

The Regionalisation of Judicial Review: Constitutional Authority, Access to Justice and Specialisation of Legal Services in Public Law

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INTRODUCTION

In April 2009 four regional Administrative Court Centres were established in Birmingham, Cardiff, Leeds and Manchester to deal with judicial review claims and other aspects of the Administrative Court's jurisdiction.¹ Although Welsh cases had previously been dealt with in Cardiff and small numbers of judicial reviews had been heard on Circuit, prior to regionalisation judicial review was an essentially centralised system based in the High Court in London.² The most important aim of this essentially administrative reform is to improve

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¹ In this paper we refer to the regionalisation of the Administrative Court, although there is a strong case for treating the establishment of the Centre in Cardiff as a stage in the formation of a distinct jurisdiction in Wales, see D. Gardner, 'Public Law Challenges in Wales: The Past and the Present' [forthcoming] [2013] PL

² Regionalisation establishes new access points to the High Court's supervisory jurisdiction rather than a new local jurisdiction. In this sense, it is not exactly comparable to, say, the creation of local small claim courts. Nor is regionalisation comparable to establishing informal 'neighborhood justice' R.L. Abel (ed) *The Politics of Informal Justice*, Vol. 1, (Academic Press, 1982) 276.

access to justice by ensuring that public law claims are issued and heard at the most appropriate location.³ This should enable matters to be handled ‘closer to home’ thereby reducing inconvenience, saving costs and potentially relieving pressure on the Administrative Court in London. As well as encouraging improvements in the availability of specialised legal services regionalisation may also allow people better access to court proceedings which are of local interest, even when they are not parties.⁴ These aims resonate with approaches to judicial review that stress its role in providing redress and serving the legal needs of communities.⁵ This is a bottom up vision that differs significantly to the centralist top down approach endorsed by the House of Lords in *O’Reilly v Mackman*.⁶

Despite its possible benefits the prospect of regionalising judicial review was not universally welcomed, including by leading members of the judiciary⁷ and the specialist Bar who feared it would reduce the quality of public law adjudication and lead to a decline in the standing and effectiveness of judicial review.

This article is broadly in two parts. In the first we place regionalisation of judicial review in context by looking at the principal reasons why regionalisation matters and why the

³ An aim reinforced in the Practice Direction giving effect to the reforms:

Practice Direction 54D - Administrative Court (Venue).

⁴ On local democracy see, M. Elliott and S. Bailey, ‘Taking Local Government Seriously: Democracy, Autonomy and the Constitution’ (2009) CLJ 436.

⁵ R. Cotterrell, ‘Judicial Review and Legal Theory’ in G. Richardson and H. Genn (eds) *Administrative Law & Government Action* (Oxford: Clarendon Press, 1994) 18.

⁶ [1983] 2 AC 237.

⁷ Collins J, then lead judge in the Administrative Court is reported to have been a ‘staunch opponent’ of regionalising the Administrative Court, N. Goswami, ‘Tensions on the bench spark Admin Court shuffle’ 15 December 2008 *The Lawyer* <http://www.thelawyer.com/tensions-on-the-bench-spark-admin-court-shuffle/136063.article>

project has been contentious in some quarters. In the second we draw on findings of our empirical research to explore whether regionalisation is opening access to public law, the early effects of the reform on the scale and types of claims being made and on the provision of legal services in the regions. We also look at use of the process by litigants in person (LIPs) and at permission success rates across the regions. Before moving into these sections of the article, we first briefly outline the research methods used for the empirical aspects of the work.

THE RESEARCH AND ITS METHODS

The picture we provide of Administrative Court litigation across the regional Centres and the Royal Courts of Justice (RCJ) in London⁸ is based on our analysis of applications for judicial review received by the Administrative Court in the four years from 1 May 2007 and 30 April 2011 inclusive, corresponding to the two years before and after regionalisation.⁹

We were interested in exploring how the reforms are affecting the regional use of judicial review and at various points in the paper we refer to ‘regional claims’. However, from a data collection perspective, identifying ‘regional claims’ is not straightforward and can be done in several ways, each of which has its limitations. The first is by focusing on claims that are issued in the regional Centres. This approach enables us to see where claims are issued, but it cannot be assumed that claims necessarily concern the particular region as

⁸ The Administrative Court regions are based upon Her Majesty’s Courts’ and Tribunals’ Service (HMCTS) regional boundaries that do not necessarily coincide with other administrative or demographic factors.

⁹ We drew on the Administrative Court’s case management system, the Crown Office Information Network (COINS). Note that our study was concerned with claims rather than final decisions of the Administrative Court.

claims may arise in one region and be litigated in another, or in London.¹⁰ An alternative, and potentially more reliable way of identifying the regional character of claims, is by examining the addresses of the parties and the nature of the issues. Unfortunately the claimant's address is generally only recorded when claims are issued by litigants in person (LIP), although if they later instruct a solicitor both their and the solicitor's details are recorded. During the period studied claimants' addresses were recorded on average in 36 per cent of all judicial reviews and solicitors' addresses were recorded in 70 per cent of all claims. Even when the claimant and/or their solicitor, or the defendant, is located in a particular region we still cannot be certain that the claim originates from that region and our findings should be read with this in mind.

To gain insight into the way practitioner users of the system view regionalisation we also conducted an electronic survey of solicitors and barristers.¹¹ In relation to solicitors we drew on Law Society data relating to those professing expertise in public law to construct a sample of 300 regional solicitors and 180 London-based solicitors. The sample was initially representative in that it included solicitors firms of all sizes (from sole trader to 81 plus

¹⁰ Practice Direction 54D – Administrative Court (Venue), para.2.2. 'Any claim started in Birmingham will normally be determined at a court in the Midland Region (geographically covering the area of the Midland Circuit); in Cardiff in Wales; in Leeds in the North-Eastern Region (geographically covering the area of the North Eastern Circuit); in London at the Royal Courts of Justice; and in Manchester, in the North-Western Region (geographically covering the Northern Circuit)'.

¹¹ We expected the e-survey to enable us to reach a wide range of participants. The method is also less time consuming and costly than postal surveys, and can easily allow for a wide range of responses including additional comments. The drawbacks include that emails might be caught by the recipient's 'spam' filter, and even where surveys reach the intended recipient they can easily be deleted. Another drawback is that not all solicitors, especially those employed by local government or other public bodies and those in small regional firms, make their email contact details available.

partners) from all regions. However, we found, as the Law Society had warned, that a considerable number of the solicitors were either no longer practicing, or no longer handled public law claims. On this basis we eventually contacted 225 regional solicitors and 150 London-based solicitors. Forty-five regional solicitors responded (a response rate of 20 per cent) and 25 London-based solicitors responded (a response rate of 17 per cent).

With respect to barristers our approach was less systematic. Through internet research we constructed a spreadsheet of both regional and London-based barristers professing expertise in public law, especially judicial review. For some chambers the addresses of individual barristers were available, for others we contacted the chamber's senior clerk. We anticipate that our e-survey was ultimately circulated to approximately 280 barristers, with around 80 based in the regions and 200 based in London. These included barristers from the most prominent sets of chambers in London and the regions. Thirty-two regional barristers responded (a rate of 40 per cent) and 48 London barristers responded (a rate of 24 per cent). Barrister respondents had an average of 14 years call.

In order to explore issues raised by regionalisation more deeply we also interviewed 25 solicitors and 25 barristers from variously sized firms and sets of chambers both in the regions and in London. The selection of interviewees was not random, but based on those solicitors and barristers with prominent reputations for public law judicial review expertise who were particularly interested in engaging with the research and their comments should be read with this in mind.

REGIONALISATION: BENEFITS AND RISKS

The general case for regionalising judicial review in England and Wales

The proposal to establish the four regional Administrative Court Centres was developed by a Judicial Working Group convened by the Civil Sub-Committee of the Judicial Executive Board (the Group) as an administrative change to the system. Unsurprisingly the Group was in part motivated by pragmatic considerations, including the hope that regionalisation would relieve pressure on the Administrative Court in London and help to ease mounting delays.¹²

However there was also a broader and potentially competing access to justice agenda. In its report *Justice Outside London*, the Group considered the clustering of public law legal services around the RCJ in London to be ‘prejudicial to those who do not live and work in London and the South East’¹³ and concluded that: ‘Nearly all judicial review and other claims in the Administrative Court have to be brought in London, with the obvious inconvenience and additional expense that this causes for claimants, defendants, interested parties and their lawyers’.¹⁴ It was hoped that regionalisation would encourage regional awareness of judicial review and a de-centralisation of the market for public law legal services, potentially leading to greater competition, increased efficiency and reduced costs. While not expressed in these terms the approach taken by the Group was compatible with the

¹² Approximately one-third of respondents to our e-survey were of the view that this was the main motivation. This echoes the circumstances surrounding the establishment of the Crown Office List itself (later to become the Administrative Court) which some saw as a response to the increasing number of asylum and immigration and homelessness cases ‘rather than an innovation based on on-going lawyers’ debates about balancing individual rights and collective welfare’: S. Sterett, *Creating Constitutionalism? The Politics of Legal Expertise and Administrative Law in England and Wales* (USA: The University of Michigan Press, 2000) 106. See also I. Hare, ‘The Law Commission and Judicial Review: Principle Versus Pragmatism’ (1995) 54(2) CLJ 268, considering the balance between principle and practicality in the Law Commission’s 1994 Report, *Administrative Law: Judicial Review and Statutory Appeals*.

¹³ *Justice Outside London* (2007) http://www.judiciary.gov.uk/publications-and-reports/reports/general/justice-outside-london/index/?wbc_purpose=Basic&WBCMODE=PresentationUnpublished para.48.

¹⁴ *ibid* para.48.

view that a highly centralised system of judicial review was becoming increasingly difficult to justify given expectations that government and redress mechanisms will be devolved and localised wherever possible, and evidence that London's virtual monopoly over judicial review litigation was likely to have had significant adverse effects on access to public law remedies.

This problem had been highlighted by research in the 1980s and early 1990s reported by Bridges, Meszaros and Sunkin in *Judicial Review in Perspective*.¹⁵ In his Foreword to that work, Sir Henry Brooke, then chairman of the Law Commission, noted that the study 'throws up a series of worrying new questions. Why, for instance, did only 2 per cent of legal aid applications ...[in the research period] ... come from that great expanse of England between Leeds and Bradford in the South and Newcastle in the north?' The findings suggested that part of the answer had to do with distance from London. The issue was picked up by the Law Commission in 1994 when it considered the need to 'address the access to justice issues raised by those concerned by the concentration of judicial review in London and the South-East'.¹⁶

Concern that centralisation was a factor impeding access was reiterated by the *Review of the Crown Office List* chaired by Sir Jeffery Bowman.¹⁷ In its view: 'aggrieved parties should be able to have access to justice in major local centres, particularly where this avoids

¹⁵ London: Cavendish, 2nd ed, 1995.

