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Expertise, Deference, and Giving Reasons

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Abstract: There is a consensus among courts and commentators on the grounds for a duty to give reasons in administrative law. Traditionally, the duty has been justified as a way to promote good decision-making, show respect for the parties, and reveal potential grounds for a challenge to the decision. We argue that this traditional picture is incomplete, because it omits two important considerations that favour giving reasons. Giving reasons can provide evidence that an administrator is an expert relative to a reviewing or appellate body, and thus provide evidence of a reason to defer to the administrator. Giving reasons can also indicate an administrator's findings on specific issues, making it possible for an appellate or reviewing body to selectively defer to it. Together these points show that concerns of deference are relevant to when administrators should give reasons.

1. Introduction

Courts and most scholars agree on why an administrative decision-maker should give reasons for his or her decisions.[1] Traditionally, giving reasons has been justified as a

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[1] e.g. *R. v Higher Education Funding Council Ex p. Institute of Dental Surgery* [1994] 1 W.L.R. 242 at 263; D. Galligan, *Due Process and Fair Procedures* (Oxford University Press, 1996) at pp. 431-434; P. Craig, "The Common Law, Reasons, and Administrative Justice" (1994) 53 Cambridge Law Journal 282 at p. 283; R. Antoine, "A New Look at Reasons – One Step Forward – Two Steps Backward" (1992) 44 Admin L Rev 453 at p. 454; T. Allan, "Procedural Fairness and the Duty of Respect" (1998) 18 O.J.L.S. 497 at p. 499. For a discussion of similar reasons for judges to give reasons, see H. Ho, "The Judicial Duty to Give Reasons" (2000) 20 Legal Studies 42 at pp. 47-50.

way to show respect for the parties, to reveal potential grounds for a challenge to the decision, and to promote good decision-making. This traditional picture is incomplete, however, because there are important considerations that favour giving reasons that have so far gone unnoticed.

We show that giving reasons helps to reveal when, and in what respects, an appellate or reviewing body ('reviewing body') should defer to an administrative decision-maker ('administrator'). Our argument has two branches. First, we show that giving reasons can provide evidence that an administrator is an expert relative to a reviewing body, which in turn indicates a reason to defer to the administrator. Second, we show that giving reasons may indicate an administrator's findings on specific issues, making it possible to defer to the administrator only on the issues on which the administrator is a relative expert.

Our argument demonstrates a new connection between deference and expertise, on the one hand, and reason-giving, on the other. It shows that the case for giving reasons is stronger than is currently admitted, and that it draws support from an unrecognized source. We do not consider the case *against* giving reasons and, as a result, do not make any claims about when reasons should be given, all things considered.

2. Why Give Reasons? Traditional Justifications

When we consider whether administrators should always give reasons for their decisions, it is worth remembering how exceptional such an obligation would be. Think of the countless everyday cases in which one makes a decision that affects others, and how rarely one is obligated to explain why the decision was made. Frederick Schauer collects some examples (though his list is by no means exhaustive):

> Like voters who simply say aye or nay, like publishers and journal editors who turn down submissions without explanation, like employers and admissions officers who send rejection letters that announce outcomes without providing justifications, like homeowners who rarely explain to the painters and carpenters whose proposals they have rejected why someone else was chosen, and like referees in sporting events who make calls that are ordinarily unsupported by explanations, many decisionmaking environments eschew ... reasons, justifications, or explanations.[2]

In many of the cases Schauer mentions, there are considerations that favour giving reasons for one's decision. Offering an explanation would show respect for those affected by the decision, for example. Expecting to give an explanation, one might deliberate more carefully and thereby reach a better decision. Nonetheless, one is not

[2] Frederick Schauer, "Giving Reasons" (1995) 47 Stanford Law Review 633 at p. 634.

usually obligated to give reasons for these types of decisions. No one would blame a voter, say, for not telling a candidate why he or she voted for someone else.

