

Institution: University of Manchester
Unit of Assessment: 20 (Law)
Title of case study: Title of case study: Administrative Justice and Asylum Appeals
<p>1. Summary of the impact</p> <p>This case study covers two research projects undertaken at the University of Manchester (UoM) which had unprecedented access to the immigration appeals system, both impacting on asylum policy. The first project focused on family visitor appeals and showed that the introduction of a fee was not a significant deterrent to accessing the appeals process. The second project on asylum appeals made a number of recommendations concerning the handling of appeals by the Tribunal, and the reporting of its decisions.</p> <p>The research on family visitor appeals was the basis for a Ministry of Justice consultation paper in 2010, and was directly cited by the government when introducing fees for immigration appeals. The research on asylum appeals has influenced policy and thinking within the Upper Tribunal (Immigration and Asylum Chamber), with particular regard to the Tribunal's management of its country guidance system. More recently, following a presentation of this research to Tribunal members, a new 'Guidance Note' on the reporting of cases was produced.</p>
<p>2. Underpinning research</p> <p>This case is based upon two research projects, undertaken at UoM over the last ten years by Professor Robert Thomas (1998-present). Both projects were empirical in scope, and enjoyed unprecedented access to the immigration appeals system, with Professor Thomas seconded to the Home Office in 2001.</p> <p>Family visitor appeals research: This Home Office funded project considered the use and procedure of immigration appeals for individuals overseas wishing to visit a family member in the UK. It addressed the process by which individuals, refused a visa to visit family members in the UK, decide to appeal against such decisions to the Asylum and Immigration Tribunal. More specifically, it was assessed whether the introduction of an 'appeal fee' dissuaded people from lodging an appeal, and the reasons for the higher success rate of oral hearings over paper appeals. This was the first published piece of empirical research into immigration appeals, and was commissioned in response to concerns that the appeal fee inhibited people from activating the appeals process.</p> <p>The research found no clear evidence that the fee in itself was a deterrent to making an appeal, and whilst clear instances were identified where the level of fee had deterred an applicant from making an appeal, in many cases the applicant's sponsor played an important role in the decision to appeal. In 65% of the cases examined the sponsor paid for the appeal, compared to 25% paid by the appellant. [D][E]</p> <p>Asylum appeals research: This project examined the procedure and determination of asylum appeals by the <i>Asylum and Immigration Tribunal</i> (now the First-tier and Upper Tribunal, Immigration and Asylum Chamber). It was undertaken as a legal empirical project funded by the <i>Nuffield Foundation</i> (£112,000), and ran from January 2007 to December 2008. Alongside Professor Thomas a research associate (Rute Caldeira) was employed for the duration of the project. The empirical element of the research involved: <u>observatory fieldwork</u> at four tribunal hearing centres (in particular asylum appeal hearings); the <u>analysis</u> of tribunal determinations; and a range of in-depth <u>interviews</u> with tribunal judges, representatives, <i>Home Office</i> presenting officers, country experts and medical professionals.</p> <p>The research involved an in-depth assessment of the Tribunal's country guidance system, by which it assesses the degree of risk posed by conditions in countries from which asylum claimants originate. The research recognised that this provided an innovative tool for managing the wider adjudication process to promote consistent decision-making, and had much to commend it. However, it was also noted that the Tribunal could usefully refine the country guidance system to</p>

case manage appeals more effectively, thus enhancing its overall effectiveness. The research utilised fieldwork data to consider both the pros and cons of the country guidance system, as well as its practical operation.

The research recognised that the determination of asylum appeals is inherently difficult – not just in terms of making an individual decision, but also regarding the management of a broader adjudication process – given that there are 25,000 appeals each year and some 600 Immigration Judges. A number of recommendations were made, based upon the need to ‘produce good quality decisions through fair procedures’, whilst ensuring that the appeals process is as swift as possible. This included a consideration of best practice around the effective preparation of appeals, and the suggestion of criteria governing the reporting of decisions. [A][B][C]

3. References to the research (all references available upon request - AUR)

Reference [A] won the Society of Legal Scholars Peter Birks Prize (2011) for Outstanding Legal Scholarship. The *International Journal of Refugee Law* is the leading academic publication in the field, and [B] was published in a practitioner-focused journal, read by legal representatives and issued to 600 Immigration Judges.

