

Administrative Court

Costs and Benefits

Introduction

Our preliminary findings reveal a substantial number of cases in the fields of health care, social services and other fields. Certain solicitors for example have considerable experience of acting on behalf of NHS bodies. The potential for such business has been set out in papers presented to Lord Justice May's working party in October 2006 – and we understand in more recent information supplied by the professions. This paper makes an attempt to assess possible resources implications of the new business. The exercise must inevitably be inexact as the precise levels of business can be estimated in advance.

Staffing

For the benefit of costing the staff numbers relate to full time staff. It may be preferable that in order to provide full time cover the duties may be undertaken by several members of staff on a job share/part time basis.

The staff numbers have been assessed on a pro-rata basis to those at the Administrative Court in London. This has been pitched at an anticipated share of the business currently dealt with in London of 15%-20%. It is understood that the current number of applications received in London is 12,000.

It is envisaged that with the opening of the Civil Centre in Manchester there will be re-structuring to take into account specialist listing and other business needs. This would enable the senior staff support functions for Administrative Court work to be included within the job specifications of those carrying out these functions in other areas of the business locally without additional costs being incurred. I refer specifically to the roles of: -

Head of Division, Group manager, Court Manager, Senior Legal Manager, Listing Office Manager, General Office Manager, Customer Service Officer.

Additional staff required would include: -

1xLawyer, 1xListing Officer (span 4), 1xCourt Clerk/Associate (span 4), 3xGeneral Office Clerks (span 3), 1xCaseworker (span 3), 1xFiling Clerk (span 2), 1xUsher (span 2).

Additional staff costs are: -

1 x Lawyer	£110,000
2 x Span 4	£50,000
4 x Span 3	£80,000
2 x Span 2	£32,200
Total	£272,200

All costs include on-costs (ssup & ni-ers) and take account of DCA Deal (3%) and hot spot location. A further allowance should be made of £5,000 for associated staff costs, i.e. equipment, T & S, deputising etc.

Judiciary

The NW Region has started the process of re-organising HCJ listing to enable dedicated civil lists in QBD to be listed in the civil only buildings in Chester, Liverpool and Manchester. It is hoped that this will create efficiency savings to allow the Region to divert some of these days into other areas of the business, including Administrative Court work. The HCJ QBD bids would allow us to have 1x Civil HCJ to sit in Manchester for 50% of term time. We would therefore only ask for an additional 50% (100days) to be allocated to Manchester to provide full HCJ cover. These days would be supported by selected Circuit Judges sitting in this area of work, as and when demand required, from current Regional resources.

The NW Region has started a Listing Review of civil days to maximise listing and improve targets. Consultation will take place between local Judiciary and Admin teams to achieve overall good practice and listing officers issued with guidance and training as necessary. Any savings achieved could, again be diverted into specialist area of work.

The Administrative Court in the North West

1. Introduction

There is widespread support amongst legal professionals for the establishment of the Administrative Court in the North West. This was evidenced by the attendance at an open meeting in Manchester presided over by Lord Justice May on 11th October 2006 and a meeting of interested parties held at Atlantic Chambers in Liverpool on 27th September 2006. This paper provides evidence as to the likely numbers that would benefit and who would benefit if Administrative Court work were heard on Circuit.

2. Who benefits?

i) Access to Justice for the vulnerable

- The Administrative Court deals with cases which involve some of the poorest and most vulnerable members of the North West region. The North West has particularly high numbers suffering from social disadvantage compared with other regions. For these groups litigation can be intimidating and alienating. There are obvious advantages to these sorts of cases being heard close to the people and places they concern.

Case Study 1: the problems of using video link facilities (provided by Garden Court North Chambers)

It is possible for permission hearings and sometimes substantive applications to be dealt with by video link. There have been numerous occasions when technical problems have caused such hearings to take far longer than would normally be necessary and many have had to be adjourned off completely. Problems have included loss of sound and loss of picture either completely or intermittently during hearings. This has inevitably taken up more of the Court's time as well as incurring greater costs for the parties involved. Some contested hearings are held in a very small room in the Crown Court at Minshull Street in Manchester which was originally designed for vulnerable witnesses to give evidence "remotely". In addition to the technical difficulties experienced this was not practical due the lack of space, the need for the advocates to stand up and sit in front of the monitor holding the microphone in one hand each time s/he wished to address the court. It is the view of many barristers that it is not appropriate for contested permission hearings and substantive hearings to take place via video link.