That there is no general obligation to give reasons provides the starting point in an analysis of reason-giving in the administrative context. There is little point in asking, why should an administrator give reasons? The more important question is, why should an administrator give reasons when it is permissible for a private decision-maker not to give reasons? There are two types of answer. First, it could be that the general considerations in favour of giving reasons carry greater weight in the administrative context. For example, many administrative decisions affect the liberty of a party. In these cases it would be especially disrespectful not to explain to the party why the decision was made, and the law rightly recognises a duty to give reasons for such decisions.[3]

The second answer is that there are considerations in favour of giving reasons that apply only or especially to state actors. With respect to administrative decisions, the hierarchical nature of the decision-making process is particularly important. Whereas administrative decisions are subject to appeal and review, personal decisions normally are not. It is therefore often said that administrators should give reasons for their decisions to help parties identify potential grounds for a challenge to the decision, and to help a reviewing body identify errors with it, such as consideration of irrelevant factors.[4]

We agree that a record of reasons is necessary to identify some types of error, and it is true that this factor is especially relevant in the administrative context. However, the implicit assumption seems to be that the identification of errors is the *only* way a record of reasons helps an appellate or reviewing body discharge its responsibilities. It is this assumption we wish to challenge. There are other ways in which a record of reasons is useful in a hierarchical decision-making process.

3. Key Terms: Giving Reasons, Expertise and Deference

Since our argument is based on the relation between decision-making, giving reasons, relative expertise, and deference, we need to say what we take these terms to mean.

Suppose a planning officer must decide whether to approve a planning application. How will the officer make the decision? Normally, he or she will decide to approve or reject the application based on an overall judgment that the application should be approved or rejected (what we call a judgment on the 'overall issue'). The judgment on the overall issue will be based in turn on judgments on any relevant sub-issues (e.g., would the proposed project increase traffic congestion?). Of

[3] e.g. *R. v Secretary of State for the Home Department Ex p. Doody* [1994] 1 A.C. 531 at pp. 564-565. See also *R. v City of London Corp Ex p. Matson* [1997] 1 W.L.R. 765.

[4] *R. v Secretary of State for the Home Department Ex p. Doody* [1994] 1 A.C. 531 at p. 565. For discussion of the point see Mark Elliott, "Has the Common Law Duty to Give Reasons Come of Age Yet?" (2011) Public Law 56 at pp. 61-62.

course this is a simplified picture of just one form of decision-making. All that matters for our purposes, however, is that something like it is common in administrative contexts.

Now suppose the planning officer decides to deny the application. If that is all the officer says, then he or she does not 'give reasons' for his or her decision. Rather, the officer gives reasons only if he or she describes the reasoning that led to his or her judgment on the overall issue, including a statement of which sub-issues were important, his or her judgments about them, and how they led to his or her judgment on the overall issue.[5] For example, the officer might say that the relevant issues are traffic congestion and economic benefits; that the proposed project would increase traffic but benefit the local economy; and that because traffic congestion is a weightier concern, the application should be denied.

On these matters of judgment – that one issue is traffic congestion, that the proposed project would increase traffic congestion, that traffic congestion is a weighty concern, and so on – it is possible for the planning officer to be more or less of an expert, relative to someone else. Without making things too technical, we will say that a person is an expert relative to another person on an issue if and only if he or she possesses skills or knowledge that make his judgment on that issue more reliable than the other person's, where their judgments are independent of each other.[6]

We take the typical view that if a person is an expert relative to another person on an issue, then the first person has a reason to defer to the second person's judgment on that issue.[7] Commentators understand 'deference' in different ways.[8] For our purposes, a person defers to another person's judgment on an issue if he gives the person's judgment weight in his own deliberations on that issue.[9] In law,

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[5] D. Galligan, *Due Process and Fair Procedures* (Oxford University Press, 1996) at pp. 429-430. See also H. Ho, "The Judicial Duty to Give Reasons" (2000) 20 Legal Studies 42 at pp. 55-62.

[6] For more sophisticated treatments of expertise, see J. Hardwig, "Epistemic Dependence" (1985) 82 The Journal of Philosophy 335 at p. 338 and generally the essays in E. Selinger and R. Crease (eds), *The Philosophy of Expertise* (Columbia University Press, 2006).

[7] A. Young, "In Defence of Due Deference" (2009) 72 Modern Law Review 554 at p. 555, A. Kavanagh, "Judicial Restraint in the Pursuit of Justice" (2010) 60 University of Toronto Law Journal 23, M. Hunt, "Sovereignty's Blight: Why Contemporary Public Law Needs the Concept of 'Due Deference'" in N. Bamforth and P. Leyland (eds), *Public Law in a Multi-Layered Constitution* (Hart Publishing, 2003) at 339, 354', *International Transport Roth v. Secretary of State for the Home Department*, [2002] EWCA Civ. 158. at [87], J. King, "Institutional Approaches to Judicial Restraint" (2008) 28 Oxford J Legal Studies 409.

