC was supported by a Secretariat made up of staff seconded from the MoJ and Scottish Government and had an annual budget in 2010-11 of £826,146 for general AJTC work, £128,092 for its Scottish Committee, and £55,466 for its Welsh Committee. The Welsh Committee had a statutory duty to oversee administrative justice as it applies to Wales, extending to tribunals administered by the Welsh Government. The AJTC's scope of operation was broader than bodies overseeing other elements of the justice system, such as the Civil and Family Justice Councils. This is because the latter bodies are judicially-led; they do not look from the users' point of view but rather examine operational matters.

30 The Justice Commission notes (at para 5.35) that: 'Although housing law is fully devolved to Wales, neither the Welsh Government nor the Senedd has, to date, considered trying to consolidate the jurisdiction for housing disputes into one court or tribunal'.

The AJTC was abolished in a so-called ‘bonfire of quangos’, mainly due to the UK Government’s perception that the proven benefits of oversight do not justify the costs involved. The benefits can be particularly difficult to quantify; neither the MoJ’s impact assessment on abolition, nor the AJTC itself, was able to offer an estimate of the scale of costs avoided by improving the administrative justice system and thereby reducing the need for appeals and complaints. A 2012 House of Commons Public Administration Select Committee (PASC) inquiry into *The Future Oversight of Administrative Justice* drew on a National Audit Office (NAO) report from 2005, concluding that: ‘Improving the cost of current redress arrangements by as little as five per cent would save more than five times the Government’s most optimistic estimate of savings to be derived from the abolition of the AJTC’.³¹

There are real difficulties in quantifying improvements to administrative justice. For example, increased caseloads for particular redress bodies could be evidence of poor performance in public administration, but they could also be evidence of increased awareness of redress routes and improved access to justice. These concerns could be addressed in two ways. The first is that the process of digitization of aspects of administration and redress provides an opportunity for the collection of data about the administrative justice system. This could be combined to provide more reliable and multi-factor models to estimate with greater accuracy the quantitative success of oversight interventions. A second related approach is to take a more rounded measure of success. A Working Group convened as part of the Welsh Government’s Gender Equality Review has also recommended a broader model for measuring success with respect to equality outcomes.³²

While I believe it is necessary for the Senedd to take a more active role in scrutinising administrative justice, my view remains that independent statutory oversight should continue. An independent statutory committee could provide a whole government educative function and strategic vision, promoting coherence of the system and taking account of the values and principles that inform it. Such a body could also engage in networking, co-ordination and collaboration with a

31 House of Commons, Public Administration Select Committee, *Twenty-First Report - Future oversight of administrative justice: the proposed abolition of the Administrative Justice and Tribunals Council* (February 2012), para 52.

32 A Parken, *The report of the Well-being and Equality Working Group: Improving Well-being and Equality Outcomes: Aligning processes, supporting implementation and creating new opportunities* (July 2019) p.10: <https://chwarateteg.com/wp-content/uploads/2019/09/Aligning-and-Improving-Outcomes-for-Well-being-and-Equality.pdf>

range of stakeholders including practitioners and academics.

Previous statutory oversight bodies have been set up with roles to monitor the implementation of wide-ranging reforms to a particular jurisdiction's administrative justice system.³³ The bodies have then tended to be disbanded once the reform process is nearing completion. But this is short-sighted given that the nature of administrative justice means systems and procedures will constantly need to evolve to meet new challenges in social life and public administration.³⁴

Although there is a UK Administrative Justice Council, this does not have sufficient resources to conduct direct monitoring and oversight of any of the UK's administrative justice systems. It addresses important thematic issues where there is some impetus for policy and/or legislative development (primarily at England and UK level) and examines matters of importance cutting across all the UK nations (e.g., digitalisation).³⁵

My research suggests that an independent statutory oversight body should be created and should have the following characteristics:

- Independence and sufficient authority to challenge politicians.
- Sufficient resources, extending to personnel and expertise, including resources necessary to conduct tribunal oversight visits.
- A separate secretariat.
- A separate research budget and appreciation of the centrality of research to

33 For example, the UK AJTC, and the Australian Administrative Review Council set up following major reforms to administrative in Australia. There has to be political and policy impetus for change, and for longer-term oversight. For example, in the experience of South Africa, Professor Cora Hoexter suggests that failure to set up an oversight body alongside codification of administrative justice was a missed opportunity to the extent that it is 'unlikely that the government will ever again have the necessary incentive to impose further...administrative procedures on it self, or the political will to do so' and that without an administrative justice champion the prospects of government providing funding for reform and seeing proposals through to implementation are fairly bleak. C Hoexter, 'The Future of Judicial Review in South African Administrative Law'. 1117 (2000) SALJ 499.

34 see e.g., J Boughey and G Weeks, 'Comment from Australia: Australian Government Scraps Peak Administrative Law Advisory Body' U.K. Const. L. Blog (25th May 2015) (available at <http://ukconstitutionallaw.org>)).

35 See AJC, *First Annual Report (2018/19)*: <https://ajc-justice.co.uk/wp-content/uploads/2019/11/AJC-Annual-report-.pdf>

policy-making.

- Be established by statute, including statutory powers and duties, and statutory relationship whereby reports must be laid before the relevant parliament and must be responded to.
- Ability to make recommendations across the whole administrative justice sector, and not be rooted in 'silos' or arms of the justice system.
- Capacity to act as both watchdog and mentor, reviewing the functions and effectiveness of institutions and procedures, but also making proposals to facilitate better decision-making, and providing support and training to administrative justice professionals (including tribunal members and others).
- Bring together policy-makers, practitioners and academics.
- Ability to work flexibly and adapt to changes in the nature of administration and new challenges (must be reactive as well as proactive in its functions).
- Transparency in its activities.