Case Study 2 below also illustrates the difficulty of video link hearings and why they can be no substitute for all parties being in the same court at the same time. Video link hearings are useful and will continue to have a role to play but they are an unsatisfactory measure the way the system currently operates.

Key facts about social disadvantage in the North West region

- The region's employment rate is 2% behind the English average.
- 9% of the region's working age population is on incapacity benefit, the highest of any UK region.

Source: North West Development Agency

ii) Decrease in the costs for litigants.

- The potential for a decrease in the costs for litigants. Travel expenses and hotel accommodation add substantially to the cost of judicial review. It is in the public interest that these costs, which very often fall on the public purse, are controlled.

Case Study 2 (provided by Kings Chambers)

A statutory challenge has been made by 10 Claimants to a Housing Market Renewal compulsory purchase order confirmed in January 2007 in Sefton. At the interim hearing for expedition the Claimants wanted to appear by video link in opposition to the application. Leading Counsel appeared in court in London. Despite various efforts over a period of 45minutes the video link with Liverpool failed to work. An Order was made and the hearing concluded. Shortly after the video link became operative and a rehearing was undertaken. That was clearly an unsatisfactory use of court, judge, and parties' time and yet is not uncommon with video link hearings. The Claimants have to travel to London for the substantive hearing.

iii) Cost and efficiency savings

- Cost and efficiency savings for regionally based public authorities. Time and money would not be spent travelling to London for hearings and conferences with professionals. Cases should be dealt with more quickly leading to speedier responses by public authorities in the region and the potential for greater efficiency in their decision making.

Key fact

The North West Solicitors in Local Government Forum is supportive of an Administrative Court in the North West.

Case Study 3 (provided by a North West local authority)

The Claimant's solicitors issued judicial review proceedings in November 2006 in respect of a failed asylum seeker application. Prior to issue, they had applied by telephone for an interim Order which was granted on 17 November 2006. That Order provided that the Defendant Local Authority should provide suitable accommodation and support to the failed asylum seeker adult and her child until determination of the application for Permission to bring proceedings for judicial review.

The Permission was not dealt with until 26 March 2007 (albeit that it was dealt with on the papers only). Upon consideration of Permission, it was ordered that the Authority had no continuing obligation to support and the interim Order of 17 November 2006 was discharged. Nevertheless, this meant that the Local Authority had been funding a placement for the adult and child for a period of some four months pending determination of a Permission Application.

Case Study 4 (provided by a North West local authority)

This concerned judicial review proceedings brought in respect of a child, challenging the following decisions made by the Local Authority:-

- A decision to reduce the hours of care provided;
- A decision to refuse school transport;
- A decision to refuse a direct payment facility to the parent.

Proceedings were issued in August 2006 and an Order refusing Permission on the papers was made on 29 September 2006. However, the Claimant's Solicitors applied for an Oral Permission Hearing. This matter required dealing with urgently in view of the uncertainty it raised as to the amount of funding which the Defendant Local Authority would be required to spend in terms of hours of support and also the School transport question, as the School term had already commenced by the time the Order refusing Permission was made on 29 September 2006. Nevertheless, given the urgency of these matters, the Oral Permission Hearing (albeit only for a 30min duration) could not be listed until 5 February 2007. This created uncertainty for both the Claimant and Defendant for a period of some five months.

iv) **Pressure on the Administrative Court in London**

- The pressure on the Administrative Court in London is such that delays occur in an area where speed is of cardinal importance. The plentiful supply of courts and administrative space in new court buildings in Manchester and Liverpool and judicial expertise in the North West region should assist the speedier and more efficient handling of cases.

Case Study 5: the problems of making emergency applications from the North West (provided by Garden Court North Chambers)

In addition to permission and substantive hearings barristers at Garden Court North Chambers are also involved in many emergency out-of-hours applications to the Administrative Court for interim relief (e.g. for those who are street homeless, threatened with removal by the Secretary of State in immigration cases and those who are unlawfully detained in prisons etc.). If instructed during the morning or lunch-time we cannot make our applications in person at present. We must wait until 4.30 pm and then call the security lodge at the Royal Courts of Justice who give our details to the clerk to the duty judge. We then wait for the clerk to call back who then arranges for the duty judge to call us at Chambers so we can make the telephone application. This is a difficult procedure for both the barrister and the judge who does not have the key documents before him/her. The barrister then has to undertake to lodge the papers within a short period of time and often travel to London (or arrange a video link hearing) for an expedited on notice hearing. This whole procedure is inefficient and disproportionately time consuming and expensive.