¹⁶ *Administrative Law: Judicial review and Statutory Appeals* (Law Com No 226) para.2.28. Aside from its recommendation that there should be a right of appeal to the county court against decisions of local housing authorities in homelessness cases, the Law Commission made no specific recommendations in relation to regionalisation of judicial review.

¹⁷ *Review of the Crown Office List* (London: Lord Chancellor's Department, 2000).

the time and cost involved of all parties to a local dispute having to travel to London'.¹⁸ However, overcoming the 'significant administrative hurdles'¹⁹ to establishing local centres was not considered a high priority at that time, given the more immediate need to ensure that the Crown Office in London was able to cope with the pressures upon it, especially those predicted to flow from the then recently enacted Human Rights Act 1998.²⁰

More recent research has drawn fresh attention to the concentration of judicial review in London and the South East and underscored the 'critical role of [geographically uneven] access to legal services in enabling the bringing of challenges'.²¹ Problems associated with regional access were also mentioned by respondents to both our e-surveys and interviews, who referred, for instance, to a lack of public awareness of the judicial review procedure in the regions, a shortage of local specialist solicitors, and the scarcity of legal aid funding.²² A regional barrister responding to our e-survey summarised these perceptions arguing that low levels of regional judicial review were due to:

...a MASSIVE unmet demand for properly funded legal advice and representation in the public law area. At the moment and with the procedure as it currently stands in social welfare type judicial reviews you almost never meet the client so it doesn't really matter where the hearing takes place...oral evidence is rarely allowed. These cases are purely legal. Families with these

¹⁸ *ibid* para.21.

¹⁹ *ibid* para.22.

²⁰ *ibid* para.24.

²¹ M. Sunkin, L. Platt, T. Landman and K. Calvo, 'Mapping the Use of Judicial Review' [2007] PL 545, 566.

²² However, only 30 per cent of solicitor e-survey respondents believed that the absence of local Administrative Courts significantly inhibited access.

types of legal problems need to see a specialist local solicitor who would then instruct counsel – if a local court existed they would of course build up local expertise – but that’s no use without local practitioners which frankly barely exist in my area.²³

Our respondents, and most notably those based in the regions, said that over time the new Centres would be a significant catalyst to de-centralisation of the market for public law legal services, leading to greater competition, reduced costs and more efficient and effective services for clients. Ten out of the 25 barristers we interviewed, for example, likened regionalisation of judicial review to the de-centralisation of the Mercantile Court in the 1990s, noting that this led to thriving centres of expertise outside London, improved the geographical spread of quality service provision and reduced client costs. As we shall see others were less optimistic.

It goes without saying that concern that centralisation has adversely affected access is not solely a matter of whether particular litigants can have their disputes resolved appropriately, important as this is. In the context of judicial review regional access also raises issues of constitutional principle. Most basically, if the concentration of legal services and skills in London has had a significant adverse effect on the ability of those outside London to obtain redress, questions are raised about the capacity of our public law system to serve the needs of citizens across England and Wales. This is an issue of equal access to justice that touches upon the basic legitimacy of judicial review: if whole populations in some regions have been inhibited from accessing judicial review because of their location, the system, it may be argued, cannot be fit for the purpose of enabling effective redress or

²³ Emphasis in original response.

enforcement of the rule of law.²⁴ How far regionalisation is likely to ameliorate the situation is a matter to which we return later in the paper. Before moving on it is worth considering the case made for where the Administrative Court Centres were eventually established.

The specific case for choosing Cardiff, Birmingham, Leeds and Manchester

The case for a Centre in Cardiff was primarily constitutional and devolution issues took priority here, including the principled and pragmatic argument that matters pertaining to Wales ought to be determined in Wales.²⁵ While the specific case for each of the other regional Centres varied, there was a common theme in that the proposed location of the Centres appeared to be specifically associated with the interests of the local legal profession and its perception of the needs of the regional communities.²⁶ As one barrister respondent to our e-survey commented: ‘The main objective [of regionalisation] was to assist those barristers and solicitors who stood to benefit by reason of their location.’

²⁴ cf Bellamy’s criticisms of access to judicial review, R. Bellamy, *Political Constitutionalism* (Cambridge: CUP, 2007), esp 244-246. Presenting the issue of judicial review’s legitimacy in this way assumes that our system of public law cannot be understood purely in terms of the normative implications of public law jurisprudence. Considerations such as whether and how judicial review meets concrete needs of claimants or affects the behaviour of public bodies are of basic importance to an assessment of the system. There is, of course, much debate on such matters, for example see: C. Forsyth (ed) *Judicial Review and the Constitution* (Oxford: Hart Publishing, 2000); P. Cane, ‘Understanding judicial review and its impact’ in M. Hertogh and S. Halliday (eds) *Judicial Review and Bureaucratic Impact* (Cambridge: CUP, 2004).

²⁵ *Justice Outside London* n 13 above Appendices F and G.

²⁶ In terms of access to justice for regional populations, Nottingham and Liverpool may be just as accessible as Birmingham and Manchester, and why was no centre proposed for Newcastle to serve the population of the far north of England?

For Birmingham, the arguments were a mix of enhancing social justice alongside a strong commercial rationale.²⁷ In Manchester, access to justice for vulnerable sections of society and increased opportunities for the local legal profession formed the key argument.²⁸ Submissions from Leeds focused on the commercial case, presenting the city as a centre of business, finance and legal expertise to rival London.²⁹ The arguments in favour of each Centre and the case for regionalisation generally, suggest that the success of regionalisation in opening access to judicial review will ultimately depend on whether it helps to improve the availability of legal services in the regions and this is not simply a matter of establishing local courts.³⁰

The risks of regionalisation

Despite its potential benefits regionalisation was considered contentious especially amongst some within the London-based Bar who reacted in a manner reminiscent of the response of barristers to the creation of the County Court in 1846. As Abel – Smith and Stevens put it:

The majority of barristers wanted as much business as possible to be kept in the most distinguished courts ... They feared the consequences of any form of dilution on the

²⁷ The case for an Administrative Court Centre in Birmingham was driven by *Birmingham Forward*, 'an independent, inclusive, not-for-profit, membership organisation...to promote Birmingham, and the region, as an ideal place to do business' <http://www.birminghamforward.co.uk/content/about-birmingham-forward>

²⁸ *Justice Outside London* n 13 above Appendix I.

²⁹ The case for a regional Centre in Leeds was made in a paper presented by Leeds City Council and *Leeds Legal*, a campaign supported by law firms launched to attract national and international clients to the city.

³⁰ There were proposals to establish a fifth Centre in Bristol as the epicentre of the South West region. However, there was no clear champion such as *Leeds Legal* or *Birmingham Forward* supporting the case and the plans stalled due to the economic climate.

recruitment to the Bar and hence ultimately to the calibre of the judiciary. There was also the traditional conservatism and self-interest.³¹

Echoing these concerns the Constitutional and Administrative Law Bar Association (ALBA) argued that access to High Court judges is ‘part of the cornerstone to the rule of law’ and expressed fear that regionalisation might lead to increased use of inexperienced and inexperienced Deputy High Court judges. Approximately 60 per cent of our e-survey participants and interviewees expressed similar worries, typically saying that, ‘the increased use of Deputy High Court judges will have a negative impact, at least at first’. This is not to suggest that practitioners were necessarily content that Administrative Court judges possessed the necessary expertise prior to regionalisation. ALBA, for instance, argued that rather than regionalising the High Court and increasing the number of judges, ‘there is a compelling case for developing a smaller and more specialist cadre of Administrative Court judges’.³² Similar anxiety was evident amongst respondents to our e-surveys, some 50 per cent of whom (both barristers and solicitors) expressed concern that judges who lacked the necessary expertise in

³¹ B. Abel-Smith and R. Stevens, *Lawyers and the Courts: A Sociological Study of the English Legal System 1750-1965* (London: Heinemann, 1967) 83. Concerns were also raised about the competence of ‘registrars’ (solicitors who acted as junior and normally part-time judges in the new County Courts) to hear cases of the reaction to the use of Deputy High Court judges, below.

³² *Regionalisation of the Administrative Court: Response of the Constitutional and Administrative Law Bar Association*, May 2008: <http://www.adminlaw.org.uk> paras.34 and 60. What is meant by ‘specialised’ is problematic in this context, see E. Laurie, ‘Assessing the Upper Tribunal’s Potential to deliver Administrative Justice’ [2012] PL 288, esp 296-298; and more generally S.H. Legomsky, *Specialized Justice: Courts Administrative Tribunals, and a Cross-national Theory of Specialization* (Oxford: Clarendon, 1990).

certain subject areas such as education and mental health were already determining cases in London and that this would be exacerbated by regionalisation.³³

There was a general consensus among our respondents (both to the e survey and in interviews) that the impact of regionalisation in this regard would depend upon how judicial staffing in the regional Courts is managed. This was also a matter of concern to the judiciary. In a memorandum to the Judicial Working Group, Collins J and court officials argued that the regionalisation proposals would create a ‘deployment nightmare’.³⁴

Approximately half of the respondents to our research (both e-survey participants and interviewees) argued that the regional Centres should be staffed by Administrative Court judges travelling out on Circuit rather than having a permanent judicial base in the regions. This approach has been adopted, with two potentially very influential presiding judges, Mr. Justice Beatson in Cardiff and Birmingham and Mr. Justice Hickinbottom with responsibility for Leeds and Manchester, handling a high proportion of claims in those Centres, especially the most high profile cases.

As well as concerns about the implications of regionalisation for the judiciary, questions were also raised regarding the availability and extent of expertise amongst the legal profession in the various regions. Approximately two-thirds of respondents to our e-survey perceived there to be a lack of appropriately specialised and experienced public law solicitors in the regions gaining new Court Centres. Some e-survey and interview respondents, not surprisingly predominantly London-based solicitors and barristers, feared that regional lawyers have yet to develop the necessary expertise in judicial review and that few would be

³³ Concern that Administrative Court judges lack expertise in some areas of law has also been noted in other research. See V. Bondy and M. Sunkin, *The Dynamics of Judicial Review Litigation: The resolution of public law challenges before final hearing* (London: Public Law Project, 2009).

³⁴ *Justice Outside London* n 13 above Appendix L.

likely to do so even after regionalisation due to the limited number of cases they may be handling.³⁵ Other respondents more optimistically assumed that expertise would develop over time. We may note that concerns that judicial review work should not be undertaken by generalist practitioners were not limited to the possible impacts of regionalisation. As one barrister e-survey respondent noted: ‘although some of this work [judicial review] is formulaic, the vast majority is difficult and can’t be done by the type of semi-trained cheap operative that the LSC think might provide such legal services through businessmen/commercial providers entering the market’.