- [A] (2011) Thomas, R. *Administrative Justice and Asylum Appeals: A Study of Tribunal Adjudication* Oxford, Hart Publishing (REF 2014) (AUR)
- [B] (2010) Thomas, R. “Tribunalising Immigration and Asylum Judicial Review” *Immigration Law Digest* 15(2) 2-4 (AUR)
- [C] (2008) Thomas, R. “Consistency in Asylum Adjudication: Country Guidance and the Asylum Process in the United Kingdom” *International Journal of Refugee Law* 20(4) 489-532 doi:10.1093/ijrl/een034
- [D] (2004) R. Thomas, “Immigration Appeals for Family Visitors Appeals Refused Entry Clearance” *Public Law* pp.612-642 (RAE 2008) (AUR)
- [E] (2003) Gelsthorpe, V., Howard, D., Thomas, R. & Crawley, H. ‘Family Visitor Appeals: An Evaluation of the Decision to Appeal and Disparities in Success Rates by Appeal Type’ (Home Office: London) (AUR)

4. Details of the impact

Family visitor appeals: This research was referred to extensively in a consultation paper issued in 2010 by the Ministry of Justice on the re-introduction of fees for immigration appeals, and comprised part of the evidence base for that consultation. Concerns had been raised that appeals fees restrict access to justice. The consultation paper said that there was a sound policy reason to set fees initially at a level considerably below the full cost of particular appeals and it drew directly upon the research. According to the consultation paper:

“In reaching this decision, we took into account that fees were introduced by the previous Government for Family Visit Visa appeals in 2000. Suggestions were raised that those with legitimate claims were being deterred from appealing. Research was undertaken between August 2001 and January 2002, with the results published as a Home Office paper in 2003 [paper 6 above]... The paper found no conclusive evidence that the fee was a deterrent to legitimate appeals.” [1]

The research findings were then directly utilised by the Ministry of Justice, with a consultation paper noting that *“the research found no clear evidence that the fee in itself was a deterrent to making an appeal.”* Fees were subsequently reintroduced through secondary legislation, prior to the removal of the appeal right altogether in 2013. Ultimately applicants will be encouraged to re-apply, avoiding the need for an appeal procedure.

Asylum appeals: The principal beneficiary of the research has been the Upper Tribunal. Given the unique and innovative nature of the country guidance system – relying on factual precedent concerning the conditions in countries from which asylum claimants seek refuge – the Tribunal

must manage the process carefully in order to reconcile competing aims such as individual justice, consistency, efficiency and flexibility. The research recommended that the Tribunal adopt innovative methods of managing its country guidance system.

The research was presented to the Administrative Justice & Tribunals Council at their away day in 2008, and considered at a roundtable seminar (June 2009) involving Tribunal judges, representatives and other stakeholders (organised by Professor Thomas as part of the research project) [2]. In 2010 an Upper Tribunal (Immigration and Asylum Chamber) case, noted that the country guidance system *"has recently been described by Robert Thomas [C]... as his article makes plain the development of the system has been encouraged by the higher courts, who have been concerned with the problem of inconsistent decisions in different panels of the Asylum Tribunal"* [3]. Also noting that the research had influenced the Asylum Tribunal's country guidance system, the judgement of Lord Justice Carnwath (then Senior President of Tribunals, now Justice of the Supreme Court) recommended that *"For an up-to-date review of the development of the system and of the modern practice it is unnecessary to do more than refer to Robert Thomas' comprehensive study: Administrative Justice and Asylum Appeals (2011) chapter 7"* [4]; this monograph was also been explicitly referenced in an official report, and disseminated via a national newspaper [5]. To this date, Professor Thomas' work continues to be cited within asylum appeal cases [6].

In addition to presentations and publications to practitioners, a specially convened roundtable seminar was organised by the Upper Tribunal (Immigration and Asylum Chamber), which was attended by judges from the High Court and the Court of Appeal as well as tribunal judges and other stakeholders. Professor Thomas gave an invited keynote speech, and in that speech a number of recommendations were presented, relating to how the country guidance process could be more effectively managed, in order to ameliorate concerns that had been raised and to enhance the country guidance process to enhance the tribunal system and access to justice.