Case Study 4 (provided by a North West local authority)

Judicial Review proceedings were issued in February 2007 concerning a decision of HM Coroner in what had been a very high profile case. At 15 May 2007 when the case study was provided no Order had been made as to Permission, nor was there any indication as to when such can be expected.

Case Study 5 (provided by Kings Chambers)

Judicial review proceedings were commenced in respect of a planning permission issued by Lancashire County Council on the 19th of January 2004. The final hearing was in May 2005 more than a year after the proceedings were issued with a decision given in July 2005. The period of 18 months from the decision under challenge being made until judgment prolonged both the uncertainty for the Claimant and other parties. In the meantime as no interim order was sought development proceeded and the balance between the rights of the Claimant and others could be seen to have changed.

Case Study 6 (provided by Kings Chambers)

A statutory challenge was made to a compulsory purchase order confirmed in October 2006 in respect of land and buildings adjacent to Lime Street station in Liverpool. Works were programmed to be carried out under the compulsory purchase order commencing in March 2007 as part of the improvement of the public realm prior to 2008 when Liverpool is European Capital of Culture. The Claimants were tenants who stood to be dispossessed under the compulsory purchase order. Despite obtaining an order for expedition the matter was not heard until March 2007 and judgment given in early April 2007. The delay has caused the rescheduling of works.

v) Expertise amongst solicitors and barristers in the North West

- As the tables below show there is expertise amongst solicitors and barristers in the North West to deal with Administrative Court work. The perception though is often that such expertise can only be found in London with the resultant leakage of such work to the capital. The presence of Administrative Court work on circuit will improve and extend the range, quality and reputation of legal services available on circuit.

vi) Promotion of the regional economy.

- Promotion of the regional economy. Increased regional spend would flow from the greater likelihood of regionally based solicitors and barristers being instructed. Professionals from outside the region would contribute indirectly to regional spend by travelling, eating, shopping and staying in the region.

vii) Increase in jobs in the North West region

- An increase in jobs in the North West region. The Administrative Court would require regionally based support staff. Indirect employment benefits would flow from the increased regional spend.

Key facts on the regional economy and the benefits of relocation are contained in the draft paper and case studies produced by MIDAS (Manchester's investment agency) and attached to this paper at Appendix 2.

viii) Interrelationship between the High Court's declaratory and public law jurisdictions

- There is often an interrelationship between the High Court's declaratory and public law jurisdictions, particularly in the area of health and social welfare. There is already a ministerial commitment to the introduction of regional hearings at main legal centres for the Court of Protection's jurisdiction over welfare decisions on behalf of incapable adults. It would be logical if future provision can be made for both jurisdictions to be exercised at the same location.

ix) Local accountability and improved regional status

- The promotion of local accountability.
- Improving the quality and reputation of the justice system.
- Improved regional status.

2. What numbers will benefit?

i) Survey of the 2200 solicitors

- A survey of the 2200 solicitors on the database of the North West office of The Law Society was carried out by Greg Plunkett, a Partner at Hill Dickinson in Liverpool in October 2006. The response from solicitors indicates that Administrative Court work is concentrated in a small number of firms often specialising in particular areas of Administrative Court work. A table of key findings is set out below:

Key findings

- 28 firms responded
- 14 firms had dealt with 297 or more judicial reviews in the last 3 years
- All firms who responded support the establishment of the Administrative Court in Manchester

ii) Further survey: targeting firms known to practice in administrative law

- A further survey, targeting firms known to practice in administrative law, has recently been undertaken by the North West office of The Law Society. There was universal support for the establishment of the Administrative Court in the North West. A table setting out the response from those firms is set out below:

Key findings

- 5 firms responded.
- They have dealt with approximately 447 judicial reviews in the last 3 years.
- All firms who responded support the establishment of the Administrative Court in the North West.

Name of firm	Number of claims in past 3 years	Type of work and other comments
Richard Corran Partner Mace & Jones Pall Mall Court 61-67 King St Manchester M2 4PD 0161 214 0509	34	I tend to work for one main client who is generally the respondent to any claim. The applicants have been unrepresented for probably 75% of the time. There are obviously significant cost issues for those applicants. The applicants can be from any part of England & Wales.
Mike Pemberton Associate Stephensons LLP 10-14 Library St Wigan 01942 774330	61	Challenges to Parole Board decisions, delays in securing hearing, Re-Categorisation decisions, Secretary of State timing lifer reviews, Criminal Cases Review Commission decision, challenge to handcuffing terminally ill prisoner attending hospital, Challenge to refusal to release terminally ill prisoner, Refusal to release on temporary licence, Child Home Leave policy, Refusal to award compensation to client released on appeal.