A related fear, voiced by ALBA, was that access to justice might be compromised if litigants were to be denied legal aid for instructing legal advisers of their choice outside their locality on the basis of disproportionate cost.³⁶ The LSC responded with an assurance that regionalisation would not have an impact on its funding criteria and that litigants would not be prevented from utilising preferred advisers due to their respective locations.³⁷

³⁵ Though a certain degree of self-interest should be expected, it is striking that all 50 of the London-based barristers who responded to our e-survey believed that regionalisation would create a two-tier market for public law legal services with regional litigation falling below London standards. London-based solicitor respondents to our survey were also worried about the standards of regional practitioners, but they did not refer especially to the specialist/generalist expertise dichotomy.

³⁶ ALBA (2008) n 32 above paras.51-57.

³⁷ *Ibid* paras.53-57 and research meeting with Legal Services Commission July 2009. Data prior to regionalisation confirm that regional claimants were as likely to be awarded legal aid once an application had been made as claimants in London and the South East. Nevertheless, regional respondents to the current research were more likely than London based respondents to cite lack of legal aid funding as a factor impacting upon client decisions not to issue or continue with a judicial review application. The Legal Aid, Sentencing and Punishment of Offenders Act 2010-12 will undoubtedly have broader implications in relation to the availability of legal aid for judicial review claims, despite government assurances that legal aid will

Regionalisation and the fragmentation of judicial review

There are also fears that regionalisation would contribute to the fragmentation of judicial review and that this would weaken its standing and effectiveness.

ALBA's response to regionalisation assumes that judicial review matters should be determined by a small specialist High Court judiciary assisted by an elite expert Bar. The inference here is that this is important in order to maintain the standing, integrity and coherence of the system, not least because a small specialist judiciary is best placed to balance the competing interests raised by public law claims and to enunciate clear requirements of legality for the benefit of citizens and public authorities. There is also an assumption that the centralised Administrative Court is likely to possess the status necessary to ensure respect for judicial determinations on the requirements of legality. These observations relate to matters of procedure and institutional structure, rather than the content and quality of the law itself, nonetheless the centralist model clearly resonates with those theories of judicial review that stress its role as an instrument of *imperium* concerned with policing the exercise of centrally conferred powers.³⁸ From this perspective, for example, the ability of judicial review to determine the limits of public power is much more important than, say, its ability to provide redress to particular claimants or the ability of claimants or regional communities to have easy access to the system.

remain potentially available for most judicial review applications: Ministry of Justice, *Proposals for the Reform of Legal Aid in England and Wales* CP12/10 November 2010 para.4.99.

³⁸ Cotterrell (1994) n 5 above.

That centralism places relatively little emphasis on enabling access to redress is clearly illustrated by *O'Reilly v Mackman*,³⁹ which as we have already noted marked the high water mark of the centralist approach to judicial review. Here Lord Diplock said that as a general rule the London-based judicial review procedure should be the exclusive route for obtaining public law redress. This meant that claimants should no longer be able to access the supervisory jurisdiction by using an action for declaratory relief or making an application for an originating summons in the Chancery Division;⁴⁰ nor should public law claims be made in the County Court.⁴¹ The judicial policy here set out was remarkable for several reasons. In particular it departed from the recommendations of the Law Commission, made only a few years earlier,⁴² which had laid the foundations of the reforms to the judicial review process introduced in 1977. The Law Commission had emphasised the importance of flexible access

³⁹ n 6 above.

⁴⁰ Prior to the decision ‘...litigants frequently commenced ordinary legal proceedings for a declaration against a public body, normally in the Chancery Division of the High Court’, Zamir and Woolf, *The Declaratory Judgment* (London: Sweet & Maxwell, 2nd ed, 1993) para2.40. For a synthesis of the historical background, see H. Woolf, J. Jowell, A. Le Sueur, *De Smith’s Judicial Review* (London: Sweet & Maxwell, 6th ed, 2007) Chapter 15. Significantly, leading decisions of the 1960s, *Ridge v Baldwin* [1964] AC 40 and *Anisminic* [1969] 2 AC 147, came to court as actions for declaratory relief in ordinary proceedings rather than by way of the prerogative order procedure.

⁴¹ See Zamir and Wolf (1993) n 40 above para 3.039. This policy was applied in *Cocks v Thanet District Council* [1983] 2 AC 286 decided immediately after *O’Reilly*. An exception to the general rule was that public law arguments could be raised collaterally, for instance, by way of defence. That exception subsequently enabled the courts to limit the application of the rule in *O’Reilly*, the limitation started in *Wandsworth London Borough Council v Winder* [1985] AC 461.

⁴² *Report on Remedies in Administrative Law* 1976 (Law Com No.73).

to redress and expressly rejected procedural exclusivity.⁴³ For their Lordships in *O'Reilly* flexible access was relatively unimportant and certainly less important than ensuring that public bodies would be protected by the distinctive features of the judicial review procedure. Unsurprisingly *O'Reilly* attracted much critical attention at the time,⁴⁴ largely from those who saw it as imposing an unduly rigid procedural strait jacket on claimants and judges that was likely to lead, as indeed it did, to 'sterile and expensive procedural disputes'.⁴⁵

With the above in mind it may be argued that regionalisation threatens to fragment the unity of the centralist system by breaking up the Administrative Court and thereby undermining its standing. This concern was graphically summarised by one of our solicitor interviewees in the following way:

If you were into conspiracy theories, as a by-product of that objective [access to justice], if you break the Administrative Court up, it's less powerful... If you had a group of judges all operating out of London, you can't help but have communication between them. Split that up and you draw your own conclusions...what is a defendant? ... guess what, it's always the government... I can't imagine Jack Straw who was challenged a few times as Home Secretary would have been completely heart-broken at such a judicial grouping being split up.

⁴³ The Law Commission expressly said that the judicial review procedure should not be the only route to challenge issues of legality and procedural fairness. *ibid* paras 34, 58(a).

⁴⁴ Many commentators criticised the decision in *O'Reilly* see eg, H.W.R. Wade, 'Procedure and Prerogative in Public Law' (1985) 101 LQR 180; C.F. Forsyth, 'Beyond *O'Reilly v. Mackman*: The foundations and nature of procedural exclusivity' (1985) 44(3) CLJ 415; M. Sunkin, 'Judicial Review: Rights and Discretion in Public Law' (1983) 46(5) MLR 645. See also D. Oliver, *Common Law Values and the Public – Private Divide* (London: Butterworths, 1999), esp 72-78.

⁴⁵ See *De Smith's Judicial Review* (2007) n 40 above.

A further concern is that the creation of multiple regional sites for judicial review adjudication will undermine the coherence and unity of the system and lead to duplication and inconsistency. It may for instance further blur the distinction between the distinctive supervisory jurisdiction of the High Court and those situations where statute confers power on courts or tribunals to use judicial review type arguments in order to help ensure that decisions are correct, rather than lawfully made. A broader but related possibility is that regionalisation with its greater focus on redress and community interests will undermine the clarity of the system by shifting attention from distinctively legal issues to broader cultural or political concerns thereby fragmenting and weakening the distinctive character of judicial review.⁴⁶

Concerns that regionalisation will damage the centralised system must be placed in an historical context. While not quite buried,⁴⁷ the rigidly centralist approach taken in *O'Reilly* has been largely overtaken by developments, including Lord Woolf's access to justice reforms and the subsequent new Civil Procedure Rules which have encouraged judges to adopt a more flexible and less formalistic approach to procedural questions, increasing the possibility that public law issues will be raised beyond judicial review proceedings.⁴⁸ More

⁴⁶ cf C. Harlow's critique of the liberalisation of standing: C Harlow, 'Public law and Popular Justice' (2002) 65 MLR 1.

⁴⁷ See eg *Jones v Powys Local Health Board* [2008] All ER(D) 234(Nov).

⁴⁸ These were intended to create a 'new approach to litigation to ensure that the civil justice regime is 'accessible, fair and efficient'. *De Smith's Judicial Review* n 40 above para 15-094, citing the Civil Procedure Act 1997, s.1(3). Judges are now required to adopt a more flexible approach: 'What matters ...is not the mode of commencement of proceedings but whether the choice of procedure may have a material effect on the outcome'. *De Smith's Judicial Review* (2007) n 40 above para 3-103. See eg *Clark v University of Lincolnshire and Humberside* [2000] EWCA Civ 129. Referring to the severe difficulties of obtaining legal

importantly perhaps, Parliament has continued to confer a judicial review type jurisdiction on a variety of courts and tribunals,⁴⁹ notably in the present context on the County Court⁵⁰ to deal with appeals from local housing authorities in homelessness cases. This jurisdiction ‘is in substance the same as that of the High Court in judicial review’.⁵¹ Human rights law has also made significant differences. In order to ensure compliance with Convention Rights, County Court judges may have to determine the lawfulness of public actions on grounds which are not limited to the traditional *Wednesbury* tests. Where a County Court ‘is asked to make an order for possession of a person’s home at the suit of a local authority, the court must have power to assess the proportionality of the making an order...’⁵² All these developments show that despite *O’Reilly* there has been significant fragmentation within public law irrespective of regionalisation. In this context, it may be added that pressure on the caseload has required an expansion of the Administrative Court and, as ALBA indicated, judicial review is no longer handled by a small cadre of judges. Moreover, core ideas implicit to the centralist model of judicial review are now much more difficult to sustain. For instance, claims that public law is not about rights or assumptions that ensuring regional access is relatively unimportant are now more difficult to defend than they may have been in

representation faced by unlawfully detained asylum seekers Lord Justice Brooke has said that ‘[T]o restrict access by insisting on proceeding by way of CPR 54 in a damages claim would in such circumstances amount to the antithesis of the overriding objective in CPR Pt 1’: *ID and Others v Home Office* [2005] EWCA Civ 38, para [106].

⁴⁹ See also The Tribunals Courts and Enforcement Act s.3(5) established the Upper Tribunal with the power to undertake a judicial review type function in relation to first-tier tribunal decisions, subject to limited High Court supervisory jurisdiction: *R(Cart) v The Upper Tribunal* [2011] 3 WLR 107 (Supreme Ct).

⁵⁰ s204 of the Housing Act 1996.

⁵¹ Per Lord Bingham of Cornhill, *Begum (FC) v London Borough of Tower Hamlets* [2003] UKHL 5, para [7].

⁵² *Manchester City Council v Pinnock* [2010] UKSC 45, per Lord Neuberger at para [49].

the early 1980s. Rather than indicating a weakening of judicial review or public law more generally, these developments may be indicative of their growth and importance and reflect the way the system has been opened to enable the use of public law arguments wherever they are useful and relevant. Moreover, while fragmentation may threaten the rigid centralism of *O'Reilly*, it may also indicate a welcome return to the more pluralist approach adopted prior to that decision when public law arguments were used effectively in a wide range of procedural and jurisdictional contexts.⁵³

The broader implications of regionalisation and the fragmentation of judicial review are issues of importance that warrant attention and discussion. Here we concentrate on whether regionalisation appears to be achieving its main aims, namely to improve regional access to judicial review and to help enhance the provision of legal services relating to public law in the regions.

We now therefore turn to consider the findings of the quantitative aspects of the research that throw light on the way regionalisation is influencing the use of judicial review and particularly the subject areas of claims being handled by the Centres, the market for legal services, the use of the system by litigants in person and permission success rates across the Centres.

