

Justice Out of London

Further Report on the Impact of and Demand for an Administrative Court in Birmingham

1. Before considering the three questions posed by Lord Justice May on 1st May, two points are self-evident but need to be stressed. The first is that the proposal for an Administrative Court Office in Birmingham meets a strongly expressed local need, which May LJ's visit revealed in a dramatic way, but which has long existed. Meeting that need is a worthwhile end in itself, quite apart from cost considerations. Conversely, failing at this stage to respond to the need would have extremely negative consequences, not solely or mainly for the legal profession, but for local commerce, business and political leaders who enthusiastically support the project and indeed believe it to belong overdue.
2. The second point is that the costs impact of the project is inherently unpredictable, since it depends on the amount of business that the court will attract. My further enquiries and information suggest that even on the most modest projection, business will be substantial. For this and other reasons, I doubt whether even Alastair Clegg and Lynn Knapman with all their skills will be able to produce a reliable figure. But it is hoped that what follows provides realistic assistance as to the likely scale of demand and resources.
3. **(a) What are estimated to be the additional administrative and other costs of taking the Administrative Court to the four centres out of London and what administrative cost savings could be achieved?**

Accommodation.

Courtrooms. The court building which would house the court would be the Birmingham Civil Justice Centre "the BCJC". There would be capacity for the Administrative Court ("AC") to have immediate use of one courtroom. Having consulted with the Court Manager, Mrs Helen Dickens, and the Regional Operations Manager, Mrs Jacqui Grosvenor, I estimate that, from an early stage after the court is set up, it is likely to require a courtroom and a judge for at least half the year, and most probably within a relatively short period, full-time.

It should be noted that there has recently been a significant increase in the number of courtrooms. This increase has been to respond to the rapidly growing business of the Specialist Courts, which has required the appointment of (the equivalent of) two further full-time judges in addition to the three already in post.

There are now two full-time Chancery judges, and one-and-a-half each Mercantile and TCC. In addition, the Court of Protection is due to commence hearings in October. I mention this increase in work as it underlines the demand for a regional service, which the BCJC is widely perceived as being able to provide as a more appropriate and cost-effective alternative to litigants being compelled to take regional cases to London.

It may well be that our estimate of the volume of AC work proves unduly conservative. If a time comes when more than one court is needed, there will be pressure on courtroom accommodation. In that event, it is anticipated that further court space will be found for the AC within the BCJC, though it is possible that other work may on occasions of extreme pressure have to be outhoused to neighbouring courts. There is some scope for this.

Staff Accommodation. On any view, the demands of the Court of Protection (already certain) plus the introduction of a regional Administrative Court Office (“ACO”), will together present a staff accommodation issue. Extra space has been identified in Temple Court (part of a joined series of buildings which include the BCJC). Decisions will have to be made about which staff will move, and necessary adaptations planned to the new accommodation. These will have to be costed, taking into account the needs of the new ACO if/when it arrives.

Summary. Accommodation issues could be sorted out without major expenditure. The only prospective costs would be in connection with the adaptation of staff accommodation described in the preceding paragraph.

4. Staffing.

It is proposed that the Regional ACO would form part of the Specialist team. This is headed at present by a Span 6 specialist team business manager. A Span 4 ACO listing/section manager would be recruited, who would need support staff. If the court attracts significant business, this would consist of two Span 3 administrative clerks, one usher (Span 2) and perhaps some further part time junior admin support.

Plainly additional staff will be required; this projection takes into account the need for economies, and may be regarded as a practical minimum. But there are probable costs savings inherent in the proposals. Specialist staff at the BCJC work as a team. They have considerable acquired experience and expertise in hands-on administrative management of cases and dealings with senior specialist solicitors. Thus, whilst training in ACO procedures will

be required, staff in the team already come to the task with a good level of skill and motivation. As at present, they will be available when free to do so flexibly to deal with matters which arise across the range of specialisms, including AC work. Thus the ACO should be significantly less expensive to set up than a “stand-alone” court starting from scratch. Also, the salaries payable to staff will be less than in London.

