



**HMCS Operational Committee July 2007**

<b>Report title:</b>	<b>Justice Outside London – establishing regional offices of the Administrative Court</b>
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<b>Purpose of report:</b>	<b>To advise the Committee of the resource and workload implications of establishing regional offices of the Administrative Court</b>
<b>Recommendation:</b>	<b>That the Committee agrees in principle to pursue the establishment of regional offices of the Administrative Court in Cardiff, Birmingham, Leeds and Manchester and sets up project management arrangements to take this forward with a view to implementation, subject to the project criteria and funding needs being met, in 2008/09.</b>
<b>Attachments:</b>	<b>None</b>

## **1. Background**

### **1.1 Key themes**

There are two key themes to this paper which come together in the proposal to establish regional offices and hearing facilities for the Administrative Court. One relates to the growing workload pressures on the Administrative Court, which are compounded by the constraints on the availability of judicial resources. The second concerns the policy objective of promoting accessibility to justice, which will be served by establishing a regional presence for this specialist jurisdiction.

### **1.2 The Administrative Court**

The Administrative Court, formerly known as the Crown Office, operates within the jurisdiction of the Queen's Bench Division of the High Court. It deals with public and administrative law cases and exercises a supervisory function through judicial review. Over the last five years the number of new cases received by the court has increased by some 76%, from 6257 cases in 2002 to 11032 in 2006. This is largely as a result of changes relating to the Nationality, Immigration & Asylum Act 2002, which came into effect in April 2005, and the introduction of new cases emanating from the Proceeds of Crime Act 2002, the Extradition Act 2003 and the Prevention of Terrorism Act 2005. Many of the new case types have strict timescales, requiring the Administrative Court Office (ACO) to prioritize cases carefully to ensure best use is made of the limited judicial resources available and that statutory timescales are met. Notwithstanding the significant increase in work since 2002, the judicial allocation has remained static. It is becoming increasingly difficult for the ACO to ensure all cases are given the priority they require as there are simply insufficient judicial resources at its disposal. This has resulted in the build-up of a substantial backlog of cases. As at 30 April 2007 there were 274 cases awaiting consideration on paper and around 1,100 cases awaiting hearing dates, some 750 of which were awaiting substantive hearings.

Waiting times are deteriorating at all stages of the judicial process with 277 cases in the warned list now over a year old, 139 between nine months to a year old and 169 between six to nine months old. Unsurprisingly there are a high number of expedited matters but this serves to distract from the overall problem.

The backlog and consequent delays in resolving cases have led to criticism from a number of quarters including the Home Office and Assets Recovery Agency, whose cases often require expedition. The Prime Minister's Delivery Unit has, of late, also taken a keen interest in the Court's performance and in particular the impact that the lack of judicial resources is having on the removal of failed asylum seekers.

### **1.3 Justice Outside London**

In April 2006 a Judicial Working Group (JWG) led by Lord Justice May was asked by the Civil Sub-Committee of the Judicial Executive Board to consider and make recommendations about arrangements for Lords Justices and High Court Judges to hear cases out of London. Their subsequent report, which was published in January 2007, comments mainly on the hearing of civil and Administrative Court cases by High Court judges and has, as its main recommendation, that fully operational offices of the Administrative Court should be established in Cardiff, Birmingham, Manchester and Leeds, and that judges should regularly sit to hear Administrative cases in those centres. This recommendation reflects the strong support expressed for the proposition by civic leaders, members of the legal profession, representatives of public authorities and other interests in the course of consultation by the Working Group. It should be noted that there are powerful constitutional reasons for establishing a properly operational Administrative Court in Wales in the light of the legislative powers attaching to the Welsh Assembly under the Government of Wales Act 2006 and other statutory sources. Indeed, limited provision already exists for a claim for judicial review to be brought in the Administrative Court in Wales and, whilst this is rarely used, the ACO has set up links with the Cardiff Civil Justice Centre.

## **2. Regional offices**

### **2.1 Location**

The Justice Outside London report sets out the rationale for establishing regional centres in Birmingham, Leeds and Manchester in addition to Cardiff, where the Court would serve the whole of Wales. The relevant Area Directors would need to confirm that sufficient office space and hearing capacity was available in these locations. The following paragraphs set out the range of case types and workload estimates anticipated in the report, but these estimates are unavoidably tentative given that the regional centres might attract new work in addition to work that would otherwise have been dealt with in London. It is not clear also how much work would continue to concentrate on London, despite the availability of a more local facility, given the London focus of the specialist Bar and law firms.