Direct impacts resulted from engagement with the Tribunal. In June 2011, It was suggested that the Tribunal should produce more detailed guidance on the criteria relating to the reporting of Tribunal decisions and have an internal committee to keep the system under review. The Tribunal subsequently produced a detailed 'Presidential Guidance Note' on the reporting of its decisions [7]. The President of the Upper Tribunal (Immigration and Asylum Chamber) commented that he was *"grateful for the research... [It] was not confined to publication [and] has indeed contributed to the thinking of lead judges in this Chamber"*. He continued by outlining the specific areas of impact:

"That seminar has led to judicial reflection on best practice, a new Guidance Note on the reporting of country guidance, an engagement with the Immigration Law Practitioners' Association on problems their members see arise, and an engagement with the Home Office Presenting Officers unit on management of country guidance cases. This has proven to be of considerable utility and has enabled us to case manage country guidance cases with more insight into common problems." [8]

The Upper Tribunal Judge with responsibility for the Tribunal's country guidance work, has also confirmed the value of Professor Thomas' work, noting that the Tribunal now has *"an internal Country Guidance Committee that keeps under review country guidance issues and your book continues to provide a helpful compass for us in deciding how to case manage country guidance cases better in the light of ongoing challenges"* [9].

The research has thus exerted direct and significant impact upon judicial thinking and policy within the Upper Tribunal, and in addition **has studied the use of country of origin information and the operation of judicial remedies in asylum cases**. As the aforementioned Senior Immigration Judge confirms, following the transfer of asylum 'fresh claim' judicial review cases to the Upper Tribunal, and in developing the Tribunal's plans for handling this work: "

"... we are once again grateful for the background analysis that you provide of UK remedies in the asylum field. Partly inspired by observations made in your book, one of the Working

Parties of the International Association of Refugee Law Judges is currently planning a London roundtable in May 2012 designed to develop international guidelines relating to procedural fairness in the use of Country of Origin Information (COI)" [9].

The impact from this research is still live, and continues to be drawn upon by the courts in 2013 [9]. Moreover, the research has an ongoing and wider relevance in terms of informing the wider developments and debate over the Upper Tribunal's guidance-setting role, with the research funders – the Nuffield Foundation – noting that the success of the research “*has made it more likely that the judiciary will not only grant access to future research, but also engage with the findings*”, suggesting also that Thomas’:

“...sensitive approach, combined with the ability to deliver findings which were interesting, relevant and useful to judges has helped the tribunals judiciary to value the contribution that research can make to practice... [the] study had relevance beyond the field of asylum... for example on the difficulties judges face in balancing accuracy, fairness, consistency and timeliness when there is not a level playing field in terms of appellants’ understanding of the process or access to legal advice.” [10]

5. Sources to corroborate the impact (all claims referenced in the text)

- [1] (2010) Ministry of Justice ‘Introducing fee charges for appeals in the Immigration and Asylum Chambers of the First-Tier Tribunal and the Upper Tribunal’ (Consultation Paper 10/10) p.15 (see also: pp. 67-71)
- [2] (2008) AJTC ‘Annual Report 2007-08’ (October) p.18; (2010) Thomas, R. “Report on a Roundtable Seminar: ‘Asylum Adjudication and Country Guidance: Function, Operation, and Future”” *International Journal of Refugee Law* 22(2) 336-339
- [3] (2010) Upper Tribunal (Immigration and Asylum Chamber), *HM and Others v Secretary of State for the Home Department (Article 15(c)) Iraq CG UKUT 331 (IAC)*, 22nd September (para.37)
- [4] (2011) Court of Appeal of England and Wales, *PO (Nigeria) v Secretary of State for the Home Department* EWCA Civ 132, 22nd February (para.48)
- [5] (2011) Senior President of Tribunals ‘Annual Report’ (February); (2011) Thomas, R. "Can the UK’s asylum tribunal system be improved?" *The Times Online* (17th February)
- [6] (2013) Court of Appeal of England and Wales, *KS (Burma) & NL (Burma) v Secretary of State for the Home Department* EWCA Civ 67, 17th January (ref. to article [C] para. 17)
- [7] (2011) Upper Tribunal (Immigration and Asylum Chamber), Presidential Guidance Note No.2, "Reporting Decisions of the Upper Tribunal (Immigration and Asylum Chamber)
- [8] Testimonial from the President of the Upper Tribunal, Immigration and Asylum Chamber, (18th January 2012)
- [9] Testimonial from Senior Immigration Judge, Upper Tribunal, Immigration and Asylum Chamber (7th February 2012)
- [10] Testimonial from the Director of Social Research & Policy, The Nuffield Foundation (1st May 2013)