An unquantifiable factor is the extent to which relieving London of work may lead to savings there. Logically this should almost certainly happen in the medium term. It is possible however that the greater access to justice provided by a Regional ACO will generate claims which might otherwise have been deterred by factors of distance and expense

Summary. A successful ACO would require at least four extra staff, together with initial set-up costs including training. However, the location of the ACO within an existing skilled and well-motivated team should keep costs to a minimum, plus the possible savings produced by relieving London.

5. Judiciary

Steps are already being taken to identify suitable Circuit Judges to sit with S9 authorisation in the AC. These will tend to be Specialist civil judges, and others already in demand for serious released High Court work. The diversion of the equivalent of one such judge’s time permanently to AC work will inevitably place a strain on already busy lists at the BCJC. To ease this strain would inevitably mean some “backfilling from the junior ranks”, i.e. the redeployment as necessary of judges to hear multi-track civil claims etc. In the long run, it might call for an increase in the circuit’s overall judicial complement, which could be justified if there was a proportionate decrease in the demand for judiciary in London. Also, the heaviest cases would be tried by nominated AC High Court Judges, who would thus take some of the extra strain.

Summary. No immediate extra cost is envisaged; but if the court is consistently busy, extra judicial resources may be needed in the medium or longer term. These could be offset if there were a proportionate decrease in demand in London.

6. (b) Where will the money come from?

We are not invited to comment on this one. But I think it right to say that staff and judges are unanimous in support of May LJ’s observation that “it is a matter of administrative and political will to find the means of achieving something positive which ought to happen”. It is especially noteworthy that staff are so keen on the project. They are proud of the improvements in regional service

which the BCJC has been able to provide, and see an ACO as a logical and necessary development of this. I quote from a senior member of HMCS staff in the region:

“We believe that the point needs to be made that the drive is to deliver justice locally wherever and whenever possible. Local practitioners are keen for the admin court to come to Birmingham, there are already specialist advocates and solicitors locally who do this work but have to travel to London for hearings. There is a saving in travel time which translates for solicitors in money whether it be against the legal aid budget or against a client. The rates paid to practitioners in the provinces both on a solicitor/advocate/client basis or legal aid basis are lower than those in London. If the volume of work is substantial the amount of saving will reflect that. Also a potential medium to long term benefit would be that the local specialist legal base would be extended thereby providing a more effective and flexible resource for court users in Birmingham. If local, the court could work with practitioner to streamline procedures and make the end product fit the user and hopefully provide some saving in time and money.”

The last sentence in particular accurately reflects the practical user-orientated approach adopted at the BCJC.

7. **(c) Who and how many people will benefit from having the Administrative Court in the four centres and in what respect?**

This is a necessary question; but many in the Midlands will consider that the very fact that it needs to be asked betrays a London-centred approach, and a failure to take account of clear evidence already available. Here are some of the answers.

- (i) The points made in the passage quoted in the previous paragraph.
- (ii) The overwhelming response to the consultations by May LJ on his visit to Birmingham. When the reason for the visit was made known to the City Council, May LJ was invited by the Mayor to a meeting at which the leaders of all political parties indicated their full support for the project; and the City’s chief legal officer who attended the meeting said that he was in favour of administrative law cases affecting the City Council being litigated locally
- (iii) The attendance at an open meeting in Birmingham of 165 practitioners and representatives of potential applicants and defendants to Midlands Judicial Review proceedings. These included solicitors who normally act for claimants in public law cases, all supportive of a local ACO. One such solicitor estimated that his office alone would be issuing 2-3 claims a week. Importantly, those present included representatives of other public bodies, including local authorities (who concurred with Birmingham’s position) and representatives

of National Health Trusts. There were also planning practitioners. The number and nature of those attending the meeting are indicative of the broad base of support for the court.