REGIONALISATION AND TRENDS IN THE USE OF JUDICIAL REVIEW

The general Picture: regionalisation and the judicial review caseload

⁵³ See n 44 above and generally D. Oliver, *Common Law Values and the Public – Private Divide* (London: Butterworths, 1999).

Prior to the reforms the Judicial Working Group predicted that the regional Centres would handle between 27 per cent and 33 per cent of the overall judicial review caseload.⁵⁴ As can be seen in Figure 1, this prediction proved to be broadly accurate: in the first year following regionalisation 30 per cent of claims were issued outside London, increasing to 33 per cent in the second year. Despite hopes that regionalisation would relieve pressure on the Administrative Court in London there were also predictions that the reform would lead to an overall increase in judicial review claims. In response to our e-survey, one-third of solicitors and two-thirds of barristers thought that this would be the case.

Figure 1: Location of issue – civil judicial review claims

Administrative Court Centre	1 May 2009 to 30 April 2010		1 May 2010 to 30 April 2011	
	No	per cent	No	per cent
	Birmingham	137	6.5	178
Cardiff	61	3	80	4
Leeds	221	10.5	238	11
Manchester	215	10	212	10
Sub-total outside London	634	30	708	33
London	1476	70	1425	67

⁵⁴ For detailed information on predictions see, S.Nason, ‘Regionalisation of the administrative court and the tribunalisation of judicial review’ [2009] PL 440.

In fact we found that there was no significant change in the number of civil judicial reviews⁵⁵ over the four years covered by this research: there were 2071 non asylum and immigration claims in year one, 2151 in year two, 2110 in year three, and 2133 in year four.⁵⁶ By contrast, the number of asylum and immigration claims increased dramatically: from 4450 in year one, to 4827 in year two, to 7628 in year three, and to 8097 in year four.⁵⁷

Since the overall caseload did not change substantially over the period, there is little obvious evidence that regionalisation had led to a significant overall increase in caseload. It is likely that the increase in the number of claims issued regionally was primarily because claims that would previously have been issued in London were now being issued locally, rather than because the existence of regional Centres was leading to new claims being made. However, Cardiff provides a notable exception to this. Following the opening of the Cardiff Centre there has been an increase in the number of judicial reviews brought by both solicitors in Wales (up by 20 per cent) and unrepresented claimants in Wales (up by 15 per cent). Claims against Welsh local authority defendants increased, from an average 14 per-annum in the two years prior to regionalisation to an average 33 per-annum in the two years following regionalisation, with 40 claims being lodged in the most recent year. This contrasts with the other Centres; where there has been no discernible increase in claims against local authorities.

⁵⁵ Unless otherwise stated references to civil cases does not include asylum and immigration.

⁵⁶ On trends see further, V. Bondy and M. Sunkin *Dynamics* (2009) n 33 above. Indications from the first eight months, 1 May 2011 to 31 December 2011, of the third year after regionalisation suggest that there may be a small increase in the overall civil caseload in the year to 30 April 2012, but that most of this increase is due to a rise in claims issued in London with a small increase in Birmingham claims.

⁵⁷ Indications from the first eight months of the third year post regionalisation suggest that the number of asylum and immigration claims continues to increase significantly: this is mainly a London trend with a slight increase in claims issued in Birmingham.

Given Sir Henry Brooke's comments in the early 1990s regarding the paucity of judicial review activity in the North East, it is noteworthy that the Leeds Centre was the busiest in terms of the volume of claims, followed by Manchester, Birmingham and Cardiff. Having said that, most of the claims issued in Leeds stem from urban areas, and hence little has changed, it seems, in the rural North East. 'The great expanse of England' between Leeds and Bradford in the South and Newcastle to the North generated no more than some half a dozen judicial review claims per-annum during this study, including both civil judicial review and asylum and immigration claims. This negligible figure indicates that regionalisation has yet to have any discernible impact on the number of applications originating from the rural North East.

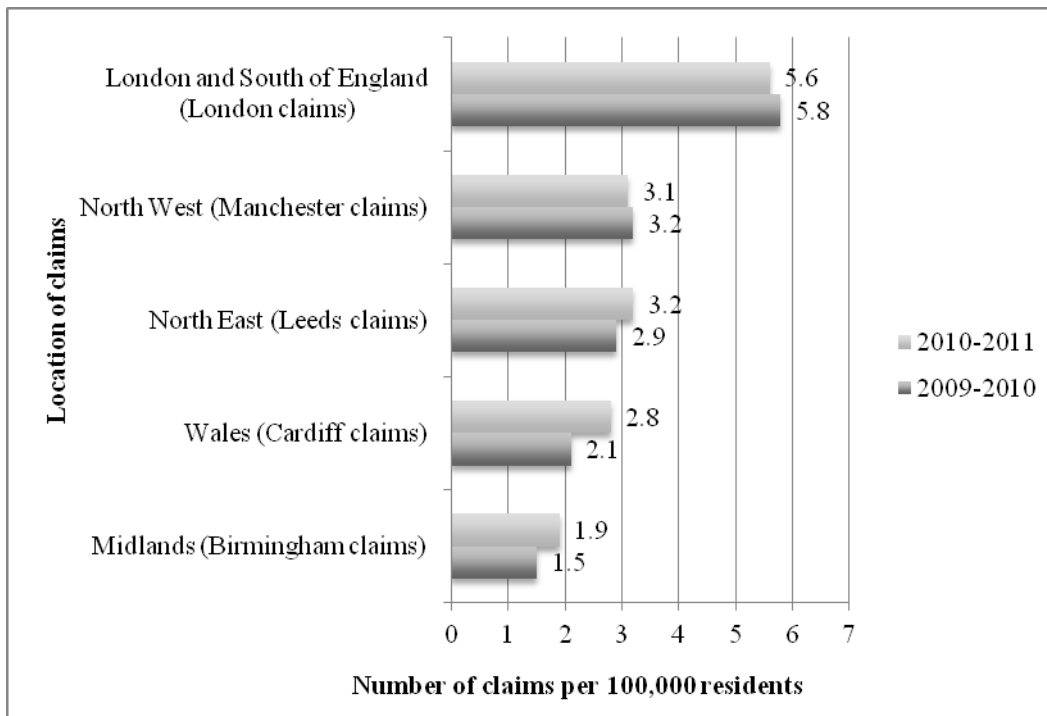
Before examining more closely the types of case being handled by the Centres, it is worth considering the incidence of judicial review litigation across the regions in the context of population statistics, as this provides a clearer indication of the relative levels of judicial review activity than can be discerned from the volume of claims alone.

The scale of judicial review and population

Figure 2 shows the number of judicial review claims per 100,000 members of the adult population resident in each region and in London and the South of England.⁵⁸

⁵⁸ Population data are taken from Office for National Statistics (ONS) data for mid-2010, the precise regional boundaries drawn by the ONS may differ slightly, but not substantially from the respective regional boundaries drawn by HMCTS. According to the ONS data the four regions gaining new Administrative Court Centres were home to 50.3 per cent of the total population of England and Wales. ONS data available online at: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-230167>. For further discussion of geographical access to judicial review and legal services see, M. Sunkin et al. (2007) n 21 above.

Figure 2: Civil judicial review claims per 100,000 residents



When population size is taken into account, the gap between the incidence of judicial review activity in Leeds and Manchester on the one hand, and Birmingham on the other, is striking: over a two year period on average twice as many claims per head of population were commenced in the Leeds and Manchester Centres as in the Birmingham Centre. When populations are considered, in relation to the civil judicial review caseload as a whole, Birmingham was relatively speaking a judicial review free zone. However, these figures do not reveal how many claims were still being issued in London when they could have been issued in one of the regional Centres; nor do they tell us about the specific types of claims being brought, an issue to which we now turn.

The subject areas of claims: civil judicial review

The term ‘civil judicial review’ covers a broad range of topics.⁵⁹ Leaving aside asylum and immigration claims for the moment Figure 3 shows the five main subject areas handled by each of the Centres and the proportion they constitute of each Centre’s overall caseloads, rounded to nearest percentage point.

Figure 3: The main subject areas of civil judicial review claims by Centre 1 May 2009 to 30 April 2011 (excluding asylum and immigration)

Subject	Location of issue											
	B’ham		Cardiff		Leeds		Manchester		London		Total	
	No	per cent	No	per cent	No	per cent	No	per cent	No	per cent	No	per cent
Community care	51	16	3	2	15	3	12	3	104	4	182	4
Homelessness	18	6	15	11	7	1.5	36	8	89	3	165	4
Housing	13	4	2	1	6	1	10	2	236	8	267	6
Prisons	47	15	7	5	262	57	192	45	489	17	997	24
Town and country planning	25	8	28	20	17	4	22	5	235	8	327	8

Figure 3 shows that when we exclude asylum and immigration ‘prisons’ is the most prevalent subject and that these cases are particularly prominent in the Leeds Centre. As we have seen, Leeds has been the busiest Centre overall, but interestingly an average of 57 per cent of civil judicial review claims handled there during our research period were prisons-related applications. This make-up of the Leeds’ caseload appeared not to have been predicted by the Judicial Working Group or by evidence submitted to it.⁶⁰

The most likely explanation for the high proportion of prisons cases issued in Leeds lies in the presence in the city of solicitors firms who specialise in prisons law; there are at

⁵⁹ The Administrative Court recognises at least 61 different ‘topics’ of civil judicial review.

⁶⁰ The evidence estimated that the Administrative Court in Leeds would attract in excess of 1000 asylum and immigration claims per-annum deriving from tribunal Hearing Centres in the North of England. (*Justice Outside London* (2007) n 13 above para.74 and Appendix J). However, this estimate was based on applications for the High Court to reconsider tribunal decisions: these have now been transferred to the Upper Tribunal.

least half a dozen firms advertising specialist prisons law advice in the greater Leeds area.⁶¹ This speciality may well be connected to the large prison population in the region.⁶² Having said this, specialist solicitors located in the North East are regularly engaged in claims relating to prisons in other English regions and in Wales, and the majority of these are also now being listed in Leeds or Manchester. Where claims concern currently detained prisoners it may be that the region of the claimant's legal adviser is the most appropriate determinant of the location of issue as detained claimants are less likely to attend court than other classes of claimant. But legal advisers in the North East also act for un-detained claimants across the regions (including the South West); and such claims are likely also to be issued in either Leeds or Manchester.

In Birmingham, where the total number of civil judicial review claims is relatively small, the single largest subject of claim aside from asylum and immigration was community care, constituting 16 per cent of the caseload, compared to an average of just four per cent of civil judicial review claims across the Administrative Court. The next largest subject of claim in Birmingham was town and country planning, which generated eight per cent of the civil judicial review caseload (the equivalent percentages in Manchester and Leeds were five per cent and four per cent respectively).