### **2.2 Caseload**

The report envisages that, save for a number of exceptions, all matters within the jurisdiction of the Administrative Court could be dealt with in the regional centres. Importantly this includes asylum and immigration matters. Applications under the Terrorism Acts 2000 and 2005 would normally be issued in London since they require particular judges and special security. Criminal cases and others which are required by rule or statute to be determined by a two judge Divisional Court would normally be heard in London. It is assumed that for many claims, for example those against local authorities, a locally based venue would be uncontroversial. Some public bodies, including government departments, might prefer to

have claims against them conducted in London and the court would have discretion to transfer if the arguments were persuasive. Many asylum and immigration cases derive from the Asylum & Immigration Tribunal, which has a network of regional offices. The report adopts the principle that Welsh cases should as a rule be heard in Wales and that this should be formalised within the relevant practice direction. It is acknowledged that there is a geographical problem with North Wales and that, whilst cases would be administered in Cardiff, they could be listed for hearing at any appropriate centre. The same principle would apply to the other regional centres – the fact that a case is started and administered in one centre would not preclude it from being heard in another location.

### **2.3 Volumes**

It is difficult to estimate the volume of cases that might be dealt with at the regional centres with any accuracy. This is due partly to the nature of the existing workload and the extent to which it can be analysed, but also to the unknown factors of the level of take-up of the regional facility and the extent to which a more locally accessible Court would generate new work. As noted above, the Administrative Court is currently handling in the order of 11,000 new cases per annum, some 65% of which is asylum and immigration work. It is assumed that a significant proportion of the 7,000+ asylum and immigration caseload would be dealt with in the regional centres, particularly those in close proximity to busy AIT Hearing Centres. A paper submitted to the JWG by Leeds City Council and Leeds Legal suggested, for example, that an Administrative Court based in Leeds would attract 600 – 700 asylum and immigration cases a year deriving from the Bradford Hearing Centre and a further 100 cases from the hearing centres at North Shields and Nottingham (North). For non-immigration and asylum cases the report makes a crude calculation of 132 cases for Cardiff; 237 for Birmingham; 171 for Manchester and 213 for Leeds based on extrapolation from those claims (29%) lodged in 2005 for which the address of the claimant was available. Taking these various facets into account a broad working assumption, once the regional centres are fully established, is that they would account for around one third of the current volume in London – some 3,500 cases per annum.

The flipside of the uncertainty over the growth and eventual volume of work that would be undertaken at the regional centres is that it is not possible to assume any matching reduction in workload at the Administrative Court in London particularly in view of the continuing rise in overall workload and the possibility of new legislation leading to the further engagement of the Court.

## **3. Judicial deployment**

### **3.1 Current position**

There are 108 High Court judges, of which 72 are assigned to the Queen's Bench Division (QB). The judges who conduct the judicial business of the Administrative Court are those High Court judges nominated for that purpose and a number of section 9 Deputy High Court judges. There are currently 39 nominated judges, of whom 34 are Queen's Bench judges and 5 Family Division judges. However, these judges have other equally pressing commitments. Additionally there are 19 Deputy High Court judges authorised to sit in the Administrative Court but, of those, due to their other professional commitments, 6 no longer sit. The pressure of work generally on the High Court bench, and QB in particular, means that there are too few judges available to meet the needs of the Administrative Court. To maintain current work levels the Court needs to sit the equivalent of 55 days per week

(assuming that at least 5 days a week will be lost to 'other' judicial duties), which equates to 12 High Court Judges per week. This level of allocation is rarely, if ever, achieved let alone the additional 3 judges per week that would be needed for at least a year to address the current backlog. A report prepared by May LJ in April 2005 for the Lord Chancellor and Lord Chief Justice indicated a need for about eight more QB judges. A policy decision was taken not to pursue this recommendation and there is little prospect in the foreseeable future of any increase in the High Court bench.

### **3.2 Supporting regional centres**

The establishment of four regional centres - which, between them, would be predicted to devote up to about 250 days to Administrative Court work - would increase the number of judges doing Administrative Court work through the deployment of judges trained and authorised to sit as section 9 Deputy High Court judges. These would be senior circuit judges - two or three allocated to each centre - drawn from the civil courts. It is not expected that there would be any difficulty in attracting applicants. A significant proportion of their time would be spent in the consideration, on paper without a hearing, of applications under section 103A of the Nationality, Immigration & Asylum Act 2002 (NIAA) for an order requiring the AIT to reconsider its decision on an appeal. These applications are currently running at some 3,000 per annum.

