

Justice Outside London

Response to the Report of the Judicial Working Group

1. Introduction

The purpose of this short paper is to consider the implications of introducing a fully operational office of the Administrative Court in Leeds. There is enough data available to come to some “best guess” conclusions which do not take account of what has been referred to as a “suppressed demand” for an Administrative Court outside London, i.e. the cases that do not appear at the moment as a result of having to go to London but might appear if Regional hearings are available.

2. Workload

The report from the Judicial Working Group helpfully estimates that, for Leeds, the likely share of the workload suggests figures of around 800 Immigration & Asylum Cases and around 200 Non-immigration cases. It is not yet clear what area of work would come to the Regions (i.e. Immigration & Asylum, Non-Immigration work or both) but, for the purposes of this paper, I will work on the basis of all areas of Administrative Court work coming to the appropriate Region. In this instance we would then be looking at an annual caseload of around 1000 cases. Only a percentage of these cases would lead to a substantive hearing. Looking at the figures from 2006 featured in the report a “best guess” would be that 10% (about 100) would result in substantive hearings. In practice this would be higher as the availability of an Administrative Court locally would lead to applications previously not made.

3. Judicial Resources

It is recommended in the report that 3 Judges per Region be “ticketed” to be able to deal with this work. In the North East Region, 8 Judges have expressed an interest in acquiring such a ticket. Subject to individual suitability, consideration might be given to granting such a ticket to those who are interested. This would enhance flexibility for listing. Some specialist Judges (HHJs Kaye QC, Behrens and Langan) have expressed an interest. Presently they spread their sittings between Leeds and Newcastle. Their effectiveness is, to an extent, hostage to the vagaries of litigants. Should they have an admin court ticket they would constitute an invaluable resource for the Administrative Court available 52 weeks a year for hearings in those two centres and to deal with paper applications.. Listing of substantive cases would be more effective. For example the Newcastle specialist list may have gaps which could be filled with admin court cases or applications.

Some of those who have expressed an interest are based in Sheffield. In appropriate cases this would provide the opportunity for litigants to have their cases heard in a location more convenient to them.

In coping with consideration of permission applications on paper, having more than three such judges would assist spreading the workload and increasing effectiveness where the ticketed judges may have other responsibilities.

4. Listing Patterns

The designated High Court and TCC listing patterns at Leeds are as follows:

QB Period - 3 x 2 weeks per year = 6 weeks

TCC period – 3 x 2 weeks per year = 6 weeks

Vice Chancellor (Chancery) – 3 x 2 weeks per year = 6 weeks

These listing periods work very well and we would be reluctant to see them change.

In addition to these designated periods we also have 3 x Specialist Judges sitting between Leeds and Newcastle and daily Circuit Judges (Civil) which take up the majority of the Designated Civil Judge's sitting pattern.

Given the prospect of more than three ticketed Admin Court judges and no restriction in the periods during which the Administrative Court work might be listed, we are confident that Leeds could cope with the additional workload envisaged .

The QB period at Leeds traditionally has 2 x High Court Judges and 2 x Section 9 Judges sitting throughout. Unfortunately the last 2 sittings periods have seen the availability of only one High Court Judge and 2 Section 9 Judges. Whilst we have managed so far with this reduction, if this were to continue we may struggle in accommodating the extra work. A diversion of Administrative Court work from London to Leeds would make the presence of a second High Court Judge in Leeds during the QB period more effective. This would have beneficial effects on QB work as we have found it much more effective to list for two QB judges and 2 section 9 judges than for one QB judge and 2 section 9 judges.

5. Accommodation

Courtrooms – Whether the provision of courtrooms would be problematic depends on how Administrative Court work was listed. If there were inflexible designated “separate” sittings periods it may be a problem. Leeds Combined Court is at full capacity for much of the year. If Admin court work became part of the regular diet of the courts, not shunted into preordained designated periods, with hearings, as convenient, in Leeds Sheffield or Newcastle, then providing courtrooms would not be an issue.

Lodgings - The pattern over the past few years has been one of under rather than over utilisation. The presence, from time to time of a High Court judge to hear admin court cases would not overstretch Lodgings.

6. Staffing Resources

I wish to make two preliminary points. First, our experience of Mercantile work is that there is an initial period when take up is slow. However, after a while, the work picks up. It is better initially to over provide for a short while and have the capacity to deal with the work when it increases rather than assume that a small level of take up will be permanent and struggle to provide a good service when demand picks up. Second, and following from the first, we would not want to embark on such an exercise unless we felt that we had the resources to make a decent job of it. It is in no one's interests to under invest and cause disappointment.

Bearing these considerations in mind, the best estimate we can give is that if a full case management function were to be performed within the region a Span 4 Listing Officer and 2 x Span 3 Administrative Officers would be required. Initially it would be important in addition to maintain robust statistics on the workload in order to monitor whether and to what extent the “suppressed demand” existed and was being met.

