Section A		
Institution: University of Manchester		
Unit of Assessment: 18 (Law)		
Title of case study: Shaping Administrative Justice Policy-Making		
Period when the underpinning research was undertaken: 2016 – 2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name:	**Role(s) (e.g. job title):**	**Period(s) employed by submitting HEI:**
Robert Thomas	Professor of Public Law	1998 – present.
Period when the claimed impact occurred: 2016 – 2020		
Is this case study continued from a case study submitted in 2014? No		

Section B

1. Summary of the impact

Research by Professor Robert Thomas has led to improvements in the operation and design of administrative justice processes and informed administrative justice policy-making. These improvements yield considerable social and economic benefit to individual claimants and are crucial in maintaining public confidence in the system of justice through holding government bodies, courts and tribunals to account. These impacts have been achieved through Thomas's engagement with government policy-makers, administrative justice institutions, law reform bodies, and the Administrative Justice Council. Specifically, his research has:

1. provided the evidence base for the Senior President of Tribunals to argue within government against proposed changes to the immigration judicial review process;
2. prompted the Law Commission to undertake a law reform project on the operation of administrative review schemes across Government;
3. provided a comprehensive evidence-base for the first 'own-initiative' investigation by the Northern Ireland Public Services Ombudsman into benefits decision-making.

2. Underpinning research

Immigration judicial review: Thomas's recent research into immigration judicial reviews has involved a detailed statistical analysis of tribunal decisions. [1, 2]. Two major findings arising from this work were foundational to the impact reported in Section 4.

First, the proportion of immigration judicial review cases deemed by the Upper Tribunal (Immigration and Asylum) Chamber to be Totally Without Merit rose significantly at a time when the overall caseload had also increased. An unintended consequence of this increase in the number of preliminary negative judgements was that it constrained access to justice, because claims refused permission on the papers deemed Totally Without Merit cannot be renewed at an oral hearing. Thomas's research found that the Upper Tribunal (Immigration and Asylum Chamber) was inadvertently using the Totally Without Merit mechanism, in part, as a means of regulating its increasing caseload.

Second, Thomas's research revealed that claimants lodging judicial review applications experienced a significantly higher success rate at the oral renewal permission stage than at the earlier paper permission stage. This finding strongly suggested that the process by which cases are considered – on the papers or at an oral hearing – was exerting a significant influence on judicial decision making, thereby affecting the quality of decisions made by judges. Overall, individuals challenging immigration decisions through judicial review whose cases were considered by the tribunal at a hearing were more likely to

succeed than individuals whose cases were considered solely on the papers. This finding significantly weakened any argument for removing the oral renewal stage.

Administrative review: Administrative review is the process by which people who have received a negative administrative decision (e.g. concerning their immigration status or a benefit claim) request the same government authority to reconsider that decision. It is important that administrative review operates effectively as it provides a vital means through which individuals are able to secure redress for the denial of basic social goods such as access to social security benefits and the right to reside in the United Kingdom.

Drawing upon empirical data, Thomas (in collaboration with Tomlinson, University of York) identified the following problems arising from the increased use of administrative review as the first rung in the redress ladder [3, 4, 5]. First, he identified that there is a lack of consistent and coherent design of administrative review processes in different areas of government and this design flaw weakens the effectiveness of these processes as a coherent mechanism of administrative justice. Second, he identified significant disparities in success rates between administrative review and tribunal appeals, thereby confirming the variable quality of administrative review systems when compared with judicial tribunals. Third, he identified that the mandatory nature of administrative reviews had led to a significant decline in the number of people accessing appeals, which strongly suggests that the review process dissuades people from pursuing appeals to tribunals.

Thomas's analytical work [6] identified ways to improve the quality of administrative decisions, such as: reforming initial administrative decision-making processes; using feedback from tribunals; making polluters pay; and changing adverse organisational cultures.

In summary, the underpinning research advanced principles to inform the design, coherence, and effective operation of administrative review systems, in order to raise the quality of processes and outcomes of administrative review.

