

<p><b>Institution:</b> 10007857 – Bangor University</p>
<p><b>Unit of Assessment:</b> UoA 20 Law</p>
<p><b>Title of case study:</b> The Regionalisation of Public Law</p>
<p><b>1. Summary of the impact</b> (indicative maximum 100 words)</p> <p>Bangor Law School’s research into the work of the Administrative Court and the regional market for legal services in public law has challenged the orthodox view that public law is the preserve of London. It has; 1. Provided evidence that regional Administrative Courts are at least equal to the Royal Courts of Justice in terms of their service to users. 2. Influenced the National Assembly for Wales in assessing the case for establishing a separate legal jurisdiction. 3. Influenced solicitors’ instruction patterns in the English regions and Wales, leading to the direction of more work to regional courts and more local solicitors instructing local counsel. 4. Informed national debate about the constitutional role of judicial review. 5. Influenced the Administrative Court/ Public Law Project in developing training opportunities outside London.</p>
<p><b>2. Underpinning research</b> (indicative maximum 500 words)</p> <p>The research was conducted by Sarah Nason, Bangor Law School (Lecturer since 2006) as principal researcher, with Professor Maurice Sunkin (University of Essex) as co-researcher, and 3 months research assistance from Duncan Hardy (Bangor) funded by the Nuffield Foundation). In 2009 Administrative Court Centres were established in 3 English regions and in Wales. The research examined regional access to public law litigation, before and after establishment of these Centres, and provided data to Her Majesty’s Courts’ and Tribunals’ Service (HMCTS), the judiciary, practitioners, and policy-makers, about the market for public law legal services and barriers to access to justice. The research consisted of data collection, collation, and analysis (including Administrative Court data) (conducted in 2009, 2011, and 2013); and interviews (2009 - 2013), electronic surveys (2009 and 2011), and workshops (Cardiff and Llandudno November 2010 – approx. 20 attendees during each workshop, predominantly barristers, solicitors, and local government representatives, London March 2013 – 16 attendees, Administrative Court Staff, judges, barristers, solicitors, local government representatives, Legal Aid Board representative).</p> <p>A key hypothesis of the research was that legal service providers would ‘cluster’ around the new Court Centres, thus increasing caseloads and improving access to justice for litigants (including meeting existing latent demand for public law advice identified by the research) [a4 &amp; a6]. The research found that geographical access to public law legal services was patchy before regionalisation [a4], and remains so after, predominantly because legal aid policy has been disadvantageous to non-specialist providers especially in the regions where caseloads are comparatively low [a1, a2, a3, a5 &amp; a6]. There was an evident lack of specialist legal providers in the regions and limited inter-action between solicitors and the local bar [a4 &amp; a6]. The research recommended further training for local providers and more engagement with HMCTS [a4, a6 &amp; a3]. It also found that local barristers would be capable of handling many so-called case-level or street-level judicial review claims, despite local solicitors continuing to instruct London-based counsel [a1, a5, &amp; a6]. The research disclosed a link between unrepresented litigation and poor outcomes for claimants (notably failure at the permission stage) and built on previous research highlighting inconsistency in permission grant rates (especially across the plurality of locations in which claims can now be issued) [a1, a5 &amp; a6].</p> <p>The research highlighted the successes of the regional Courts in reducing waiting times and providing an efficient, good quality, service to users [a1, a2, a3 &amp; a5]. However, the research also identified the difficulties of operating a specialist jurisdiction on a small scale (such as judicial deployment, court resources, sufficient caseloads, local awareness) [a1, a3, a4, a5 &amp; a6]. It also highlighted some problems of overlapping jurisdictions (i.e. ‘forum-shopping’ e.g. issuing in London to take advantage of longer waiting times, and inconsistent development of case law) and fed</p>

## Impact case study (REF3b)

these concerns into the Welsh Assembly's consultation on a separate jurisdiction for Wales [a1, a4, a5 & a6].

The research exposed the diversity of topics covered by judicial review litigation, the plurality of roles performed by the procedure, and how this relates to the market for legal services and the development of legal principles [a1]. These concerns and the analysis of caseloads informed debate about the future of judicial review, dispelling myths about its impact, and highlighting the need for more nuanced analysis of its constitutional value and impact [a1].