- (iv) The organisation “Birmingham Forward”, participants in which include the local Bar and Law Society, as well as many other Birmingham commercial and professional firms, strongly support the project. A detailed report of January 2006 revealed among other things strong evidence that the Midland Region was relatively poorly served by the current system of High Court Judge deployment. That organisation would regard the implementation of the current project as no more than a modest step to redress the balance. It conducted a wide-ranging enquiry into the benefits of the project and its effect on costs, the results of which are summarised below.

Benefits of a change to the system

5.10 There seems little doubt that the creation of a High Court in Birmingham would lead to more administrative and public law cases being heard in Birmingham than at present. It would increase the ease of access to justice for those cases involving issues and decisions specific to the Birmingham area. This view is overwhelmingly supported by the responses received to the survey. Such support is evidenced by the following responses:

- *“The advantages are obvious”;*
- *“The reinforcement of the Court in the Midlands must be a positive move”;* and
- *“Clients will save time and money and will receive more effective justice.”*

Cost to litigants

5.11 Recipients of the survey were also asked to give their view of the likely impact on their organisation if their cases were heard in Birmingham as opposed to London. Examples of the responses we received on the subject of costs include the following:

- *“A lot of time and money spent getting to London will be saved”;*
- *“There would be savings for the Council, and those taking action against it; if cases could be heard in Birmingham rather than London. As we have to outsource High Court litigation there*

should be efficiencies in being able to instruct a more accessible firm in Birmingham instead of London”; and

- *“Costs would inevitably reduce. Less travel, no need for London agents, more likelihood of case being heard without adjournments. These savings should bring a 5%-10% saving on costs.”*

Other benefits

5.12 Likely wider consequences of such an increase in the available judicial resources are considered to be as follows:

- a growth in the amount of public law work handled by local solicitor practices and the Birmingham bar;
- the development of greater legal expertise available to citizens and organisations;
- an improvement in the effectiveness and efficiency of the Administrative Court (as a result of greater focus on local issues, less last minute filing and less late Court starts due to disrupted travel arrangements); and
- increased an easier access to justice for local users in respect of public and administrative law matters.

(v) The best estimate of Birmingham Forward and local practitioners is that a regional ACO would attract approximately 700 claims a year at a conservative estimate. My enquiries and experience at the BCJC, especially having regard to the growing demand for the specialist courts and the service they provide, would support that estimate.

(vi) It has been said that the occasional sittings of the AC in Birmingham hitherto have not demonstrated a significant local demand, and that the extension of video hearings should be sufficient to cater for regional cases. Neither point provides a credible argument against the project. Without a Regional ACO where claims can be issued and managed, the visits of the AC from London could be little more than a flag-waving exercises. And, as the Report of the Judicial Working Group concluded, a video conference is no substitute for a proper hearing of a case in the place where it belongs.

7. **Summary.** The benefits of a Regional ACO in Birmingham are substantial and far-ranging if the views of local politicians,

businesses and commercial firms, the legal profession, and potential parties to judicial review proceedings are to be heeded. These benefits include meeting a strongly felt need by providing a practical and user-orientated regional service to litigants in the field, which at present does not exist, as an alternative to being compelled to litigate in London; benefits in terms of cost and convenience; and the strengthening of local professional and legal expertise.

Richard Gibbs

Mr Justice Gibbs, member of Lord Justice May's Judicial Working Group, and Presiding Judge of the Midland Circuit.

Addendum to Further Report on an Administrative Court in Birmingham.

I have now received the final response of Birmingham Forward to the further consultation. They have increased their estimate of the number of claims per annum which the Birmingham ACO might expect from 750 to 1100. I am not persuaded that this increased estimate is necessarily justified at the outset though events may prove me wrong. The conservative estimate of 750 per year would still represent a busy court if as seems likely it would include substantial cases.