Richard Price Member (LLP) Pannone LLP 123 Deansgate Manchester M3 2BU 0161 909 3000	25	Planning, licensing and healthcare, including: <ul style="list-style-type: none"> • R (on the application of L) v Wolverhampton Crown Court – substantive hearing judicial review of bail hearing. • R (on the application of Live Wire Telecom Ltd) v Commissioners for HM Revenue & Customs – substantive hearing – judicial review of failure of HMRC to make a decision to pay claimants VAT reclaim. • R (on the application of (1) Davis & Dann Ltd & (2) Precis (1080) Ltd v Commissioner for HM Revenue & Customs oral permission hearing on judicial review of failure of HMRC to make a decision to pay claimants VAT reclaim. • “Mink Farmers” v DEFRA – Agriculture. • Davies & Others v DEFRA – Agriculture. • Davies & Others v Parliamentary Health Service Ombudsman (case current) – Parliamentary. • Garnett v Environment Agency (case current) – Environmental.
Andrew Lockley Head of Public Law Irwin Mitchell 2 Millsands Sheffield S3 8DT 0870 1500100	At least 100 per year	Planning, Licensing, Healthcare, Education, Community Care, Regulatory, Prison Law, Criminal Justice Due Process & Commercial In cases of community care, education, homeless, destitution cases, healthcare & general public law applicants are deterred from access to the courts because of the distance to travel to London.
Emily Gent Assistant Maxwell & Gillott 1 Kings Yard Lancaster LA1 1LA 01524 596080	27	Education & Community Care.

iii) **Survey Barristers on Northern Circuit**

- Kings Chambers in Manchester and Atlantic Chambers in Liverpool have each surveyed barristers on the Northern Circuit. A broad range of Administrative Court work is undertaken as set out in the table of findings below:

Name	Approximate number of cases per year	Typical areas of work
Kings	25	Planning and environment.
Garden Court North	233	Housing, immigration, community care, prison law.
Central Chambers	60-70	Human rights, civil liberties.
Byrom Street	2	Education, mental health.

Cobden House	4	Housing, crime (case stated).
Deans Court	6	Customs, costs, mental health.
Exchange	10	Education, special needs and police.
Kenworthys	10	Crime and immigration.
8 King Street	50	Education and mental health.
Peel Court	2	Licensing.
9 St John Street	6	Mental health.
St Johns	20	Mental health, incapacity.
Atlantic Chambers	7	Social care, education, employment, crime.
25 Castle Street	5	Crime (case stated).
Chavasse Court	2	Mental health.
7 Harrington Street	5	Family, crime.
India Buildings	8	Housing, mental health, immigration.
Oriel Chambers	20	Environment.

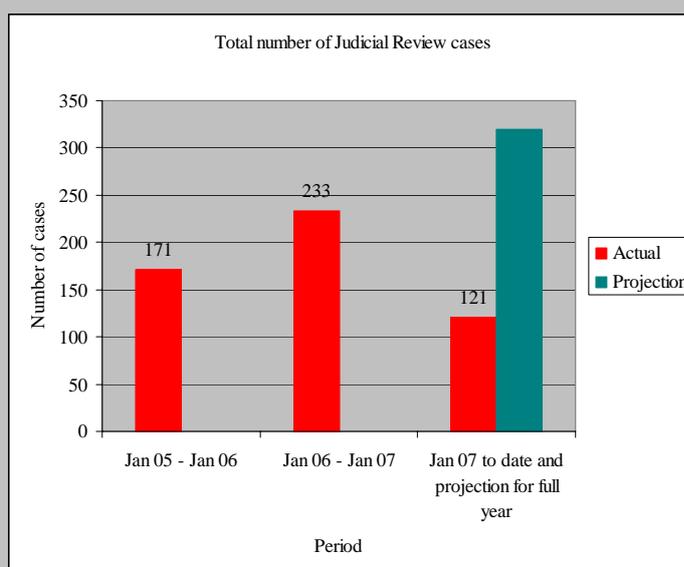
Key findings

- Barristers practicing on the Northern Circuit deal with approximately 475 judicial review cases each year.
- Housing, social care, mental health and immigration dominate.
- There are clusters of expertise in specialist areas in certain chambers; for example in planning and environmental law at Kings, housing, immigration and prison law at Garden Court North and human rights and civil liberties at Central Chambers.