Cardiff also saw a high proportion of town and country planning cases constituting 20 per cent of civil judicial review applications in that Centre compared to an average of only

⁶¹ It is noteworthy that the Law Society data on specialist public law solicitors indicated that Yorkshire and the Humber has the highest concentration of specialist practitioners outside Greater London (eight and a half per cent of all public law solicitors). This supports our later finding that regional caseloads are driven significantly by the location and litigation strategies of specialist solicitors.

⁶² According to a Ministry of Justice snapshot, as at 31 August 2010, 23 per cent of the prison population of England and Wales were detained at prisons in the North East of England, whereas the North East is home to just 14 per cent of the total population of England and Wales.

eight per cent of all civil judicial review claims across the Administrative Court. It is notable that half of the claims issued in Cardiff were from claimants and/or solicitors with addresses in the South West of England, indicating that planning issues tend not to be distinctively Welsh issues; here, claimants appear to be choosing Cardiff rather than London as a matter of convenience. However, the use of Cardiff by claimants based in the South West of England is not limited to town and country planning. We found that approximately 42 per cent of all civil judicial review claims issued in Cardiff related to matters originating in the South West of England.⁶³ In this context it may be remembered that the main rationale supporting the Cardiff Centre was to ensure that Welsh cases are issued and heard in Wales. By contrast, homelessness claims (which accounted for 11 per cent of all civil judicial review in Cardiff),⁶⁴ were predominantly issued by solicitors based in Wales.⁶⁵ In cases such as these, involving vulnerable claimants, it is likely that access to a local Centre is more significant, being a matter of need rather than choice. The proportion of claims involving homelessness issued in three of the regional Centres (Cardiff, Birmingham and Manchester) is notably higher than the Administrative Court average. It is also notable that Leeds had a very small number of homelessness claims (seven claims, forming just one and a half per cent of the caseload). This figure is striking given the scale of claims involving prisons in this region.

An important area of litigation which is not included in Figure 3 because it is not, strictly speaking, judicial review, is worth mentioning nevertheless, namely statutory appeals.

⁶³ Based on the claimant's address where available or the solicitor's address where claimant's address is unknown.

⁶⁴ Compared to an average of four per cent across the Administrative Court.

⁶⁵ Three quarters of the homelessness claims. The other quarter were listed by solicitors in the South West of England.

In Manchester these accounted for 24 per cent of the total caseload of the Centre.⁶⁶ The high proportion of statutory appeals is a factor unique to Manchester as 98 per cent of these cases involved the General Medical Council (GMC), a national body with a significant presence in Manchester. Under the Medical Act 1983 the GMC has powers and responsibilities regarding doctors' fitness to practice and a significant proportion of this work, although it concerns cases from the whole of England and Wales, is handled by the GMC's Manchester office. These claims would probably have been issued and heard in London but for the establishment of the Manchester Centre. Since its Manchester-based in-house lawyers no longer routinely incur the expense of travelling to London the GMC appears to be a clear beneficiary of regionalisation.

Asylum and immigration claims

The most prevalent subject of judicial review claims is asylum and immigration and the regional patterns of litigation in this area reveal interesting contrasts with the other subjects.

Figure 4: Asylum and immigration judicial review claims

Administrative Court Centre	1 May 2009 to 30 April 2010		1 May 2010 to 30 April 2011	
	No	per cent	No	per cent
	Birmingham	334	4	517
Cardiff	59	0.8	69	0.9
Leeds	154	2	244	3
Manchester	186	2	284	3.5

⁶⁶ Statutory appeals constituted an additional 150 claims per-annum on top of the judicial review applications noted in Figures 1, 2 and 3.

Sub-total outside London	733	8.8	1114	13.4
London	6,894	91.2	6,983	86.6

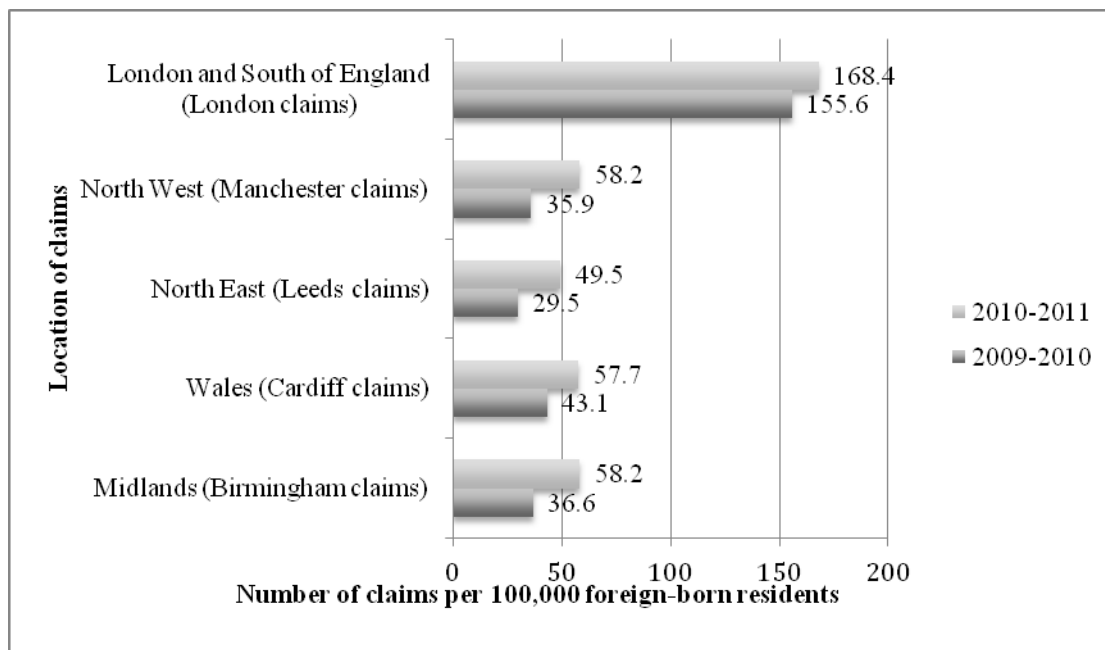
Figure 4 shows where asylum and immigration judicial review claims were issued and Figure 5 shows the number of these claims per head of the adult foreign-born population resident in each region and in London and the South of England. The following observations may be made. First, the overall number of asylum and immigration claims is significantly higher than the number of any other category of claim. At the end of the second year only Cardiff had fewer asylum and immigration cases than other civil claims. By contrast in the Birmingham Centre there were nearly three times as many asylum and immigration claims (517) as all other civil cases (178). Over the two years post regionalisation Birmingham dealt with almost as many asylum and immigration claims as Leeds and Manchester combined. Second, despite the general increase in the number of asylum and immigration claims issued in the regions, the vast majority of such claims were still being made in London, although the proportion of London claims fell slightly over the two years from approximately 90 per cent to approximately 86 per cent.⁶⁷

While in relation to non-asylum immigration civil claims we have described Birmingham as virtually a judicial review free zone, in relation to asylum and immigration it is by far the busiest of the Centres.

⁶⁷ These figures may also be considered in the context of the number of foreign-born people living in England and Wales. According to Migration Observatory, 6,137,471 foreign-born people were living in England and Wales at the close of 2010. Of these nearly a third of were resident in the four regions gaining new Administrative Court Centres. C. Rienzo and C. Vargas-Silva, *Briefing: Migrants in the UK an Overview*, The Immigration Observatory at the University of Oxford, September 2011: http://migrobs.vm.bytemark.co.uk/sites/files/migobs/Migrants%20in%20the%20UK-Overview2_0.pdf

As we saw in relation to town and country planning cases issued in Cardiff and prisons cases issued in Leeds and Manchester, it cannot be assumed that the issues underlying the challenge necessarily originate in the region in which proceedings commence. Over a fifth (22 per cent) of the asylum and immigration cases issued in the Birmingham Centre concerned claimants who were detained at detention and removal centres outside the Midlands region including those that are as geographically close to the RCJ in London as they are to the Birmingham Centre. These claims are interesting in so far as they seem exceptional given the London-centricity of asylum and immigration judicial review at the time. While there may be additional factors at play such as claimants' connections with the region, these figures also underscore Birmingham's standing as a location for specialist asylum and immigration advice capable of attracting work from London.

Figure 5: Asylum and immigration claims per 100,000 foreign-born residents



Conclusions on the overall caseload trends

As yet there are few signs that populations local to the regional Centres are accessing the public law system in a way that differs markedly to patterns established prior to regionalisation. Having said that there are indications that regionalisation is enabling access to claims that may not otherwise have been made, for instance the incidence of homelessness claims in Cardiff. We can also see that the regional Centres appear to be national hubs for certain types of claim: In Birmingham asylum and immigration cases dominate, in Leeds prisons cases dominate, and in Manchester a significant proportion of cases concern medical discipline. Related to this, we found that much of the litigation handled by some Centres, most notably Manchester and Cardiff, emanates from beyond the region covered by that Centre.

This chimes with responses to our e-surveys which disclosed that regional solicitors were likely to specialise in one or two particular areas of public law such as prisons, education, community care or social welfare.

It is not surprising to find a correlation between the subject matter of judicial review claims in the regions and the expertise of local solicitors. It stands to reason that the availability of specialist advice has evolved in response to certain needs within local populations, such as the need for prisons expertise in the North of England which has a cluster of local prisons or the establishment in Birmingham of expertise in asylum and immigration and community care. However, specialist provision is unlikely to meet the full range of need in any of the regions. The relatively low number of homelessness and housing claims in Leeds compared with the number of prison cases, for example, may indicate that specialist provision may be leaving other areas of need unmet. We return to this issue in the next section of the paper.

REGIONALISATION AND THE MARKET FOR LEGAL SERVICES

Approximately two-thirds of respondents to our e-survey perceived there to be a lack of appropriately specialised and experienced public law solicitors in the regions gaining new Court Centres. Some e-survey and interview respondents, not surprisingly predominantly London-based solicitors and barristers, feared that regional lawyers have yet to develop the necessary expertise in judicial review and that few would be likely to do so even after regionalisation due to the limited number of cases they may be handling.⁶⁸ Other respondents more optimistically assumed that expertise would develop over time. Concerns that judicial review work should not be undertaken by generalist practitioners were not limited to the possible impacts of regionalisation, with one barrister e-survey respondent noting that ‘although some of this work [judicial review] is formulaic, the vast majority is difficult and can’t be done by the type of semi-trained cheap operative that the LSC think might provide such legal services through businessmen/commercial providers entering the market’.