The final response does however include some useful specific information to add to what the Working Party has already been told about likely use of the court. These relate in particular to the likely caseload of specific court users who would use the court if it was set up, i.e. Mills & Reeve, solicitors, would expect 20 claims a year in which they are instructed, involving NHS Trusts, to be dealt with by the court. No5 Chambers would expect to be involved in 30 public law challenges per year to planning decisions, which would be brought in the Regional AC, and would mostly be substantial cases.

The e-mail from Mills & Reeve is of particular interest in its views about the benefits of a local court.

Richard Gibbs

From: David Lock [mailto:David.Lock@mills-reeve.com]

Sent: 05 June 2007 11:14

To: Alistair Wyvill

Subject: Administrative Court

Dear Alistair,

Mills & Reeve has over 100 NHS bodies as clients. We also act for about 70 local authorities and a large number of higher education institutes and other public bodies. Many are served from our growing Birmingham office.

We would support the formation of an Administrative Court in Birmingham. We would probably be involved in about 30 new Judicial Review cases each year. Of these maybe 20 are for NHS bodies and 10 for local authorities it is difficult to provide precise figures because we have seen significant growth in both practice areas in recent years. Currently, we have to do all this work through London. Some of these cases are for London public body clients and so would continue to be litigated in London but a sizeable number, maybe about 20 cases per year, are for public bodies outside London where it would save our clients costs to have them resolved in Birmingham.

The service we get from the London administrative courts can be less than desirable. For example we are defendants in one complex case which was lodged in September last year and we are still awaiting a decision the paper permission stage (although there have been a few standstill periods in that time). Whilst we understand and sympathise with the pressures on judicial time, we have found that these proceedings are continually set back in the permission list due to imposition of "more important" matters demanding attention from the London courts or those affecting the liberty of the subject. Whilst these factors are clearly important and would, to some extent, still be the case if the court operated in Birmingham, it would be far easier to progress matters in a local court.

Saving costs is particularly important for the public bodies we represent because (a) they are almost always defendants rather than claimants in JR proceedings, and (b) they rarely recover their costs if successful. Hence the cost of defending JR proceedings comes directly out of the funds provided by taxpayers for the services they provide.

Finally we see a significant move away matters coming to court ex post facto on a compensation claim and towards challenges in advance of decisions of public bodies on issues such as access to complex drug regimes and commissioning decisions of local NHS units. This would suggest that demands for administrative court business will continue to increase as the demand for other Queens Bench matters declines.

We accept that it is possible that a local administrative court would increase the number of challenges. However as this privilege is already available to residents of the South East we cannot see that this is a good reason to deny such facilities to those living in the rest of the country.

I hope this is helpful in setting out our position.
Please let me know if you need any further details.

David

David Lock



MIDLANDS HIGH COURT PROJECT

REPORT ON THE DEMAND FOR A LOCAL ADMINISTRATIVE COURT

June 2007



Birmingham Law Society



1. This report is provided in response to a request from the Judiciary to identify likely demand for a local administrative court based in Birmingham.
2. We understand from the Judicial Statistics Annual Report 2005 that in that year there were 7,372 different matters commenced in the Administrative Court in London.¹ We have been told recently by the court itself that current levels are in the order of 11,000 per annum.
3. However, we also understand that the Administrative Court does not at present maintain records which show where within England and Wales each matter arose. However, we believe that the likely demand for a local Administrative Court can be inferred from the following matters.

Population

4. The West Midlands has a population of 5.3 million (about 10% of the population of England and Wales) and, the Midlands as a whole, 10 million (about 20% of the population of England and Wales). All of the former and most of the latter would find an Administrative Court in Birmingham more convenient than one in London (or Manchester).
5. In addition, because of the convenience of Birmingham and the reputation of the local courts and profession, it is apparent that more and more cases from outside the Midlands, particularly from North Wales and the North West of England, are being litigated by solicitors based in Birmingham, where possible in courts in Birmingham.
6. On this basis alone, it could reasonably be assumed that a Birmingham Administrative Court would be likely to generate substantial volumes of work and related benefits in terms of better and cheaper access to justice. This assumption is

¹ Tables 1.13-1.15

reinforced by what is known about the likely users or user groups of an Administrative Court in Birmingham.