Oversight of the work of the regional centres would be provided by two QB judges whose first judicial role, whilst on circuit, would be to hear Administrative Court matters. This arrangement would mirror the existing practice whereby two Chancery judges have a supervisory role across the circuits trying Chancery cases and supporting senior circuit judges. Between them, the two Chancery judges and two QB judges would cover all the specialist jurisdictions and provide an enhanced High Court judge presence in the regions. Although the demands for QB judges in various jurisdictions are very great and the number of judges is limited, there could be no diminution in the level of judicial resource available to the Administrative Court in London so long as the current level of work there remains.

## **4. Legal & administrative staffing**

### **4.1 Staffing needs**

In the absence of firm workload projections provision can only be made, in the first instance, for a core staff complement sufficient to establish a viable office in each regional centre. This would need to handle the issue of claims, file management, listing and casework. A complement of four staff (1 x Span 6; 1 x Span 4; 2 x Span 3) is indicated. In practice it is felt that regional centres at Birmingham and Manchester would require more staff than those in Cardiff and Leeds, but this would be a progressive growth subject to continuing review of the scale and complexity of workload. Staff numbers might also be governed by the extent to which it was possible to harmonise work processes and deploy flexibly across other specialist activity areas.

The ACO has nine lawyers, plus two senior legal managers, who case manage and validate cases, advise parties and prepare case papers and summaries for judges. Similar legal support would be required in the regional centres although, as the caseload would be less complex, at least initially, it might be possible to operate at one lawyer (Span 8) per centre with cross cover for leave.

Given the workload and backlog pressures noted above it would not be feasible to make any offsetting reduction in staff complement at the ACO in London. Indeed, the current

pressures on the ACO are such that eight new administrative staff posts have been approved recently by the RCJ Group Management Board which will have to be offset by further headcount reductions elsewhere in the Group.

#### **4.2 Management**

It is assumed that recruitment and management of the staff for the regional centres would be undertaken locally by the host Areas. There would have to be links to the ACO in London however to ensure that staff were appropriately trained, performance targets met and practices and procedures consistently applied. Given the specialist nature of the legal work there is a case for the lawyers to be recruited through the RCJ and managed on an outposted basis by the ACO's senior legal managers.

#### **5. IT**

The ACO has a case management system – COINS – with a case record, progression and tracking functionality, electronic listing diary, production of email merged case progression letters and storage of orders and transcripts of judgments in (searchable) electronic format. It is not one of the RCJ systems that is being considered for migration to SUPS Caseman. A preliminary study of the possibility and cost of making COINS functionality available in four regional offices has been undertaken. The indicative costs of establishing on-line systems with direct access to the main COINS database at the RCJ are £25k (start-up) and £14.5k (recurring). No account has been taken of any additional costs which may arise from the extension of the secure network on which the system is currently placed (x.gsi). These additional costs may be considerable.

#### **6. Accommodation**

It would be the responsibility of the host Areas to identify and make provision for the accommodation needs for the regional centres. It is assumed that the court offices would be housed in the civil justice centres in Cardiff, Birmingham, Manchester and Leeds with access in those locations to courtroom capacity. The nature of the caseload is such that most of the judicial input is by way of decision on papers with no hearing in open court. Reconsideration of AIT decisions is entirely a paper based process. The initial permission application stage in judicial review is also a consideration on papers without a hearing. Around 50% of claimants make renewed applications for judicial review where permission has previously been refused on the papers. Renewal hearings are usually scheduled for 30 minutes. There would also be a need for substantive hearings which are, on average, 1-2 days long. No assumptions are made in this paper on the costs – capital or revenue – of meeting the courtroom and other accommodation requirements.

#### **7. Training**

The appointment of additional section 9 Deputy High Court Judges would be undertaken in the usual way through nomination to the Head of Division via the Judicial Office. It is understood that the Lord Chief Justice can delegate responsibility for dealing with NIAA s103A applications to nominated section 9 judges. Training for judges ticketed to sit in the Administrative Court would come under the aegis of the Judicial Studies Board who would need to develop and fund a course programme. It is recognised, however, that in the first instance a locally organised training event may need to be held at the Royal Courts of Justice, under the direction of the lead judge of the Administrative Court, for the newly appointed section 9 judges.

Similarly, training for legal and administrative staff working in the regional centres would be organised initially by the ACO and might involve attendance at the RCJ.

A notional training cost of £5k is shown below but this will be subject to the numbers to be trained, cost of training materials, travelling and subsistence expenses and any backfill requirements.