Given these factors we looked for early signs of the way regionalisation may be affecting the provision of legal services to claimants, bearing in mind the difficulties in isolating the influences of regionalisation, especially during a period when there have been both major reforms in public funding and severe economic pressures on law firms and other advice providers. Even assuming that regionalisation may exert some influence on the provision of legal services to claimants, other factors are likely to be more influential. For example, while regionalisation may encourage generalist solicitors to become more involved

⁶⁸ Though a certain degree of self-interest should be expected, it is striking that all 50 of the London-based barristers who responded to our e-survey believed that regionalisation would create a two-tier market for public law legal services with regional litigation falling below London standards. London-based solicitor respondents to our survey were also worried about the standards of regional practitioners, but they did not refer especially to the specialist/generalist expertise dichotomy.

in public law, legal aid reforms appear to exert an opposite pull by reducing the numbers of solicitors able to undertake publicly funded judicial review cases. One solicitor we interviewed who has worked both for London-based and regional firms noted that, ‘the Legal Services Commission has proposed a funding model based on reduction, merger and non-expansion [of firms undertaking publicly funded public law work] and certainly non-expansion into specialisations, the focus will be on the volume of advice work’. The implication is that specialist firms dealing with a high volume of cases will be able to attract public funding for judicial review claims, whereas the vast majority of solicitors who issue very few claims will not.

We found no evidence that regional firms are issuing greater numbers of judicial review claims now that regional Centres exist. On average in the two years before regionalisation there were 547 civil judicial review applications per-annum issued by solicitors based in the four regions⁶⁹ whereas in the two years after regionalisation this figure stood at 552 applications per-annum.⁷⁰

In view of the comments above regarding the pressures to specialise, it may be noted that previous research has highlighted the degree to which judicial review claimant litigation has been dominated by a small number of specialist firms.⁷¹ We also found this to be the

⁶⁹ Accounting for 38 per cent of all applications in which a claimant solicitor’s address was recorded.

⁷⁰ Again accounting for 38 per cent of all applications in which a claimant solicitor’s address was recorded. Regional solicitors do not only act for regional claimants and therefore these results must be read alongside the discussion above relating to the location of claimants. The number of asylum and immigration claims issued by regional solicitors has increased from an average of 324 claims per-annum in the two years prior to regionalisation to 621 in the two years after (an increase of 92 per cent). However, the number of applications issued by solicitors in London and the South of England has also increased, from an average of 598 claims per-annum to an average of 1356 claims per-annum (an increase of 127 per cent).

⁷¹ Bridges et al. (1995) n 15 above 53-55.

case. Indeed we found evidence of increased specialisation following regionalisation. In the first year studied, 16 per cent of the firms issuing civil judicial review applications (that is 100 firms) were responsible for half of all claims. By the final year of the research just eight per cent (50 firms) issued half of the claims.⁷²

By contrast we found that the vast majority of solicitors who issued judicial review claims did so very infrequently. For instance, during the four years studied, 1881 solicitors firms issued civil judicial review⁷³ claims and 65 per cent of these issued just one claim. This finding is also consistent with previous research.⁷⁴

These findings may well tell us more about the influences of changes to the legal aid system, which have seen a reduction in the number of firms being granted public funding, than the impact of regionalisation of the Administrative Court. Nonetheless, specialist firms with relatively high caseloads are likely to derive the greatest benefits from their proximity to the new Court Centres, especially if this reduces their operational costs across a significant proportion of their work. As we have indicated above, this begs the question whether regionalisation will help improve access for those with problems that do not fall within areas of specialism?

We have been largely concentrating on claimant solicitors, but it may be worth commenting briefly on the location of those who act for defendants. It appears that on

⁷² The same degree of concentration was evident in asylum and immigration judicial review applications.

⁷³ Asylum and immigration judicial review is more specialised, despite there being nearly four times as many asylum and immigration claims as other civil claims during the period of this research there were still only 2404 solicitors firms that issued at least one asylum and immigration claim during the four years. Of these solicitors firms, 1262 (52 per cent) issued just one claim over the four years.

⁷⁴ For instance, research has shown that during the late 1980s, 77 per cent of the solicitors who issued applications for judicial review in any given year did so only once in that year: Bridges et al. (1995) n 15 above 53-55.

average approximately 80 per cent of defendants or their lawyers were based in London and the South East of England during the course of this research and this figure appears not to have changed as a result of regionalisation. This is unsurprising given that the majority of defendants remain London-based central government departments, that the Treasury Solicitor's Office (which acts for 180 central government departments) is based in London and that many out of London local authorities continue to use London solicitors and brief London-based counsel. Overall it seems that regionalisation has had less impact on the location of those acting for defendants than it has on those acting for claimants.

Regionalisation and the Bar

Our e-surveys and interviews show that London-barristers expressed concern about the capability of regional solicitors, but no similar concerns for standards at the regional Bar. Nevertheless, it appears that the effect of regionalisation on the Bar has been greater than on firms of solicitors. In particular, there are indications that the hold of the London Bar over public law litigation is relaxing. Two years before the reforms, a regional barrister was instructed to act for the claimant in only 13.5 per cent of all civil judicial review claims issued in the Administrative Court and many of the barristers instructed were from small satellite outposts of prominent London chambers. The proportion of regional barristers instructed increased year-on-year during the research to 29 per cent of all barristers instructed to act for claimants in civil judicial review claims in the second year following the reforms.⁷⁵ However, as with solicitors, while the amount of work handled by the regional public law Bar has increased, overall there has been a greater concentration of work among a smaller

⁷⁵ The proportion of asylum and immigration claimants represented by regional barristers increased from six and a half per cent two years prior to regionalisation to 18 per cent in the second year following the reforms.

proportion of chambers. In the first year of this research 50 per cent of claimants were represented by barristers from just five per cent of the chambers instructed to act for claimants in that year. In the final year work was even more concentrated, with barristers from four per cent of chambers representing half of all claimants. In that year we found that the 50 most prominent barristers were instructed in 49 per cent of civil judicial review claims (there was a similar picture in relation to asylum and immigration claims).

Conclusions on the effects of regionalisation on the provision of legal services

Overall regionalisation does not appear as yet to have had significant impact on the way the two professions engage in judicial review work. The majority of solicitors who issue judicial review claims continue to do so very rarely. On the other hand a small number of specialist firms, including those in the regions, continue to generate the majority of claims especially in areas such as education, community care and prisons. Indeed we found signs of increased specialisation. This is unsurprising given public funding policies. Moreover, specialist firms are likely to be best placed to benefit from close proximity to the regional Centres.

As we indicated earlier regionalisation coupled with the increasing devolution of a judicial review type jurisdiction to inferior courts and tribunals underscores the growing importance of public law expertise for the general legal profession, yet it seems that regionalisation coupled with public funding requirements have so far only served to entrench existing specialisation.

REGIONALISATION AND LITIGANTS IN PERSON (LIPs)

Where claims are filed by litigants in person (LIPs) ease of access to a Court Centre is likely to be an important consideration for the claimant, especially when the claimant is an individual (as opposed, for example, to a commercial body). Claims by LIPs are therefore likely to provide a good indicator of whether regionalisation is improving accessibility from a lay claimant perspective. Ten solicitors and eight barristers who responded to our research⁷⁶ predicted that regionalisation would lead to an increase in the number of LIPs and suggested that such litigants stand to benefit the most from the reforms. Of course respondents did not all see this as a positive development, with one London-based solicitor interviewee fearing that there would be an increase in ‘plastic bag carrying’⁷⁷ claimants who will clog up the system with hopeless cases’. Our findings confirm the expected increase in LIP applications.

The two years following regionalisation saw an increase in the number of civil judicial review claims issued by LIPs. There were 400 such claims (19 per cent of all civil judicial review claims) in the first year of this research and 474 (22 per cent of all civil judicial review claims) in the final year of this research.⁷⁸ Moreover, the number of claims issued by LIPs with addresses in the regions increased by approximately 60 per cent over the four years covered by this study.⁷⁹ Interestingly, the increase in the use of judicial review by LIPs in civil cases appears to have been an essentially regional phenomenon, as the number of claims by LIPs based in London and the South of England fell over this four year period

⁷⁶ 13 e-survey respondents and five interviewees, six based in the regions and 12 based in London.

⁷⁷ Reference to LIPs who arrive at court with their relevant papers and materials in a plastic carrier bag and the connotations that can be drawn from this.

⁷⁸ Although these claims have been issued without the aid of a solicitor, the claimant may have received legal advice before issuing the claim in person.

⁷⁹ Two years prior to regionalisation, there were 97 claims filed by such claimants. Two years after regionalisation, there were 155.

(from 197 per-annum two years prior to regionalisation and to 181 per-annum in the second year after regionalisation).⁸⁰

Aside from the increased convenience of the regional Centres, the growth in the number of regional LIPs may also be affected by restrictions on the availability of legal services in public law cases⁸¹ or be linked to cut backs in the funding available to frontline advice providers, such as Citizens Advice Bureaux and Law Centres. In this connection it is noteworthy that LIP numbers increased everywhere except in London and the South of England.

Two more specific points may be made in relation to our findings on LIPs. Somewhat surprisingly, significant numbers of unrepresented claimants, particularly those with addresses in the North of England, chose to issue their claims in London despite the existence of the new regional Centres.⁸² Although we do not know their reasons for doing so,⁸³ this

⁸⁰ With respect to asylum and immigration claims, the number of claims issued by regional claimants has increased, from an average of 324 claims per-annum in the two years prior to regionalisation to an average of 621 claims per-annum in the two years after regionalisation. However, as a proportion of all asylum and immigration claims in which the claimant's address is known, the proportion of claims issued by regional claimants has reduced from an average of 36 per cent to 32 per cent. This is due to the large increase in applications from London claimants.

⁸¹ See for example, R. Moorhead and M. Sefton, *Litigants in person: Unrepresented litigants in first instance proceedings*, Department for Constitutional Affairs Research Series 2/05 (2005) and K. Williams, *Litigants in person: a literature review* (Ministry of Justice, 2011):

<http://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/litigants-in-person-literature-review.pdf>

⁸² In the first year after regionalisation approximately 40 per cent of regional LIPs bringing civil judicial review applications issued their claims in London, however, this fell to 35 per cent in the second year. Around half of all LIPs from the North of England continued to issue in London. Midlands based LIPs were the most likely to issue in their closest Centre, Birmingham. Here the proportion of claims issued by LIPs increased from two in

finding is somewhat counter-intuitive as we might expect the regional Centres to be particularly attractive to this class of claimant.

The second observation is to do with the subject matter of LIP claims. Since the number of LIP claims is relatively small it is difficult to draw firm conclusions about trends in subject the matter of regional LIP claims. However, LIP claims in each of the Centres concerned a spectrum of subject areas and they were not concentrated in areas of specialisation, such as prison litigation in Leeds. As we see in the next section, a relatively high proportion of LIP claims failed to satisfy the arguability criteria of the permission stage, indicating that they were weak in terms of their legal merit. Nonetheless, that LIPs pursued claims in subjects beyond the specialisms offered by the litigating solicitors once again raises the questions of whether and to what extent specialisation is leaving needs unmet?