[8] For an account of different models of deference see A. Young, "In Defence of Due Deference" (2009) 72 Modern Law Review 554 at pp. 560-562.

[9] For this account of deference, see A. Kavanagh, "Deference or Defiance? The Limits of the Judicial Role in Constitutional Adjudication" in G. Huscroft (ed), *Expounding the Constitution: Essays in Constitutional Theory* (Cambridge University Press, 2008) at 184–215. See also D. Dyzenhaus, "The Politics of Judicial Deference" in M. Taggart (ed), *The Province of Administrative Law* (Hart

any decision-maker can defer to any other decision-maker in this way. If a Planning Appeals Board oversees the decisions of the planning officer, it defers to the planning officer to the extent to which the planning officer's decision weighs in the Planning Appeals Board's deliberations.

To be clear, by 'deference' we do not mean any particular *legal* doctrine of deference. The way we understand the term, it is possible for any person to defer to any other person's judgment on an issue. Recent debate about the doctrine of 'due deference' in human rights adjudication does not, therefore, bear on our argument in this paper. For instance Trevor Allan, one of the foremost skeptics of a doctrine of due deference, accepts the role of deference in our sense in decision-making.[10] Nor do we assume that expertise is the *only* reason to defer to another person's judgment.

Earlier we defined our 'reviewing body' to encompass both courts exercising powers of judicial review and tribunals charged with hearing appeals on the merits. This may seem overbroad because of the different roles of these bodies. However, both types of bodies sometimes defer to administrators, in that they give weight to the judgments of administrators. That makes our argument applicable to both types of bodies.

4. Determination of Expertise

A reviewing body often needs to determine whether it or an administrator has greater expertise, with respect to either an overall issue or a sub-issue. How can a reviewing body determine its relative expertise? Traditional markers of expertise include 'paper qualifications' – degrees, certificates, titles, etc. – and experience.[11] Neither is necessary or sufficient for expertise, however. Some people have a great deal of expertise but no paper qualification, and vice versa. Experience suggests knowledge and skill, but is not conclusive proof of it. Conversely, newly constituted decision-makers lack experience but may be experts nonetheless.

Since paper qualifications and experience are indicative of expertise, but not conclusive of it, other indicia have a role to play. We think that a reviewing body is

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Publishing, 1997) at 286; M. Hunt, "Sovereignty's Blight: Why Contemporary Public Law Needs the Concept of 'Due Deference'" in N. Bamforth and P. Leyland (eds), *Public Law in a Multi-Layered Constitution* (Hart Publishing, 2003) at 339; A. Young, "In Defence of Due Deference" (2009) 72 Modern Law Review 554.

[10] T. Allan, "Human Rights and Judicial Review: A Critique of 'Due Deference'" (2006) 65 Cambridge Law Journal 671 at p. 672. See also A. Kavanagh "Defending Deference in Public Law and Constitutional Theory" (2010) 126 Law Quarterly Review 245. Moreover, at least some academic criticism of even the *doctrine* of deference does not stand against doctrines of deference which conceive of deference as "giving weight to the opinion of another". See A. Young, "In Defence of Due Deference" (2009) 72 Modern Law Review 554 at pp. 573-577.

[11] Cf. T. Allan, "Deference, Defiance, and Doctrine: Defining the Limits of Judicial Review" (2010) 60 University of Toronto Law Journal 41 at p. 51 for scepticism about qualifications as a ground of deference.

sometimes better able to gauge the relative expertise of an administrator through an investigation of its reasons. For example, in *R. (Begum) v. Denbigh High School*[12], the court deferred to a school manager's decision regarding a student's right to wear a type of Islamic dress.[13] The school manager's decision warranted deference because, as Allan notes, it was 'apparently supported by cogent reasons' that the complainant was unable to undermine, which indicated that the school manager was a relative expert on the issue.[14]

There are at least four ways the record of reasons may indicate whether and to what extent an administrator is an expert relative to a reviewing body.

Sophisticated forms of reasoning. That an administrator's reasons with respect to an issue take a sophisticated *form* suggests the administrator is a relative expert on that issue, regardless of the soundness of those reasons.[15] The reviewing body might see from the record of reasons that an administrator is superior at identifying the relevant reasons, considering the issues from different viewpoints, identifying counterarguments, weighing the various factors, interpreting policies and legislation, and so forth. Taken collectively, the form of the reasoning may demonstrate the administrator's superior skill at reasoning in a particular area, and thus its expertise in it. For example, if a planning officer used a sophisticated quantitative method of determining the effect of a proposed planning change on traffic patterns, it would help establish the officer as a relative expert on the traffic-related aspects of a planning application.