### 3. References to the research (indicative maximum of six references)

**a1.** S. Nason and M. Sunkin, 'The Regionalisation of Judicial Review: Constitutional Authority, Access to Justice and Specialisation of Legal Services in Public Law (2013) *Modern Law Review* 76(2) 223. DOI: 10.1111/1468-2230.12011 (submitted to REF2014 ID 2005).

**a2.** S. Nason, M. Sunkin and D.Hardy, 'Regionalisation of the Administrative Court and Access to Justice' (2010) 15(3) *Judicial Review* 220. *A copy of this article is available on request.*

**a3.** S. Nason, 'Regionalisation of the Administrative Court' (2009) 14(1) *Judicial Review* 1. *A copy of this article is available on request.*

**a4.** S. Nason, 'Regionalisation of the Administrative Court and the Tribunalisation of Judicial Review' [2009] *Public Law* 440. *A copy of this article is available on request.*

**a5.** £6,123, British Academy, 'Regionalisation of the Administrative Court and Access to Justice' S. Nason (Bangor) M. Sunkin (Essex) (95% of funding attributable to Bangor) 03/03/10-03/03/11.

**a6.** £8,203, Nuffield Foundation, 'Regionalisation of the Administrative Court and Access to Justice' S. Nason (Bangor) M. Sukin (Essex) and L. Platt (Institute of Education) (90% of funding attributable to Bangor) 01/06/09-30/11/09. DOI 10.5235/108546810793129303.

### 4. Details of the impact (indicative maximum 750 words)

#### Impact on policy debates

The research findings have influenced contributions to policy formulation and access to justice debates (e.g., following research presentations by Sarah Nason at the Legal Services Research Centre conference (Oxford 2012 /Public Law Project London Conference (2012)). The research findings were presented at a time of consultation and debate about possible changes to judicial review and legal aid. The work provided empirical data, which assisted in informing the debate and responses to consultation exercises [5.1 & 5.2].

The research has also assisted the work of the Public Law Project (PLP) (a non-Governmental Organisation in the field of access to justice in public law). PLP's Research Director confirmed that the research has been of great interest to the PLP specifically for its unique and original analysis of the operation of the regional Centres and its addition to the evidence base of empirical data regarding judicial review generally which PLP has been collecting for many years. The importance of the data was proved when PLP were able to analyse and respond to recent government proposals to reform judicial review on the basis of empirical data rather than general comment [5.2].

The research has provided an on-going critical assessment of the regionalisation project, in particular adding to a base of knowledge about inconsistency of judicial decision-making in the Administrative Court especially at the permission stage [5.1 & 5.10].

#### Impact within Her Majesty's Courts' and Tribunals' Service HMCTS

The research has impacted upon the case for maintaining and expanding the regionalisation of public law, particularly when other local courts (such as magistrates' courts) were being closed due to austerity measures [5.4].

**Impact case study (REF3b)**

In Wales the research has influenced the development of initiatives to increase the number of specialist practitioners and to broaden access to public law legal services and remedies, specifically by providing evidence of the lack of specialist legal providers in Wales [5.6]. As a result of the research the Administrative Court Lawyer for the Welsh & Western Circuits has begun to arrange bi-annual, Administrative Court Office led training events [5.5].

In the Midlands the research has helped the Birmingham Administrative Court put into place measures to increase its share of the total caseload outside London and to improve the efficiency of the service it provides. The Administrative Court lawyer for the Midlands has used the findings to consider whether changes need to be made to increase the regional share of the workload and whether it is possible for the court to influence the region of issue. E.g., it has been possible to see the relatively low number of solicitors in the region issuing claims and to target measures to attract them. The research has also highlighted possibilities to provide an improved quality of service which in turn may result in an increase in usage of the regional Administrative Court Centres [5.1 & 5.5].

**Impact on National assembly for Wales and Welsh Assembly Government**

The research findings relating to public law in Wales formed part of written and oral evidence to the Welsh Assembly Constitutional and Legislative Affairs Committee. The findings in relation to access to justice, legal institutions, and the legal profession were cited in the Committee's December 2012 Report as informing the its understanding of what institutions are needed to fully establish a separate jurisdiction and on procedural changes necessary to ensure currently established Welsh institutions are sufficiently supported (para 33, conclusions 1 – 4 (separate jurisdiction for Wales) para 92 recommendation 2 (amendment to Civil Procedure Rules) para 142 (legal education and qualification issues) [5.7]. The language used by Sarah Nason in giving her evidence to the Committee (that the Welsh jurisdiction question is one of “degrees and development”) was adopted by the Committee's Chair in his response to the Welsh Government's launch of its own further consultation (in plenary 27 March 2012), pertaining to the idea that a Welsh jurisdiction would develop by degrees rather than as a singular event (or even series of events) and depends significantly on the establishment of separate legal institutions (notably separate courts) [5.7].