Finally in this context it may be noted that with respect to asylum and immigration the pattern of LIP cases differed significantly to that of civil judicial reviews, particularly in relation to claims brought in London. The total number of regional LIPs in asylum and immigration claims from non-detained claimants⁸⁴ more than doubled over the four-year research period, from 132 in the first year of the research to 273 in the final year. However, unlike other civil judicial reviews the increase in numbers of asylum and immigration claims from LIPs was not just a regional phenomenon, but was also evident in London and the South

every 10 to in the first year after regionalisation to three in every 10 in the second year. The majority of civil judicial review LIPs based in Wales issue in Cardiff.

⁸³ eg, whether the decisions were based on tactical assessments (such as to take advantage of potentially longer delays or more specialist judges) or were simply due to ignorance of the new Centres and the belief that judicial review is still exclusively based in London.

⁸⁴ ie, not detained at an asylum and immigration detention and removal centre.

of England where the number of LIP claims issued by non-detained claimants increased from 288 in the first year of this research to 728 in the final year.⁸⁵

VARIATIONS IN PERMISSION SUCCESS RATES ACROSS THE REGIONAL CENTRES

The final issue we consider concerns the potential effects of regionalisation on the permission stage of the judicial review procedure. Regionalisation gave rise to fears about the quality and consistency of judicial decision-making, especially at the permission stage. This matter appeared to have worried practitioners more than any other possible consequence of regionalisation.

Previous research has highlighted two key issues in relation to permission: an historical decline in permission grant rates and the high levels of judicial inconsistency in relation to permission decisions.

While in 1996 the grant rate for civil judicial review was 71 per cent⁸⁶ by the final year of this study that figure had fallen to 29 per cent.⁸⁷ Bondy and Sunkin have identified several factors that are likely to have contributed to this downward trend.⁸⁸ These include a

⁸⁵ As in other civil judicial reviews a substantial proportion of regional asylum and immigration LIPs continued to issue their claims in London: This delay makes suggest that LIP claims are growing much faster in the regions than in London: in reality we are seeing the continued transfer to the regions of claims that are likely to have been issued in any event.

⁸⁶ These figures include both paper and oral permission applications.

⁸⁷ In asylum and immigration, grant rates have also reduced, from 37 per cent in 1996 to 12 per cent in the final year of this research.

⁸⁸ V. Bondy and M. Sunkin, 'Accessing Judicial Review' [2008] PL 647 and V. Bondy and M. Sunkin *Dynamics* (2009) n 33 above.

change in the dominant judicial approach in favour of greater stringency, and the direct and indirect effects of the reforms to the judicial review procedure introduced following the report of the Bowman committee in 2000. These reforms removed the general right of claimants to seek permission orally. Historically oral applications for permission have been significantly more successful than written applications. The reforms also enabled defendants to set out in summary form their grounds for disputing the claims before the permission application is contested, so that judges can see how the defendant responds to the claim. Bondy and Sunkin show that these responses have been widely used by judges when refusing permission claims. Earlier involvement of defendants has also contributed to an increase in the rate of settlement prior to the permission stage.⁸⁹ The procedures have encouraged defendants to look closely at judicial review claims before they reach the permission stage and enables them to concede or settle where they accept that the claim has merit or for other pragmatic reasons: '[t]his, in turn, may leave the less meritorious, or more contentious, claims to proceed to the permission stage'.⁹⁰ Not surprisingly a high proportion of these claims fail to satisfy the permission criteria. Bondy and Sunkin also stress the link between settlement and expert legal advice and assistance. There is a twofold association. First legal advice is likely to lead to good quality claims, and second, experienced lawyers appear best placed to negotiate and secure settlements. These factors are important to bear in mind especially in relation to claims brought by LIPs.

The second issue raised by research concerns judicial inconsistency. Work beginning in the early 1990s revealed that even amongst the relatively small Administrative Court judiciary there has been a high level of inconsistency in the way applications for permission

⁸⁹ V. Bondy and M. Sunkin, *Dynamics* (2009) n 33 above and V. Bondy and M. Sunkin, 'Settlement in Judicial Review Proceedings' [2009] PL 237.

⁹⁰ V. Bondy and M. Sunkin (2008) n 88 above 656-657.

have been decided, with the result that obtaining permission appears to be something of a lottery.⁹¹ This, incidentally, suggests that the judiciary in the Administrative Court has not been overly concerned with establishing a common approach to the handling of judicial claims, a point that is pertinent to earlier expressed fears regarding the fragmentation of the Administrative Court. It has been observed that the ‘...centralised system provides access to a relatively large pool of judges and, while inconsistency affects the relative chances of individual claimants obtaining permission, more systemic biases are likely to be ironed out by the number of judges involved’.⁹² There are fears, then, that regionalisation may exacerbate inconsistency if it leads to greater involvement of less experienced judges or because each Centre may have fewer judges handling cases than would the Administrative Court in London. The influence of the two presiding judges may be of particular significance in this regard. Sixty per cent of respondents to our research felt that regionalisation would increase inconsistency and that this would be a negative development, although 14 per cent of respondents accepted that inconsistency would not necessarily reflect a problem and could be a sign of the strength of the reforms.

In view of the above we examined the permission grant rates across the regions and our findings are summarised in Figures 6 and 7, which show permission grant rates across the regional Centres during their first two years of operation in relation to civil judicial reviews and asylum and immigration respectively.⁹³

Figure 6: Civil judicial review paper permission application grant rates

⁹¹ See Bridges et al. (1995) n 15 above Chapter 8, 166 and V. Bondy and M. Sunkin (2008) n 88 above.

⁹² *ibid* V. Bondy and M. Sunkin (2008) n 88 above 667.

⁹³ The Figures refer only to paper applications, as the number of oral applications handled by the regions to date is too small to draw useful comparisons.

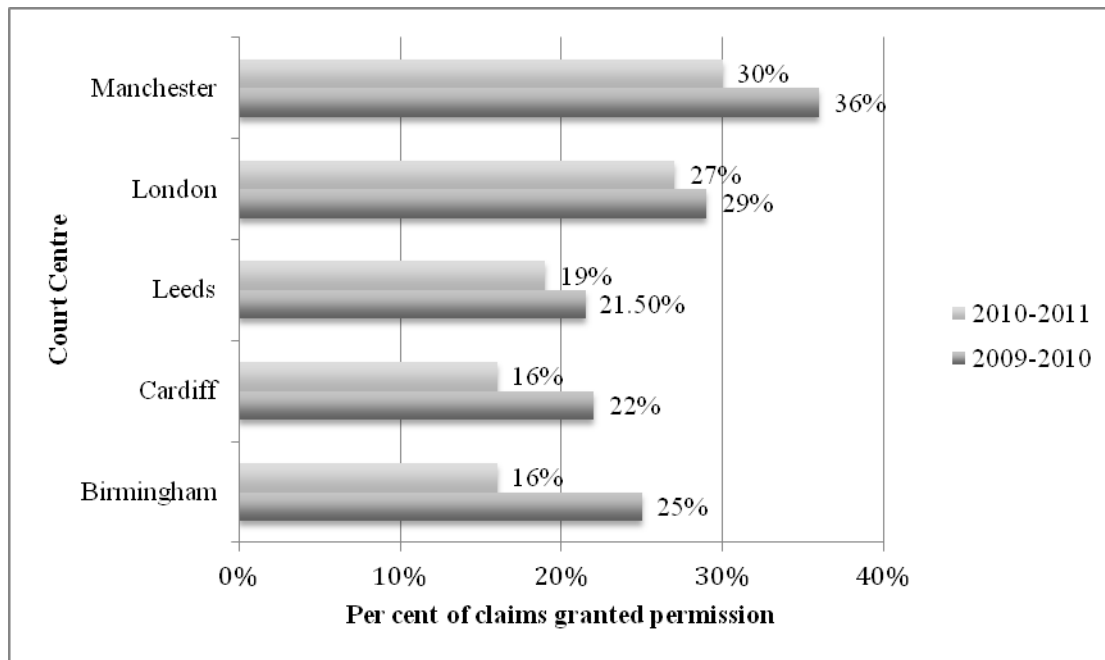
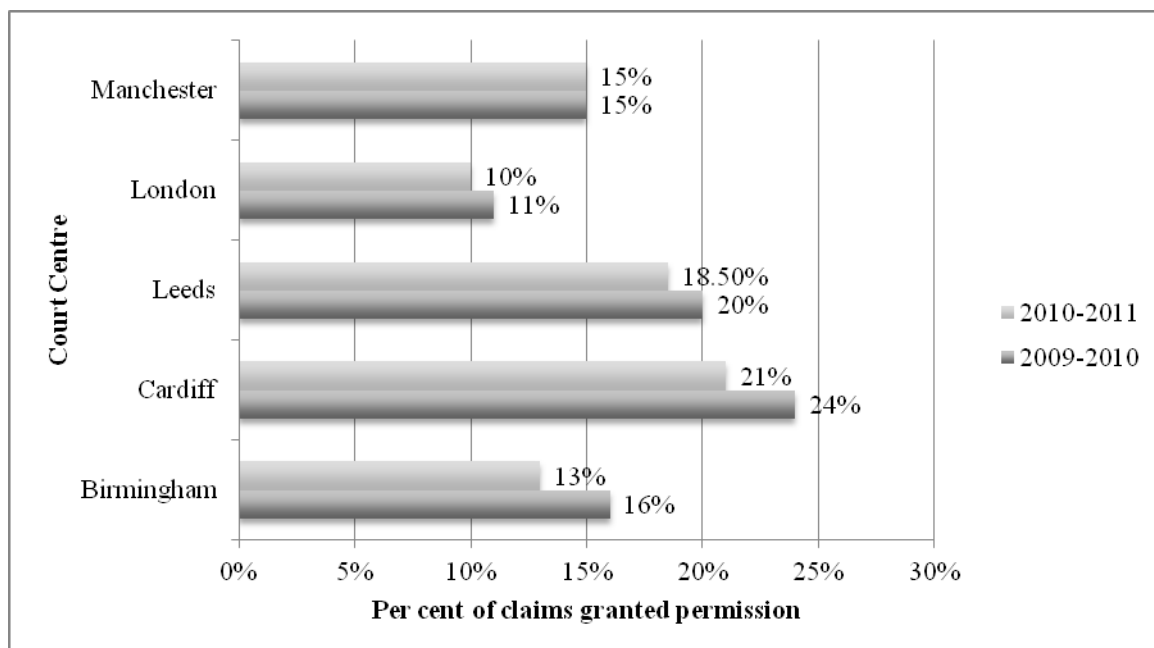


Figure 7: Asylum and immigration judicial review paper permission application grant rates



Looking at the civil judicial reviews we can see that over the two years studied the permission grant rate fell in each of the regions, as well as in London: the largest fall was in Birmingham, from nearly 25 per cent to 16 per cent. In the second year, with the exception of Manchester, the regional grant rates were markedly lower than the grant rate in London. In

that year there was also a marked variation across some regions. Most notably, the grant rate in Manchester was almost twice that in Birmingham and Cardiff.

As we have just indicated a variety of factors may explain these findings. However the connection between the numbers of LIPs and the low grant rates is particularly striking.