## **8. Resource implications**

The notional cost of establishing four Administrative Court regional centres is £765k per annum plus a start-up cost of at least £40k. This is broken down as follows:

Judicial (para 3.2)	Not known. As salaried circuit judges, the section 9 Deputy High Court judges would not attract a sitting fee. However judicial costs might be incurred in covering the County Court work that they would otherwise have undertaken. There would be additional training costs.
Staffing (para 4.1)	£750k per annum (at target minimum rates effective from 1 August 2007)
IT (para 5)	£40k (Year 1) £15k per annum (Year 2 recurring)
Accommodation (para 6)	Not known
Training (para 7)	£5k per annum

These are new costs as it would not be possible, for the reasons previously stated, to transfer budget from the ACO in London. Some adjustment in funding between London and the regional centres might be possible in the longer term but this could only take place in the light of careful monitoring of workload pressures and trends, and consultation with key interests. To do otherwise would be to risk compromising the efficiency and effectiveness of the main administrative and hearing centre in London, which would have serious judicial and political consequences.

## **9. Stakeholder interest**

In preparing their report the JWG consulted with members of the senior judiciary including Presiding Judges, political leaders and representatives of the legal professions from the regions concerned. Open meetings were held in Cardiff, Birmingham, Manchester and Leeds attracting an overall attendance of some 450 people. Whilst there was strong support from those consulted in Cardiff and the regions for establishing a regional presence for the Administrative Court, formal consultation would need to take place with a comprehensive list of stakeholders if the proposal is to be taken forward. These would include the Home Office and other government departments and agencies, the Treasury Solicitor and the Local Government Association. A Diversity Impact Assessment would also have to be undertaken and its findings taken into account in the planning and implementation of the regional centres.

## **10. Jurisdiction and procedure**

The core jurisdiction and procedure for the Administrative Court derive from section 31 of the Supreme Court Act 1981 and Parts 8, 52 and 54 of the Civil Procedure Rules. The advice received by the JWG was that the establishment of regional centres undertaking the range of work described herewith would not require rule amendment but might necessitate modest changes in the Part 54 Practice Direction. If this matter is to be taken forward, however, it would be appropriate to request the Civil Procedure Rules Committee of the Civil Justice Council to give formal consideration to the procedural implications.

## **11. Project management**

In view of the significant judicial, political and resource implications of this proposal it is recommended that it should be registered formally as a project and made subject to the MoJ's project management discipline. This would establish the required level of corporate visibility at an early stage and the necessary mechanism for more detailed assessment of the costs and benefits of the initiative and the associated risks.

## **12. Timescale**

This paper has described the pressures currently facing the Administrative Court. Whilst these have been addressed to some extent by appointing additional staff to the ACO, albeit at the expense of other areas within the RCJ Group, the shortfall in judicial resource – which is the key contributor to delay in resolving cases put before the Administrative Court – can only begin to be tackled by establishing regional centres and deploying QB and Deputy High Court judges in the way described. The alternative would be to appoint additional High Court judges which, based on previous considerations, is assumed not to be an option. The urgency of the situation indicates a need for a tight project timetable to be set so that, if there is a decision to proceed, implementation can take place during the 2008/09 financial year.

## **13. Recommendations**

The Board is asked to agree in principle to pursue the establishment of regional offices of the Administrative Court in Cardiff, Birmingham, Leeds and Manchester. The idea of running a pilot was discussed in the Justice Outside London report and rejected on the basis that a pilot in one centre – however that centre was chosen – would not properly test the proposal as a whole. There was concern also that this would suggest a lack of commitment to the project. However, in view of the difficulty in predicting workload and consequent staffing needs – and the need to test the operational, IT and communication links between the pilot centre and the ACO in London - there is a strong argument for sequential development of the regional centres. Whilst there may be arguments for commencing with Cardiff given the constitutional framework now applying to Wales and the fact that the Administrative Court already sits there, it would be for the Project Board to determine the order of development taking into account overall priorities.

In view of the complexity and scale of this project, it is recommended that a Project Manager be appointed to lead it and report to a Project Board chaired by the Director of the RCJ Group, or his nominee, with appropriate RD/AD representation. The composition of the Project Board is not for discussion here but would require senior judicial input both in respect of the devolution of the Administrative Court and the parallel integration of the QB liaison judges. The involvement of a regional Circuit Judge would also be appropriate. The cost of a Project Manager at Span B, with Span D support, will need to be factored into the project cost.