The research findings about the need to develop public law legal service specialisation in Wales were supported by recommendations made in a 2013 Welsh Government report *The Future of Legal Services in Wales* (July 2013).

**Impact on the Judiciary:**

The Lord Chief Justice for England and Wales has noted in his *Birkenhead Lecture* to the members of Grays Inn (21 October 2013) (paras 40 and 41 especially) that the research discloses the differential development of the public law bar outside London and that this disparity requires urgent rectification [5.6]. Both the present Lord Chief Justice and President of the Queen's Bench Division have drawn on the research findings in keeping up to date with the variable Administrative Court caseload (views expressed in a meeting with Sarah Nason at the RCJ October 2013) [5.6]. Other members of the judiciary have noted that following the research they are better informed in dealing with cases in the regions [5.1].

**Impact on legal services providers:**

The research has contributed to awareness of public law outside London and the need for London-based advisers to take advantage of the regional Courts. It has contributed to the growing realisation of the need for those based in London to serve other nations and regions better. That has reflected itself in a greater awareness of the need to travel outside London for the purpose of giving advice to clients or for court hearings [5.1]. As part of the research two CPD workshops were held (Llandudno and Cardiff) in November 2010. The participants included local authority representatives, practitioners, and court staff. The findings were considered by the Administrative Court User Group in Wales and presented in the minutes of one of its meetings (June 2012), solicitors present agreed to action the recommendation to develop measures ensuring they instruct local counsel wherever possible [5.8].

### Impact on legal aid provision/access to justice for unrepresented litigants

Early findings from the research formed part of Bangor Law School's submission to the House of Commons Welsh Affairs Committee (April 2009) considering closure of the Legal Services Commission Office in Cardiff. The findings were cited in the Committee's Report (para 28) and influenced the Committee's recommendation for an urgent reconsideration of the plans to close the Cardiff office [5.9]. The research finding that current legal aid policies in relation to public law may be disproportionately damaging to regional service providers have been made known to the new Legal Aid Board and will be taken into account when new legal aid contracts are awarded [5.3].

### 5. Sources to corroborate the impact (indicative maximum of 10 references)

1. Feedback from Workshop, 27 March 2013 (16 attendees: representatives from the Constitutional and Administrative Law Bar Association, Administrative Court Staff, Judiciary, Solicitors in Local Government Association, and leading solicitors firms), (on file with institution).
2. Email from Public Law Project Research Director, 2 August 2013 (on file with institution).
3. Non-executive Director, Legal Aid Board (email and contact details on file with institution)
4. The Director of the High Court, various emails and meetings (email of support and contact details on file with institution).
5. Testimonials from Administrative Court Lawyers' for Wales and Western, and Midlands Circuits (emails and contact details on file with institution).
6. Lord Chief Justice of England and Wales, 'Justice in one fixed place or several?' *Birkenhead Lecture, Grays Inn* 21 October 2013 (paras 40 and 41 especially).
7. Written and oral evidence to Welsh Assembly Constitutional and Legislative Affairs Committee and December 2012 Report on "Inquiry into a Separate Welsh Jurisdiction" available online at: <http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=2594&Opt=0> and <http://www.senedd.tv/search.jsf> - Archived meetings Senedd.tv. Committee 2 – Constitutional and Legislative Affairs Committee – 26 March 2012 and Response of Committee Chair to Counsel General for Wales in Plenary 27 March 2012: <http://www.assemblywales.org/bus-home/bus-chamber-fourth-assembly-rop.htm?act=dis&id=232159&ds=3%2F2012#dat>
8. Minutes of Administrative Court Users Group Meeting, 19 June 2013 (on file with institution).
9. House of Commons Welsh Affairs Select Committee, Seventh Report, Legal services Commission Cardiff Office, 21 April 2009, para 28: <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmwelaf/374/374.pdf>
10. Practitioner journal article, 'Regionalisation of the Administrative Court' [2009] *Judicial Review* 363, [para 18].