Local Authorities

7. There are 38 city, borough, county or district councils in the West Midlands (see appendix 1) and 45 such councils in the East Midlands (appendix 2). The Birmingham City Council (which accounts for about 10% of the population of the Midlands) advises that it is involved as a respondent in about 50 applications in the Administrative Court each year. Extrapolating from these figures, the likely annual number of administrative court proceedings against Midlands' city, borough, county or district councils could be estimated at *circa* 500. It could be assumed that the great majority of these applications are commenced by residents of the Midlands and that in the great majority of cases both the applicant and the respondent would have found it considerably cheaper and more convenient for those applications to be dealt with in Birmingham.

Health Services

8. Across the West Midlands' region there are a total of 45 NHS organisations: 21 Acute Trusts (providers of healthcare services) including four Foundation Trusts (Birmingham Children's Hospital NHS Foundation Trust, Heart of England NHS Foundation Trust, The Royal Orthopaedic Hospital NHS Foundation Trust and University Hospital Birmingham NHS Foundation Trust), five Mental Health Trusts including one Foundation Trust (South Staffordshire Healthcare NHS Foundation Trust), 16 Primary Care Trusts (commissioners of healthcare services), one Care Trust (jointly providing health and social services) and two Ambulance Trusts, employing 126,000 staff.²

² www.westmidlands.nhs.uk/aboutus/default.aspx

9. In the East Midlands, there are 24 NHS organisations, including nine Acute Trusts, nine Primary Care Trusts, five Mental Health Trusts and an Ambulance Trust, as well as eight Independent Sector Treatment Centres.³
10. There are no figures available to us as to the number of Administrative Court matters commenced each year involving the NHS. However, Mr David Lock, barrister, former parliamentary secretary and consultant with Mills & Reeves, Birmingham, who acts for a significant number of local authorities and NHS trusts across the country, informs us that his firm alone would expect to be involved in about 20 cases each year in an Administrative Court in Birmingham if one was established, the majority of which are likely to be for NHS agencies. Whilst small in number, these cases are normally large in scale.

Property Developers

11. There is significant housing and other development being undertaken in the Midlands with some of the largest UK home builders either being based or having a significant presence here, including Alfred McAlpine Homes, Barrett Homes, Bloor Homes, Bovis Homes, Charles Church Developments, Countrywide Developments, Crest Homes, David Wilson Homes, Friel Homes, Gallagher Estates, George Wimpey, JG Land and Estates, JJ Gallagher, McCann Homes, Miller Homes, Persimmon Homes, St Modwin Developments and Taylor Woodrow.
12. No.5 Chambers, Birmingham, the largest set of specialist planning counsel outside London predicts that a local Administrative Court is likely to attract in the order of 30 applications annually concerning disputed planning decisions. Again, whilst small in number, these cases are normally large in scale.

³ www.eastmidlands.nhs.uk/the-local-nhs-

Results from earlier reports

13. In undertaking research for our earlier report in 2006, we surveyed a significant number of regional businesses and authorities to ascertain their views as to the desirability and demand for an Administrative Court in Birmingham. In that report, we summarised the responses as follows:

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- increased and easier access to justice for local users in respect of public and administrative law matters.

14. We would also point to our supplemental report of November 2006 where we noted:

5.1. the estimate provided by the Court Service (the reliability of which is acknowledged as doubtful) of circa 250 as the likely number of administrative court matters which would be commenced in Birmingham annually if an administrative court was created here is likely to be a serious underestimate:

5.1.1. one solicitor who attend the meeting said that his Birmingham firm alone commenced “two to three” cases a week in the administrative court in London, which would otherwise be started in Birmingham if there was a court;

5.1.2. Ian Dove QC pointed out that from his direct experience in planning cases, there is a lot of “suppressed demand” because many litigants are put off by the cost and inconvenience of commencing in London...