Case Study 7: Garden Court North Chambers

Garden Court North has been instructed on over 350 occasions in judicial review matters over the last 17 months. The number of such cases has been increasing over recent years. Garden Court North project that this trend will continue (see the chart below). The majority of solicitors who have instructed Garden Court North are based in the North West (see table below). Many of the public bodies being challenged in these matters are also from the North West. Many of their opponents are barristers practising from Chambers based on the Northern Circuit.

Garden Court North Chambers: number of judicial review cases



Garden Court North Chambers: number of cases by origin of solicitor

North West	81
North East/Yorkshire	37
Midlands	12

iv) **Survey of North West local authorities**

- A survey of North West local authorities has been conducted by Jeanette McLoughlin of Liverpool City Council and Peter Heginbotham, Senior Partner at Davis Blank Furniss. All those surveyed support the establishment of the Administrative Court in the North West. A table of responses from local authorities is set out below:

Name of Authority	No of Judicial Review Claims dealt with over the last 3 Years
Liverpool City Council	45
Peak District National Park Authority	1
South Ribble Borough Council	0
Blackburn with Darwen	1
South Lakeland District Council	1
Greater Manchester Police	Average of 3 per year
Wirral Metropolitan Borough Council	30
St. Helen's Borough Council	4
Rochdale Borough Council	4
Sefton Borough Council	13
Blackpool Borough Council	10
Denbighshire County Council	4
Trafford Metropolitan Borough Council	9
Halton Borough Council	2
Crewe and Nantwich Borough Council	3
Manchester City Council	45
Bury Metropolitan Borough Council	7 plus 1 appeal dealt with by the Administrative Court
Tameside Metropolitan Borough Council	10
Burnley Borough Council	2
Oldham Metropolitan Borough Council	3
Salford City Council	4 and approximately 10 other cases where judicial review was threatened and the advice of Counsel sought
Stockport Metropolitan Borough Council	1 preliminary hearing, 3 full hearings
Wigan Metropolitan Borough Council	7
Bolton Metropolitan Borough Council	2

3. Conclusions

- i) **We believe that the benefits of establishing the Administrative Court in the region are clear, compelling and significant.**
- ii) **It would promote access to justice, particularly for the substantial number of vulnerable and disadvantaged groups in the region.**
- iii) **It would increase efficiency, reducing the delay and costs associated with the present arrangements.**

- iv) It would assist development of the regional economy, increasing jobs and prosperity in the region.
- v) It would promote and improve legal services within the region.
- vi) The surveys of barristers, solicitors and local authorities demonstrate not only the need for the establishment of the Administrative Court in the region but also that there is already considerable legal expertise which will ensure that the Administrative Court's users are provided with experienced and high quality representation.
- vii) The surveys demonstrate conclusive support for the proposal from those representing both claimants and defendants
- vii) The evidence and case studies demonstrate that Manchester has the capacity comfortably to accommodate and support an Administrative Court

Appendix 1: list of contributors

This paper results from a meeting of legal professionals interested in advancing the case for the establishment of the Administrative Court in the North West held on 22nd May 2007 and chaired by Michael Redfern QC, Leader of the Northern Circuit. The paper draws upon earlier submissions and research by Frances Patterson QC and a working party of legal professionals in Liverpool headed by Andrew Edis QC.

The following individuals and organisations have been directly involved in carrying out research, gathering case study examples and drafting this paper:

Frances Patterson QC	Kings Chambers
Andrew Edis QC	Atlantic Chambers
Peter Heginbotham OBE	Davis Blank Furniss
Scott Donovan	Atlantic Chambers
Adam Fullwood	Garden Court North Chambers
Jeanette McLoughlin	Liverpool City Council
Greg Plunkett	Hill Dickinson
Matthew Stockwell	India Buildings Chambers
Hugh Derbyshire	Atlantic Chambers
Joanne McLeod	The Law Society (North West Region)

The following individuals have also assisted:

John Benson QC	Atlantic Chambers
Lesley Anderson QC	Kings Chambers
Gareth Thomas	Atlantic Chambers
Anne Whyte	Atlantic Chambers
Chris Topping	Jackson & Canter Solicitors

Appendix 2: MIDAS paper and case studies