Resources for training would be required including short term resources for overtime / agency staffing to enable suitable numbers of staff to be released from normal duties to undertake training (some at the Administrative Court office). Resources would be required to support setting up new procedures e.g. to ensure spreadsheets were in place to monitor workloads, listing arrangements and so on.

The requirement to make available the expertise of Legal Advisers outside London should not be a problem. This could be achieved in one or more of a number of ways such as: having a small number of locally based Legal Advisors; London based Legal Advisers working remotely; or out of London centres sharing resources thereby having locally based Legal Advisers covering a range of areas of expertise.

7. Summary

We believe that establishing an Administrative Court office in Leeds is achievable provided that the necessary Judicial and administrative resources are made available and a degree of flexibility in terms of listing is permitted. There are potential advantages for the region in terms of the more effective use of available judge power and there are potential benefits for the Administrative Court in improving the effectiveness of dealing with an ever increasing workload by utilising extra resources outside London.

Clare Brown - Acting District Operations Director – Leeds Combined Court
23rd May 2007

Justice out of London

Demand

For as long as I have been Designated Civil Judge at Leeds the Leeds Law Society through its representative, James Haddleton, has been pressing for Judicial Review cases to be heard on circuit¹. The experiment of listing some JR cases before Maurice Kay J at Sheffield was greeted with enthusiasm. Until the review by May LJ the trail had gone cold. The meeting which May LJ held at Leeds indicated a widespread demand for JR being commenced and heard locally. This was from solicitors in a variety of fields, the Bar and notably from Local Authority representatives who envisaged locally generated work arising in relation to their housing planning and education functions. The demand could not have been more clearly stated.

Examples

Already the County Court has jurisdiction to hear Homelessness Appeals under Section 204(3) Housing Act which involves review of decisions of the Local Authority adopting principles of judicial review.

As Designated Civil Judge I have, as a regular feature, had urgent applications in respect of refusal to grant temporary accommodation, on the basis and understanding that judicial review proceedings are being commenced in London. On the last occasion the solicitor erroneously thought that I had the power to make directions in the Administrative Court. Increasingly these applications are being made in the context of immigration and asylum disputes where the provision of temporary accommodation is an issue. The availability of a “one stop shop” in the form of a section 9 administrative court judge is obvious. The same is true of planning disputes. I am aware that the presiding judge has had a similar experience in Newcastle during this term.

One feature of my work is dealing with litigants in person who claim to have actions in damages against public bodies but where, upon examination, the true cause of action is by way of judicial review but time has long since expired. The immediate

¹ At Appendix A I reproduce the letter which he sent to me following discussions on this topic in 2002.

availability of JR locally would be a much more effective and timely remedy than an inappropriate action in damages after the harm has been done.

My experience at the Bar was that there is a natural disinclination on the part of litigants to pursuing a complaint to the point where the only available recourse is to a court in London. Often a meritorious claim was abandoned at that stage as not worth the disproportionate effort and expense involved. I can see no reason why the same disincentive does not stifle meritorious JR claims in this area and the opinion expressed by the Local authorities above bears this out.

.

Administration

One of the main concerns being voiced relates to the administration of Administrative Court work; that it is felt important that it should all be administered centrally. I have seen the memorandum sent to May LJ by Andrew Collins J, Roger Venne and Lynne Knapman.

The possible use of technology

It is of interest that a strong argument against establishing locally based Administrative Courts is that sophisticated technology could be used to allow local issue, but central (London) administration and hearings, thus catering for the needs of locally based users.

I have to observe that the use of technology is not one way. Should it be decided that there is an overwhelming need to administer centrally, then I cannot see why, with modern communications technology, hearings could not be listed at out of London Centres.

Nevertheless, I happen to agree with the conclusions of the Judicial Working Group that the difficulties in administration are more perceived than real.

Local administration

QB listing has for some considerable time been administered locally. In Leeds the High Court listing officers form part of the Diary Manager's team. They are responsible for QB, Chancery, Mercantile and TCC listing and work alongside their County Court colleagues. Administering an additional tranche of High Court work will, of course, need additional staff and I refer to the paper of Clare Brown in this respect. There is, in my view, a strong business case for implementing the JWG

proposals, but there has to be the injection of capital to set up the Courts. No commercial organisation would set up an enterprise without capital in the expectation of paying for it out of income generated, or, if it did, it would soon fail.

My simple point is that, if QB, Chancery, and specialist jurisdiction work can be administered outside London, there is no real reason why Administrative Court work cannot be equally well administered at local centres.

The team of lawyers

This is one area in which technology could play a part. If the necessary material can be reduced to electronic form it can be transmitted to a lawyer wherever he might be with his or her response by e-mail. The technology for scanning and putting into 'Adobe' format is well tried and simple to implement.

By way of comparison, the Designated Civil Judges at the centres identified by May LJ already administer Requests from EU courts for the taking of witness evidence. They are required to use the team of lawyers appointed to do such work at the Treasury Solicitor's Office in London. The material goes back and forth without difficulty, although it would be considerably more efficient were it to do so electronically.