Conclusion

15. Assuming that new administrative court matters remain at or about 11,000 per annum across England and Wales, in light of the above, we believe that, once the court is established, at least 10% or 1,100 administrative court matters annually are likely to be commenced in Birmingham, many of which will be large scale cases on important issues. For the reasons set out above, the competing (admittedly doubtful) estimate from the court service of 250 we believe is far too low. Plainly, a large proportion of the actual population and the large number of local authorities, NHS trusts, property developers and other potential users of the Court in the Midlands will find it significantly cheaper and more convenient to commence proceedings in Birmingham. Our judgment of 1,100 we believe is conservative in the circumstances.

Appendix 1

Local councils in the West Midlands

Principal local councils in Herefordshire, Shropshire, Staffordshire, Warwickshire, West Midlands and Worcestershire.

These include county, city, borough and district councils and unitary authorities.

Herefordshire

- Herefordshire County Council

Shropshire

- Bridgnorth District Council
- North Shropshire District Council
- Oswestry Borough Council
- Shrewsbury and Atcham Borough Council
- Shropshire County Council
- South Shropshire District Council
- Telford and Wrekin Borough Council

Staffordshire

- Cannock Chase District Council
- East Staffordshire Borough Council
- Lichfield District Council
- Newcastle under Lyme Borough Council
- South Staffordshire Council
- Stafford Borough Council
- Staffordshire County Council
- Staffordshire Moorlands District Council
- Stoke on Trent City Council
- Tamworth Borough Council

Warwickshire

- North Warwickshire Borough Council
- Nuneaton and Bedworth Borough Council
- Rugby Borough Council
- Stratford on Avon District Council
- Warwick District Council
- Warwickshire County Council

West Midlands

- Birmingham City Council
- Coventry City Council
- Dudley Metropolitan Borough Council
- Sandwell Metropolitan Borough Council
- Solihull Metropolitan Borough Council
- Walsall Metropolitan Borough Council
- Wolverhampton City Council

Worcestershire

- Bromsgrove District Council
- Malvern Hills District Council
- Redditch Borough Council
- Worcester City Council
- Worcestershire County Council
- Wychavon District Council
- Wyre Forest District Council

Appendix 2

Local councils in the East Midlands

Principal local councils in Derbyshire, Leicestershire, Lincolnshire, Northamptonshire, Nottinghamshire and Rutland.

These include county, city, borough and district councils and unitary authorities.

Derbyshire

- Amber Valley Borough Council
- Bolsover District Council
- Chesterfield Borough Council
- Derby City Council
- Derbyshire County Council
- Derbyshire Dales District Council
- Erewash Borough Council
- High Peak Borough Council
- North East Derbyshire District Council
- South Derbyshire District Council

Leicestershire

- Blaby District Council
- Charnwood Borough Council
- Harborough District Council
- Hinckley and Bosworth Borough Council
- Leicester City Council
- Leicestershire County Council
- Melton Borough Council
- North West Leicestershire District Council
- Oadby and Wigston Borough Council

Lincolnshire

- Boston Borough Council
- East Lindsey District Council
- Lincoln City Council
- Lincolnshire County Council
- North Kesteven District Council
- South Holland District Council
- South Kesteven District Council
- West Lindsey District Council

Northamptonshire

- Corby Borough Council
- Daventry District Council
- East Northamptonshire District Council
- Kettering Borough Council
- Northampton Borough Council
- Northamptonshire County Council
- South Northamptonshire Council
- Wellingborough Borough Council

Nottinghamshire

- Ashfield District Council
- Bassetlaw District Council
- Broxtowe Borough Council
- Gedling Borough Council
- Mansfield District Council
- Newark and Sherwood District Council
- Nottingham City Council
- Nottinghamshire County Council
- Rushcliffe Borough Council

Rutland

- Rutland County Council