Consideration of unfamiliar material. That an administrator considered and discussed material that is unfamiliar to a reviewing body but nonetheless clearly relevant to an issue suggests the administrator is a relative expert on that issue. For example, in *Akaeke v Secretary of State for the Home Department*, Carnwath LJ considered a detailed explanation by the immigration tribunal of the 'country guidance' practices as evidence of its expertise.[16] Similarly, in the *Denbigh High*

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[12] [2005] EWCA Civ 199.

[13] In this case, the reasons were gauged from witness statements (late reasons) and not from the record of reasons: [2005] EWCA Civ 199 [67]. Our argument applies with greater force to the record of reasons.

[14] T. Allan, "Deference, Defiance, and Doctrine: Defining the Limits of Judicial Review" (2010) 60 University of Toronto Law Journal 41 at p. 47.

[15] For a similar argument on the problem of deciding which of two putative rival experts is more correct, see, A. Goldman, "Experts: Which Ones Should You Trust" in E. Selinger and R. Crease (eds), *The Philosophy of Expertise* (Columbia University Press, 2006).

[16] *Akaeke v Secretary of State for the Home Department* [2005] EWCA Civ 947 at [29]. The 'country guidance' was explained by Ouseley J as President of the IAT, in *NM and Others (Lone Women - Ashraf) Somalia v. Secretary of State for the Home Department* CG [2005] UK IAT 00076.

School case, the school manager's careful consideration of Islamic dress codes was considered by the court to indicate relative expertise on the matter.[17]

Comparison with an acknowledged expert's reasoning. A reviewing body can compare an administrator's reasoning to the reasoning of an acknowledged expert to help determine whether the reviewing body or the administrator is the relative expert. The way we use the term, an acknowledged expert is a decision-maker that has been judged by any of the methods above, including by an assessment of qualifications or experience, to be an expert relative to the reviewing body. Examples of acknowledged experts might include academic commentators and highly specialised courts or tribunals.[18]

If the administrator reasoned in the same way as the acknowledged expert did, that would suggest the administrator and the acknowledged expert possess a similar degree of expertise, and thus that the administrator is an expert relative to the reviewing body. Even if the administrator did not reason in the *same* way as the acknowledged expert, the degree of similarity might still indicate that the administrator is an expert relative to the reviewing body. We emphasise that we are not claiming that reviewing bodies currently use this method of evaluating relative expertise. Rather, our claim is that if they did, this would help them evaluate relative expertise.

Is it really necessary to compare the *reasoning* of the administrator and the acknowledged expert? Would it not be enough to compare their conclusions on an issue? The answer to the latter question is 'no', because an administrator could have arrived at the same conclusion as the acknowledged expert by chance, especially with respect to a binary issue (e.g., should a planning application be approved or denied?). The record of reasons clarifies whether the conclusion was a lucky guess or the result of a reasoned process, where only the latter indicates expertise.

Comparison with the reviewing body's reasoning. Normally there is no point in the reviewing body comparing its own reasoning to the administrator's, because there is no way for it to know whether any differences reflect inexpertise on its part or the administrator's. However, suppose that the reviewing body knows (based on qualifications, experience, material considered, etc.) that it is an expert relative to the administrator. In that case, it could judge the degree of the administrator's relative *inexpertise* by comparing its own reasoning to the administrator's (in the same way as we said it could compare the administrator's and the acknowledged expert's reasoning).

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[17] [2005] EWCA Civ 199 at [34].

[18] For examples of specialised courts or tribunals that are acknowledged experts, see *Cooke v Secretary of State for Social Security* [2001] EWCA Civ 734.

Why would the reviewing body want to know the exact degree of the administrator's inexpertise? Doesn't it already know it should not defer? We have only discussed expertise-related reasons for and against deference, but there are other types of reasons for deference, such as constitutional reasons.[19] Whether the reviewing body should defer, and the degree to which it should defer, depends on the balance of all the relevant reasons. The more inexpert the administrator is relative to the reviewing body, the heavier the reason *not* to defer weighs in the balance, and the more compelling the reasons *to* defer must be to tip the scales.[20] Thus, even when it is known that the administrator is a relative inexpert, a record of reasons is still relevant.