Video link as a possible answer to local demand

It has been suggested that video link might be one way of bringing JR cases to people outside London. Whilst in theory this sounds feasible, I should sound a cautionary note. When the Civil Procedure Rules introduced the appeal from the County Court direct to a High Court Judge, it was anticipated that there would be a need to have access to a High Court Judge at times when none was available to hear Civil appeals on Circuit. A Pilot was run to install video conferencing equipment in the RCJ and at a number of major centres, such as Leeds, Birmingham, Cardiff and Manchester. The idea was that an appeal could easily be listed before the High Court Judge sitting in the RCJ.

I can only speak for Leeds, but I struggle to recall an instance where such a link was successfully used. There might have been one or two in the very early stages, but more recently attempts to set up such appeals have been met with insuperable difficulties. In short, administratively it proved to be a failure. From the RCJ's point of view, I can understand that there are logistical and administrative problems in

listing a provincial appeal before a High Court Judge using the few video conferencing suites.

Whilst in theory video conferencing technology is well proven for taking evidence of remote witnesses and joining meetings, I believe that there would have to be significant investment in more video conferencing equipment and that far from making administration easier it would only increase the administrative problems.

Many think that there is no substitute for a face to face live hearing. I do not necessarily fall into that camp, but I respect and understand that point of view. After all the court system is not based on the judges' preferences, but rather those of the litigants. Making an application to a television screen is less likely to appeal to many litigants. Whilst I think that some hearings can properly be held by videolink, I cannot for the foreseeable future see such hearings becoming the norm, particularly where 'live' judges can be made available.

A central database?

If it is thought necessary for the Administrative Court to keep tabs on all its work, the infrastructure is in place for there to be a proper system of electronic record keeping and diarising of work.

QB work

The Civil Procedure Rules have resulted in effective case management which, in turn, results in a high settlement rate, particularly in respect of high value personal injury claims. In Leeds we operate 3 fortnightly civil listing periods each year during which at least one, preferably two, High Court Judges, and two Section 9 Circuit Judges or Recorders sit back to back. Historically, two High Court Judges sat in these listing periods, but the high settlement rate has deterred the provision of more than one. The advantages of back to back listing are reduced. Cases which ought to be heard by High Court Judges have to be heard by the Designated Civil Judges or other section 9 judges. The deployment of a second QB judge on a regular basis would enable flexibility of listing as between Administrative Court, QB and other specialist court work.

Conclusion

I strongly support the reasoning contained within the Report of the Judicial Working Group and its recommendations, which I know were keenly anticipated by the professions locally. Most importantly, I am confident that with a proper system of user committees meeting regularly and constantly open channels of communication, a locally administered Administrative Court would receive the complete co-operation of the professions.

Simon Grenfell

Designated Civil Judge Leeds and North Yorkshire

APPENDIX A

JSH/LC
3 December 2002

His Honour Judge Grenfell
Leeds Combined Court Centre
The Courthouse
Leeds
LS1 4BY

James Haddleton
Princes Exchange
Princes Square
LEEDS
LS1 4BY

Tel: 0113 369 2705

Fax 0113 369 2799

Dear Judge Grenfell

JUDICIAL REVIEW IN THE NORTH

Further to recent discussions on the matter of holding judicial reviews in the North, I should be grateful if you would raise the possibility of judicial reviews occurring in the North with the Presiding Judge for his initial comments.

At present, judicial review proceedings only take place in London. For parties outside of London, this is often inconvenient and an additional cost. In many instances, judicial reviews affect those on low budgets and low income where cost is particularly important. These include judicial reviews relating to decisions of local authorities, immigration and education issues. In many of these cases, the parties have no link to London and it would be preferable for all parties concerned for the matter to be heard locally.

The provision of relevant court services to the local populace would be a reform consistent with Lord Woolf's reforms of the civil justice system and other government initiatives to bring down the costs of litigation and widen access to justice.

We have already asked for comments from practitioners about holding judicial reviews in the North. The responses we have received are all positive. We are intending to broaden our research to include the other main legal centres in the North being, Manchester, Liverpool, Newcastle, Sheffield, Bradford and Hull. However, it would be very useful to have received an initial encouraging stance from the Presiding Judge. This will help to show that this is more than a fanciful idea and that there are real prospects of this happening.

It is fully accepted that until judicial reviews are held in the North, there will be no way of knowing what the uptake will be and the legal profession has a responsibility to make it work if they wish to have the facility in the North. However, we would actively promote this facility if it became a reality. Our discussions suggest that if such a scheme were to work then it would probably mean a High Court Judge sitting in the North, perhaps three times a year for a fortnight. At present, I do not make any suggestion as to precisely

where judicial reviews should be heard but geographically there is some sense in Leeds and Manchester being the appropriate centres.

I am very happy for you to show this letter to the Presiding Judge and very much look forward to hearing from you in due course.

Kind regards

.

Yours sincerely

JAMES HADDLETON
Chairman Leeds Law Society
Civil Litigation Sub Committee

Version 2.0 16/08/01 16:17