3. References to the research

[1] **Thomas, R**. (2016) "Immigration Judicial Reviews: Resources, Caseload, and 'System-manageability efficiency", *Judicial Review*, 21(3), 209-220. DOI: 10.1080/10854681.2016.1219097

[2] **Thomas, R**. (2015) "Mapping Immigration Judicial Review Litigation: An Empirical Legal Analysis" *Public Law*, 652-678. https://bit.ly/3tbHyqm

[3] **Thomas, R**. and Tomlinson, J. (2017) "Mapping current issues in administrative justice: austerity and the 'more bureaucratic rationality' approach", *Journal of Social Welfare and Family Law*, 39(3), 380-399. DOI: 10.1080/09649069.2017.1363526

[4] **Thomas, R**. and Tomlinson, J. (2019) "A Different Tale of Judicial Power: Administrative Review as a Problematic Response to the Judicialisation of Tribunals", *Public Law*, 537-562. https://ssrn.com/abstract=3254119

[5] **Thomas, R**. and Tomlinson, J, (2016) Current issues in administrative justice: Examining administrative review, better initial decisions, and tribunal reform (ESRC report). DOI: 10.2139/ssrn.2940783

[6] **Thomas, R.** (2015) "Administrative Justice, Better Decision-making, and Organisational Learning" *Public Law*, 111-131.

Evidence of research quality: [3, 4, 5] developed from an ESRC IAA funded project, awarded to Thomas in 2016 for GBP6,400. All the publications published in journals were peer-reviewed.

4. Details of the impact

1. Prompting resistance to detrimental reform of the immigration judicial review process

The research on immigration judicial review [1, 2] was initially published online and then quickly and widely circulated to interested stakeholders. It attracted the attention of the Senior President of Tribunals, the UK's lead judge in the area. He drew extensively on the research findings to resist proposals from the Cabinet Office to restrict the judicial review process by limiting the availability of oral renewal hearings. The government's proposals were based upon the low success rate of claimants. The rationale for the proposals was contradicted by Thomas's research findings that 20 per cent of claimants succeed at the oral renewal stage [1]. In private discussions with government, the Senior President of Tribunals strongly relied on the research to contest and ultimately reject the government's proposals.

According to his testimonial, the Senior President of Tribunals "*drew upon this research in my discussions with Government to argue against proposed changes to the immigration judicial review process to limit the availability of oral renewal hearings. I also took the research as my baseline in discussions with Government about possible procedural and appellate route changes. The research provided an essential insight into how process alters outcomes and access to justice which influenced both the judiciary and Government in their options analysis and will influence changes to primary and secondary legislation, practice direction material and guidance…. Had this research not existed, the discussions I highlight above would have been anecdotal rather than focused on careful, methodologically coherent analysis. Furthermore, the possibility of legal and procedural change for the better would have been considerably reduced"* [A]. Following Cabinet briefings, the Cabinet Office's proposal was withdrawn.

As regards reach and significance, 15,000 immigration judicial reviews are lodged per year and there are 2,500 oral renewal permission hearings. Such hearings are more effective than a judge considering a case solely on the papers; the claimant's barrister can convey the arguments more effectively to the judge. Claimants win 20 per cent of oral renewal hearings. Accordingly, had the government's proposal been implemented, then one fifth of the claimants (approx. 500 per year) who currently win their cases at oral hearings would have been left without this important remedy and would have faced deportation.

The research also exerted impact in a very politically-driven area of policy. Government has long sought to reduce rights of legal challenge in this area. Overall, the research [1] supplied an important evidence-base that the government's own proposals lacked.