Now that we have outlined how a record of reasons can be used to determine the degree of deference due, we are able to address a possible objection to our argument. We have said that the fact one person is an expert relative to another person is a reason for the second person to defer. While there is a high degree of judicial and academic agreement on this point, there are some scholars who have concerns about basing deference (even partially) on expertise, Trevor Allan among them.

Allan does not deny that expertise may weigh in favour of deference. Instead, he claims that for expertise to justify deference in some case, it must be shown to have been exercised *in that case*.[21] If Allan is correct, then deference should not be based on general markers of expertise such as degrees and past experience, since these indicate merely a capacity for the kind of reliable judgment that constitutes expertise. To justify deference, there must also be some indication of the use of that capacity.

This is where our argument shows its worth. Unlike the traditional ways of determining expertise, our method of determining expertise – detailed above – meets Allan's condition. Our method tells the reviewing body to study the administrator's

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[19] A. Young, "In Defence of Due Deference" (2009) 72 Modern Law Review 554 at p. 565; A. Young, "Deference, Dialogue and the Search for Legitimacy" (2010) 30 O.J.L.S 815 at pp. 822-825; A. Kavanagh, "Deference or Defiance? The Limits of the Judicial Role in Constitutional Adjudication" in G. Huscroft (ed), *Expounding the Constitution: Essays in Constitutional Theory* (Cambridge University Press, 2008) at pp. 191-193 and pp. 200-203; A. Kavanagh "Defending Deference in Public Law and Constitutional Theory" (2010) 126 Law Quarterly Review 245 at p. 229; J. Jowell "Judicial Deference and Human Rights: a Question of Competence" in P. Craig and R. Rawlings (eds), *Law and Administration in Europe: Essays in Honour of Carol Harlow* (Oxford University Press, 2003) at pp. 72-73.

[20] For a recent example of this weighing process: 'Respect has always to be given to a professional disciplinary tribunal such as a Fitness to Practise Panel although I agree with Cranston J (at Cheatle paragraph 15) that the degree of deference will depend on the circumstances and *one factor* may be the composition of the tribunal.' *Mr Chatenya Chauhan* v *General Medical Council* [2010] EWHC 2093 (Admin) [emphasis added].

[21] T. Allan, "Deference, Defiance, and Doctrine: Defining the Limits of Judicial Review" (2010) 60 University of Toronto Law Journal 41 at pp. 51, 59; T. Allan, "Human Rights and Judicial Review: A Critique of 'Due Deference'" (2006) 65 Cambridge Law Journal 671 at pp. 689 and 692

reasons *in a particular case* to determine whether the administrator used his or her expertise in arriving at his or her decision in that case. Even commentators who do not share Allan's concerns about expertise-based deference tend to think that it should be justified on a case-by-case basis, further strengthening our argument.[22]

5. Expertise and Selective Deference

If an administrator is an expert relative to a reviewing body with respect to a certain issue, then there is usually a reason for the reviewing body to defer to the administrator's judgment on that issue. Even to be able to defer, though, the reviewing body must have some idea of what the judgment was. Sometimes it is obvious. The administrator's judgment on the overall issue can usually be inferred from the fact of its decision. When it comes to sub-issues, however, it is usually necessary to be more explicit. The administrator has to actually say what it thinks about those issues. That is what a record of reasons accomplishes. It sets out the administrator's judgments on the various sub-issues, making it possible for the reviewing body to defer to it on those issues. It also makes it possible for the reviewing body to *selectively defer*, that is, to defer to the administrator on certain sub-issues without deferring to it on other sub-issues or on the overall issue.

The *Belmarsh* case [23] is a recent example of selective deference. The government wished to derogate from Article 5 of the European Convention on Human Rights in order to detain terrorism suspects. The House of Lords was forced to decide two issues: First, was there a public emergency threatening the life of the nation? Second, were the government's measures necessary, or 'strictly required by the exigencies of the situation'?[24] The majority of the Law Lords recognized that 'the level of deference cannot necessarily be set globally for a given case'.[25] A high degree of deference was warranted on the 'public emergency' issue because the government was a relative expert on that issue. Less deference was due on the 'necessity' issue, because the government's expertise on that issue was also less.