We found that the higher the proportion of LIPs the lower the permission grant rate. Manchester, which had the highest grant rate, had the lowest proportion of claims issued by LIPs when compared to London and the other regional Centres. Moreover, those Centres which saw the highest rise in LIP issued claims in the second year after regionalisation also saw the biggest reduction in grant rates. Figure 8 shows that those Centres which saw the highest percentage increase in claims by LIPs also witnessed the greatest decline in permission success rates.⁹⁴ While high proportions of LIPs claims failed to satisfy judges that they justified being granted permission, it is not known how many were poorly presented rather than without any legal merit. It is well known that LIPs experience difficulty in relation to the effective presentation of their legal claims.⁹⁵

Unlike in other civil judicial review claims, claimants in asylum and immigration cases were more likely to be granted permission in the regions than in London where only ten per cent obtained permission. While the grant rates are low overall, the figures may suggest that the quality of legal advice and representation is, if anything, higher in this class of case in regional claims than in claims brought in London. Once again, as Figure 9⁹⁶ shows, the regions with the largest growth in LIPs generally also experienced the greatest decline in

⁹⁴ Although the total number of LIPs issuing civil judicial review claims in London reduced over the course of this research there was an increase in such claims between the first and second years after regionalisation.

⁹⁵ See eg, K. Williams (2011) n 81 above.

⁹⁶ Figure 9 includes applications from claimants detained at asylum and immigration detention and removal centres.

permission success rates. The exception was Manchester where the number of LIP claims increased, but permission grant rates remained static.

Figure 8: Increase in LIPs compared to decrease in permission success in civil judicial review

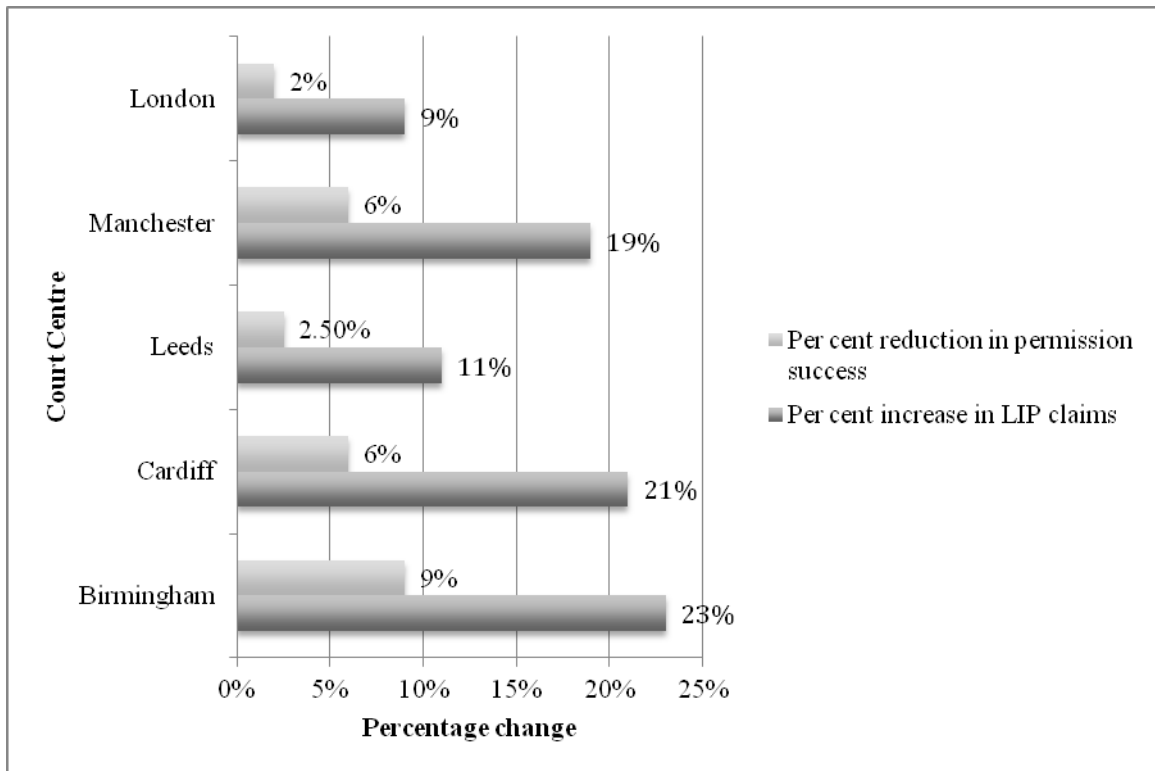


Figure 9: Increase in LIPs compared to decrease in permission success in asylum and immigration judicial review

Centre	Increase in LIP claims		Per cent reduction in permission success
	No	Per cent	
Birmingham	50	300	3
Cardiff	7	800	3
Leeds	14	88	1.50
Manchester	33	75	0
London	162	9	1

CONCLUDING REMARKS

The establishment of regional Centres for handling Administrative Court matters and enabling regional access to judicial review, while achieved as an administrative change, is a potentially significant step in the development of judicial review in England and Wales. It creates a new procedural architecture for dealing with judicial reviews and marks an additional welcome step away from the highly centralist conception of the judicial review system epitomised by Lord Diplock's judgment in *O'Reilly v Mackman*. As such regionalisation recognises the need to improve the ability of citizens from across England and Wales to gain access to public law redress.

Despite its important positive potential, this reform was not welcomed in all quarters. Unsurprisingly perhaps, the main concerns were articulated by London-based practitioners who expressed fears that regionalisation might lead to a decline in the quality of legal advice in public law matters as well as in the quality of public law adjudication, with potential eroding effects in relation to the standing and reputation of judicial review. There were also fears that regionalisation would lead to further damaging fragmentation of public law litigation.

While it may be plausibly argued that regionalisation will contribute to the further fragmentation of public law adjudication, the ramifications of this for the standing of judicial review and the reputation of the inherent jurisdiction are by no means clear. While there may be risks, fragmentation is arguably a healthy indication of greater pluralism and a sign that citizens are gaining greater opportunity to raise public law arguments to protect their rights and interests. From this perspective it reflects the more pluralistic approach that prevailed prior to *O'Reilly*. While we would be inclined to take this positive view, the research we report here was not specifically directed at assessing this matter.

The practical importance of regionalisation will depend largely on whether it does help improve the ability of those outside London and the South East to obtain public law redress, for instance by encouraging a more diverse regional supply of legal services in public law cases. The following final comments need to be read bearing in mind that these are early days and categorical conclusions on the effects of regionalisation cannot yet be reached.

We found that there has been general growth in judicial review litigation in the regional Centres, although it is difficult to know how many regional cases would have been brought in London but for the reforms. However, we found no clear signs that populations local to the regional Centres are accessing the public law system in a way that differs markedly to patterns established prior to regionalisation. Having said this, we did find evidence of growth in litigation that is likely to reflect particular needs of local populations, such as asylum and immigration and community care in Birmingham, and homelessness in Cardiff.

Overall it appears that regionalisation has yet to have major effects on the supply of legal services by generalist firms of solicitors. There are, for example, no signs that public law litigation is being handled by a broader range of firms. Nor in this context did we find significant evidence to suggest that the quality of legal advice has or is declining in the regions. Firms with particular specialisations continue to be involved in a very high proportion of judicial review claims. This was particularly notable in relation to prisons litigation in Leeds and asylum and immigration in Birmingham, but was also evident in relation to other matters such as community care again in Birmingham. Indeed, we found that there has been a growth in regional specialisation and a tendency for claims to be associated with these areas of specialisation. Connected to this we found that where claims are filed often depends more on the location and litigation strategy of specialist solicitors than on the geographical proximity of the claimant to the regional Centre.

Specialisation clearly benefits those with problems falling within the specialist area who have access to a relevant firm. However, given that a high proportion of claims in particular regions are concentrated in single subject areas a question arises as to whether specialisation is leaving other needs unmet. We were struck, for example, by the low level of homelessness litigation in Leeds compared to the number of prisons cases in that region.

We found significant increases in resort to judicial review by LIPs across the regions. While this may not be caused by regionalisation, the existence of regional courts is likely to be of particular importance to this class of claimant. Not surprisingly we also found an association between the numbers of LIPs and high rates of failure at the permission stage, indicating that claims brought by LIPs are likely to be either weak and/or poorly presented. We also found that LIPs were using judicial review across a much broader range of subject areas than were the specialist solicitors, which also raises the question whether specialisation might not be meeting the full spectrum of need.

Turning to the Centres themselves, there are indications that they have yet to gain trust that they are capable of handling the full range of judicial review cases, especially those that are particularly specialised and complex or raise issues of broad public importance or sensitivity. A particular concern is that judges determining cases in the regions may lack the necessary expertise and experience in public law. One London-based barrister e-survey respondent commented that, ‘Judges are less likely to be experienced in public law. I have recent experience of a local government decision in Birmingham which was hugely superficial compared to the way in which the issue would have been treated at the RCJ’. Another barrister, this time based outside London, also responding to our e-survey commented that, ‘Many clients still prefer coming to London where there is the perception that the matter will receive more serious consideration...’ The relevant Practice Direction adds weight to this view by prescribing that certain cases, especially those relating to

terrorism and serious financial crime, can only be issued and determined in London.⁹⁷ The ability of Administrative Court lawyers to group together cases raising matters of general importance to be joined and heard in London also reinforces this proposition.

A possible effect of regionalisation may, then, be to create a two-tier supervisory jurisdiction: one tier which is principally concerned with matters of national interest and constitutional importance normally centred in London and the other, regional tier that is concerned primarily with cases concerning issues of local importance or more routine cases concerning matters of individual redress. The regional Administrative Court Centres have certainly played host to some cases of considerable importance to local communities, including cases involving asylum issues, cuts to local authority budgets and the closure of local services. That such matters can now be dealt with locally is an important indication of the value of regionalisation and its potential for enhancing regional contact with and awareness of public law. To this extent the regionalisation reform may be regarded a success regardless of the volume of regional claims.

Langstaff LJ, former Presiding Judge of the Leeds and Manchester Centres, has noted that: ‘The future is the Admin Court; it gives a tremendous social advantage to those who want access to justice’.⁹⁸ The quality of access to judicial review has been, and remains, conditioned largely by the availability of skilled lawyers. The establishment of regional Centres may help encourage more lawyers to develop public law expertise and it appears that access to judicial review is still largely dependent on the availability of solicitors with particular specialisations. Specialisation is being encouraged by market forces and public funding policies and is likely to be the model for the future. Current evidence suggests that regionalisation is likely to reinforce this. This being so the real question in terms of access is

⁹⁷ Practice Direction 54D – Administrative Court (Venue) para 3.1.

⁹⁸ http://www.kingschambers.com/news/latest/admin_court_flourishing_in_the_regions/

whether citizens across England and Wales will have access to those able to provide specialist advice across the spectrum of matters where judicial review and public redress is needed. Unless that occurs access will remain patchy across the regions and the effects of these reforms will be more symbolic than real.