2. Prompting the Law Commission's project on administrative review

The Law Commission was established in 1965 for the purpose of promoting the reform of the law. In 2016, it launched a public call for proposals for law reform projects. In 2016 Thomas organised an ESRC IAA-funded roundtable workshop with the support of HM Courts and Tribunals Service and the Administrative Justice Forum. Thomas and Tomlinson presented their research on administrative review to the Law Commission and others. The resulting roundtable discussions and research presentations formed the basis of a submission to the Law Commission. Thomas's submission to the Commission drew extensively upon the research's findings about the practical operation of administrative review and the variable quality of administrative review decisions, thereby weakening public confidence in it. The proposal argued that increased use of administrative review

revealed weaknesses because it led to significantly lower success rates than tribunal appeals; it had a review success rate of around 18-20 per cent, compared with a tribunal appeal success rate of over 60 per cent. If administrative review was to work properly, then it needed to be more effective than it is currently. The proposal also presented principles advanced to inform the design of an effective administrative review process.

In total, the Law Commission received 1,315 submissions for law reform projects on some 222 different topics. Thomas's proposal was one of only 13 topics selected for proposed legal reform. As the Law Commission noted:

"Both the submission and the research papers did an admirable job of emphasizing the importance and relevance of internal review processes which precede any kind of judicial recourse, and in particular its importance to lawyers, judges and the courts and tribunals system. The project has the potential to improve the life of many UK citizens, and to improve the efficiency of administrative departments to the benefit of all. I can safely say that the Commission would not be looking to review this area of law were it not for the careful and measured research which Professor Thomas published, and his submission of the project for the inclusion in the Programme" [B].

The Law Commission is still in the process of conducting this project and has not yet produced its final report. While there are no official figures on the total number of administrative reviews decided per year, it can safely be estimated that there are at least one million administrative reviews per year undertaken across the entirety of government at a typical unit cost of GBP80 per review. Improving how administrative review operates will have significant impacts in terms of the quality of routine administrative decisions and the ability of individuals to secure their legal entitlement to, amongst other things, benefits, immigration status, housing, tax liability, education and so on.

3. Providing the comprehensive evidence-base for investigation by the Northern Ireland Public Services Ombudsman into benefit decision-making

The research on administrative review [3-5] found significant shortcomings in the operation of the process of mandatory reconsideration. These included: the inadequate scrutiny on the part of Department of Work and Pensions of medical evidence submitted by benefit claimants pertaining to their medical conditions; the challenges faced by vulnerable benefit claimants; the low number of benefit claimants who challenge initial benefit decisions (with the risk that claimants met with an inadequate mandatory reconsideration decision are unlikely to mount a second challenge); and the low success rate of mandatory reconsiderations compared with tribunal appeals. The research was circulated and presented through Thomas' role as member of the Administrative Justice Council and co-chair of its Academic Panel.

The research provided a direct evidence base for the Northern Ireland Public Services Ombudsman (NIPSO) in its decision to commence the first ever "own-initiative investigation" into the operation of disability benefits (Personal Independence Payments) and the administrative review process known as "mandatory reconsideration. **[Text removed for publication]**

The outcome of the Ombudsman's investigation is awaited. Clearly, the research exerted a major impact in both prompting and focusing the investigation, in particular on questioning the ability of administrative reviews to provide an effective check of initial benefit decisions. [**Text removed for publication]** An interim update, published in July 2020, indicates that the role of evidence in mandatory reconsideration requests remains a

key element of the investigation [D]. The report into the investigation is due to be published in early 2021.

The wider reach and significance of the impact is demonstrated by the number of people affected. Around 150,000 people claim Personal Independence Payments in Northern Ireland. Since 2016, there have been some 56,610 mandatory reconsiderations in Northern Ireland. It is likely that the investigation will exert a wider influence on benefit decision making in Britain, where there are some 300,000 mandatory reconsiderations per year (PIP & other benefits). An enhanced and more effective mandatory reconsideration process would reduce the number and cost of tribunal appeals and anxiety for people concerned. Currently, there are 300,000 tribunal appeals per year at a cost of GBP592 per an appeal.

[**Text removed for publication]**

5. Sources to corroborate the impact

[A] Testimonial from Senior President of Tribunals. Received 12 November 2019.
[B] Testimonial from the Law Commission's Public Law team. Received 14 December 2017.
[C] **[Text Removed for Publication]**
[D] Interim Update on the Investigation into the Department for Communities' Administration of the Personal Independence Payment (PIP) Benefit System, 9 July 2020.