Why is it important to give the reviewing body the option to selectively defer? In some cases the administrator will be an expert on certain sub-issues, the reviewing body on others, and the combination of their relative expertise will yield a more reliable judgment on the overall issue than either decision-maker could have reached independently. Selective deference is a means of combining relative expertise.

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[22] A. Kavanagh "Defending Deference in Public Law and Constitutional Theory" (2010) 126 Law Quarterly Review 245 at p. 226; M. Hunt, "Sovereignty's Blight: Why Contemporary Public Law Needs the Concept of 'Due Deference'" in N. Bamforth and P. Leyland (eds), *Public Law in a Multi-Layered Constitution* (Hart Publishing, 2003).

[23] *A v. Secretary of State for the Home Department* [2004] UKHL 56 ('the *Belmarsh* case').

[24] Article 15, European Convention of Human Rights.

[25] M. Elliott, J. Beatson and M. Matthews, *Administrative Law* (Oxford University Press, 2011) at p. 276

Thus, by making selective deference possible, providing a record of reasons may lead to a more reliable judgment on the overall issue.

To see how this might work, consider a version of the planning example. The Planning Office is in charge of making the initial decision whether to approve or deny a planning application. It is particularly good at making factual determinations, such as the effect that the proposed project would have on traffic patterns, noise levels, local businesses, and so on.[26] Indeed, it is an expert on these issues relative to the County Appeal Board, which is tasked with making the final decision on planning applications. Despite the Appeal Board's relative inexpertise on factual issues, it has greater knowledge of the relevant planning legislation and skill at determining what it requires. Its knowledge and skill make the Appeal Board a better judge than the Planning Office of what the planning legislation requires in a given factual context. In our simplified picture, the Planning Office is a relative expert on the factual issues, the Appeal Board on what the planning legislation requires. Each is an expert relative to the other with respect to one sub-issue.

The upshot of all this is that if the Appeal Board defers to the Planning Office on the factual issues, while following its own judgment on what the planning legislation requires, it will likely form a more reliable judgment on the overall issue than either it or the Planning Office could have done independently. This is only possible, however, if the Planning Office does more than simply state that it has decided to approve or deny a planning application. It must be explicit about why it decided to approve or deny the application. It must say what it thought the relevant factual issues were, what factual determinations it made, and so on. In other words, it must give reasons for its decision.

Our argument shows that in some cases a record of reasons is helpful in determining when and on what issues a reviewing body should defer. But, someone might wonder, how do we know in advance which cases are which? How can we know whether a record of reasons would be helpful in this way, without first inspecting those reasons? Does the argument not favour giving reasons in every case? That is so, but it is no objection to our argument. We are only claiming to have identified an additional consideration in favour of giving reasons, not a conclusive consideration. We acknowledge that there are important considerations that weigh against giving reasons. Therefore we are not claiming to have justified a general duty to give reasons.

Another concern is that our argument has little practical importance. After all, the duty of candour already requires an administrator to provide reasons for its decision to a reviewing body once the decision is challenged. What does it matter whether there are other considerations that also favour giving reasons to a reviewing body? The short answer is that not all reasons are equal. The reasons provided under

[26] With this reference to factual determinations, we do not mean to invoke the traditional distinction between questions of law and questions of fact. Nor do we mean to imply that administrators can only be relative experts on questions of fact.

the duty of candour are provided *after* the initial decision has been challenged.[27] These so-called 'late reasons' are especially likely to be unreliable and to be tailored to satisfy a reviewing body.[28] Since only accurate reasons evidence the expertise of the administrator, our argument therefore favours reasons given at the same time as the initial decision is made.

6. Conclusion

We have shown that a record of reasons makes it easier to identify relative experts and their findings, and helps reviewing bodies to determine when deference is warranted and on what issues. Since these points have not been noticed before, the immediate consequence of our argument is to strengthen the case for reason-giving. The larger significance of our argument is to reveal some of the hitherto unacknowledged connections between deference, expertise, and reason-giving.

[27] e.g., A. Schaeffer, "Reasons and Rationalisations: Late Reasons in Judicial Review" (2004) 9 Judicial Review 151 at p. 153.

[28] e.g. *R (Nash) v Chelsea College of Art* [2001] EWHC Admin 538; See A. Schaeffer, "Reasons and Rationalisations: Late Reasons in Judicial Review" (2004) 9 Judicial Review 151; For these general worries about reasons which are exacerbated in the case of late reason see D. Galligan, *Due Process and Fair Procedures* (Oxford University Press, 1996).