

Impact case study (REF3b)

<p>Institution: University of Essex</p>
<p>Unit of Assessment: 20 – Law</p>
<p>Title of case study: The Use and Effects of Judicial Review in the UK</p>
<p>1. Summary of the impact Professor Maurice Sunkin’s research on judicial review (JR) has established a comprehensive independent evidence base on the use, impact and operation of JR in England and Wales. This research has been used to inform policy debate, in some instances influencing policy decisions. The research was seminal to 2009 reforms enabling regional access to JR and has influenced the work of the English Law Commission, the <i>Review of Civil Courts in Scotland</i> and Lord Justice Jackson’s report on Costs in Civil Litigation. Most recently it has informed multiple responses to the UK Government’s proposals to reform JR and legal aid, and influenced the Ministry of Justice’s report on those responses.</p> <p>2. Underpinning research Since the early 1990s Sunkin has established a programme of research, funded by the ESRC and the Nuffield Foundation, into Judicial Review (JR) in England and Wales. The research has covered a broad variety of issues concerning JR and has developed the most comprehensive available evidence base on the use and impact of JR. The three most prominent questions of the research have been: who uses JR? how does JR operate? and what is the impact of JR?</p> <p>Investigating who uses JR, Sunkin has studied the geographical and demographic factors associated with the use of judicial review (see 1995 and 2008). This reveals the concentration of JR litigation in London and the South East and the problems faced by populations in other regions in accessing JR. Regarding the operation of JR, Sunkin has explored the dynamics of public law litigation, including the incidence and reasons for out-of-court settlement (see 2008, 2009a, 2009b). The work on the operation and effects of the permission stage in JR (by which claimants obtain the court’s permission to have JRs dealt with in court) has highlighted the variation in judicial approaches to permission and the variations in refusal and grant rates according to procedure. This work has also showed how the permission stage influences early settlement.</p> <p>Regarding the impact of JR, Sunkin has undertaken both quantitative and qualitative analysis of the effects of JR litigation on claimants, public bodies and the quality of public services (e.g. 2010). The research found a correlation between increases in legal challenges to local authorities and improvement of local authority performance according to general performance indicators. The qualitative research has found that legal challenges can trigger a reassessment of the way local authorities work, and can provide guidance and clarity as to how a local authority can improve the quality of its public services.</p> <p>Much of Sunkin’s research has been undertaken in collaboration with colleagues from other disciplines at Essex, other HEIs, and from non-academic external organisations. Since 1992 Sunkin has developed a partnership with the Public Law Project, a national legal charity, with which he has developed a body of research that has been used to inform their campaigning and lobbying. Sunkin’s research has attracted total funding of over £530,000 over 6 grants from the ESRC and the Nuffield Foundation.</p> <p>As explained below, the research has provided an evidence base for much debate and reform of JR in England, Wales, and Scotland. The research on the geographical concentration of JR has</p>

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led to major reforms to regional JR access; the research on the permission stage in JR has informed, *inter alia*, Scottish court reform initiatives; and the research on the impact of JR has informed the work of the Law Commission in England and Wales.

3. References to the research

- Sunkin, M., L. Bridges, and G. Meszaros (1995) *Judicial Review in Perspective*, Cavendish. ISBN: 9781859412039
- Sunkin, M., K. Calvo, L. Platt, and T. Landman (2007) Mapping the use of judicial review to challenge local authorities in England and Wales, *Public Law*, 545-567. [available from HEI on request]
- Sunkin, M. and V. Bondy (2008) Accessing judicial review, *Public Law*, 647-667. [available from HEI on request]
- Sunkin, M. and V. Bondy (2009a) Settlement in judicial review, *Public Law*, 237-259. [available from HEI on request]
- Sunkin, M. and V. Bondy (2009b) *The Dynamics of Judicial Review Litigation: The resolution of public law challenges before final hearing*, Public Law Project. ISBN 978-1-989421-10-8
- Platt, L., M. Sunkin, and K. Calvo (2010) Judicial review litigation as an incentive to change in local authority public services in England & Wales, *Journal of Public Administration Research and Theory*, 20 (Supp 2), i243-i260. DOI: 10.1093/jopart/muq027

Research Funding:

- M. Sunkin; *Access and Use of Judicial Review*; Nuffield Foundation; 1992 – 1994; £74,986
- M. Sunkin (PI), L. Bridges, University of Warwick (Co-I); *The Dynamics of Judicial Review Litigation*; ESRC; 1994 – 1997; £152,950 (Essex portion: £61,233)
- M. Sunkin; *The Impact of Judicial Review on the Independent Review Service of the Social Fund*; ESRC; 1997 – 1999; £53,306
- M. Sunkin; *The impact of the Human Rights Act on Local Services in Essex: A Pilot*; Nuffield Foundation; 2004 – 2005; £7,000
- M. Sunkin (PI), in collaboration with the Public Law Project; *The Permission Stage of the JR Procedure*; Nuffield Foundation; 2005 – 2009; £118,974
- M. Sunkin (PI), in collaboration with T. Landman (Dept of Government, Essex) and L. Platt (Institute of Social and Economic Research, Essex); *The Impact of Litigation and Public Law on the Quality and Delivery of Public Services*; ESRC; 2006 – 2008; £131,865

4. Details of the impact

Sunkin's research has produced the most comprehensive available collection of data on Judicial Review. As the primary source of empirical research on JR in England and Wales, Sunkin's work has been a significant source of information for: civil society groups contributing to policy debate on JR policy in England and Wales; court decisions in JR cases; and policy-makers in the UK, including the Ministry of Justice (MofJ), the Law Commission, and the Scottish Civil Courts Review. Sunkin has also worked in partnership with the Public Law Project (PLP) to help their campaigning, including co-authoring their responses to a number of MofJ consultations on JR reform. The result has been a substantial contribution to debate on JR in a number of contexts, informing the recommendations made by major policy-makers and in some instances influencing changes made in policy and legislation. The impacts of the research come under 3 categories: impacts on courts, policy, and civil society.

Impact case study (REF3b)**Impact in courts**

Sunkin's research has had impact on court decisions, both through citation of his publications and through recommendations made by Lord Justice Jackson, following his review of the costs of civil litigation. Lord Justice Jackson's 2009 report on Costs in Civil Litigation [corroborating source 1] cites research by Sunkin to support these recommendations (para 3.21, p.309 and para 5.2, p.352). Similar arguments were accepted in the seminal decision of the Court of Appeal in *Bahta v SSHD* [2011] EWCA Civ 895. One of the barristers on the case comments that 'the [research] proved very useful...[it] cast light in an important area where there is a serious shortage of information to inform policy, even in relation to cost orders' [corroborating source 2].

Impact on policy

Sunkin's publications on the impact of JR have informed the work of the UK Law Commission, which cited his work in 2010 to support its recommendations for improving monetary remedies against public bodies. Of Sunkin's work the Law Commission's report comments: 'We are glad that such work has been undertaken, especially as it backs up our argument that there can be positive benefits to litigation' [corroborating source 3]. His research has also informed policy changes. Sunkin's work on the concentration of JR in London and the South East was recognised by the Law Commission in 1994 [corroborating source 4, paras 2.20 and 2.28] and by the *Review of the Crown Office List*, Lord Chancellor's Department in 2000 [corroborating source 5, Chapter 6 para 21]. Reform ultimately occurred in April 2009, when regional JR centres were established in Birmingham, Cardiff, Manchester and Leeds. A former High Court judge and Chairman of the Law Commission writes that 'Sunkin's work played a significant role in the identification of the problems that flowed from lack of easy regional access to judicial review ... and therefore played a seminal role in contributing to the reform agenda that eventually led to the regionalization of the Administrative Court' [source 6].

Similarly, Sunkin's research has informed recommendations that were incorporated into a Draft Bill for the Scottish Parliament. His research was cited to support the recommendations made by Lord Gill's Review of the Scottish Civil Courts [source 7, Vol 2, Chapter 12. see esp. paras 34, 40-50]. The Review states: '... Research [by Sunkin]...suggests that [in England & Wales the pre-trial protocol and permission stage] ...work well in filtering out unmeritorious applications and in prompting early concessions where claims are well founded' (para 50); 'We recommend the introduction of a requirement to obtain leave to proceed with an application for judicial review in Scotland, following the model ...[in] ... England and Wales...' (para 51). Following this recommendation, the Scottish Government has included a leave requirement in the Draft Courts Reform (Scotland) Bill [the process from the Gill review, influenced by Sunkin, to the Draft Bill, has been tracked by the UK Constitution Law Group blog; see source 8]. Consultation on the Bill is ongoing at the time of writing (August 2013), with the potential for further impact of Sunkin's work in this area if the Bill is passed into law.

Impact on civil society and the Ministry of Justice

In England, Sunkin's research has been used by a wide range of organisations, including his collaborative partner institution the Public Law Project (PLP), to submit responses to MofJ consultations regarding reforms to JR and to legal aid. His joint submissions with the Public Law Project have been partly responsible for influencing the MofJ's responses to those consultations. In 2009, the Legal Services Commission (LSC) and the MofJ issued a consultation on their proposal to withdraw solicitors' delegated power to self-grant emergency representation in JR cases. Sunkin and the PLP used his research to question the statistical data used to justify the MofJ's proposal. Sunkin's research was distributed to practitioners and expert groups and was widely utilised by them in their responses to the consultation (see for example the Advice Service Alliance's

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response to the consultation, corroborating source 9, paras 3.33-3.34). Ultimately the MofJ decided not to proceed with this reform. This decision was partly based on the fact that respondents to the MofJ consultation argued that the latter's permission rate statistics were unsound [source 10, see especially para 15].

In December 2012 the MofJ issued another consultation on reforms to JR in England and Wales. 22 of the responses to the consultation cited Sunkin's research, including responses from The Equality and Human Rights Commission, the Advice Workers Alliance, the Bingham Centre for the Rule of Law, NGO Reprieve, Garden Court (barristers) the Constitutional and Administrative Law Bar Association, and the Education Law Association. Sunkin's work on JR was the only research referred to by the Government in its response to the consultation. The Government note that: 'Those [respondents] who disagreed [with certain of the proposals] ... pointed to the research undertaken by Bondy and Sunkin, which suggested that the Government was over-estimating the failure rate for applications for permission' [source 11, p18 para 69].

Though it is impossible to determine the primary influence on the Government's decision not to pursue certain proposed reforms to JR, the fact that the research was widely cited in the consultations indicates that it was a significant contributing factor to the Government's decisions on this issue.

5. Sources to corroborate the impact [All sources saved on file with HEI, available on request]

1. Lord Justice Jackson, *Review of Civil Litigation Costs: Final Report*, December 2009: <http://www.judiciary.gov.uk/Resources/JCO/Documents/Reports/jackson-final-report-140110.pdf>
2. Barrister on *Bahta v SSHD* [2011] EWCA Civ 895 and former President of the Administrative Law Bar Association
3. The Law Commission No 322, *Administrative Redress: Public Bodies and the Citizen*
4. The Law Commission No 226, *Administrative Law: Judicial review and Statutory Appeals*
5. Bowman Report (2000) *Review of the Crown Office List: A Report to the Lord Chancellor*.
6. Former High Court Judge and Chairman of the Law Commission
7. *The Report of the Scottish Civil Courts Review*, 2009: http://www.scotcourts.gov.uk/docs/aboutscs/vol2chap10_15.pdf?sfvrsn=2
8. 'Access to Judicial Review in Scotland', Aileen McHarg, *UK Constitutional Law Group* <http://ukconstitutionallaw.org/2013/07/30/aileen-mcharg-access-to-judicial-review-in-scotland/>
9. *Legal Aid: Refocusing on Priority Cases*, *The Advice Services Alliance's response to the Ministry of Justice consultation paper*, October 2009: https://www.asauk.org.uk/fileLibrary/pdf/Legal_Aid_Refocusing_on_Priority_Cases.pdf
10. *Legal Aid: Refocusing on Priority Cases, Response to Consultation* (CP(R) 12/09) February 2010: [http://www.ialibrary.bis.gov.uk/uploaded/legal-aid-refocusing-final-response-web\[1\].pdf](http://www.ialibrary.bis.gov.uk/uploaded/legal-aid-refocusing-final-response-web[1].pdf)
11. *Reform of Judicial Review: the Government Response*, April 2013: <https://consult.justice.gov.uk/digital-communications/judicial-review-reform>