

The Constitutional Position of Statutory Ombudsmen

Merits, Limits and the Constitutional Boundaries of Informal Justice

A Constitutional Analysis of the Role, Jurisdiction and Limits of Statutory Ombudsman Schemes

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Abstract

Statutory ombudsmen have become indispensable institutions within the modern administrative state. Established to provide an accessible, independent and informal alternative to litigation, they now determine disputes affecting millions of consumers and businesses across diverse areas of economic and public life. Their constitutional contribution to access to justice is substantial. By offering procedures that are generally quicker, less formal and less costly than court proceedings, statutory ombudsmen have widened access to dispute resolution and reduced reliance upon conventional litigation.

The constitutional success of the ombudsman model, however, gives rise to a further question. As Parliament has progressively expanded the jurisdiction and significance of statutory ombudsmen, have the constitutional assumptions upon which the model was originally founded remained constant? Modern ombudsmen increasingly determine disputes involving substantial financial consequences, complex evidential issues, detailed contractual interpretation, specialist regulatory frameworks and questions of considerable legal complexity. Such disputes frequently bear little resemblance to the relatively informal complaints for which ombudsman schemes were originally conceived.

This paper examines whether the constitutional strengths of informal adjudication continue to outweigh its inherent procedural limitations as the complexity of disputes increases. It argues that the constitutional justification for informality cannot be considered independently of the nature of the disputes entrusted to informal adjudicators. Informality promotes accessibility, flexibility and efficiency, but it may also reduce the procedural safeguards available where disputes depend upon contested facts, expert evidence, credibility assessments or complex legal analysis.

The paper does not contend that statutory ombudsmen are constitutionally deficient, nor does it suggest that informal adjudication should be displaced by litigation. Rather, it argues that every constitutional institution possesses limits, and that the continued expansion of statutory ombudsman jurisdiction requires renewed examination of those limits. It proposes that constitutional legitimacy depends not only upon accessibility and efficiency, but also upon ensuring that the procedural characteristics of an adjudicative model remain proportionate to the complexity and consequences of the disputes it is asked to determine.

Using the Financial Ombudsman Service as an illustration of wider constitutional issues, the paper considers whether the evolution of statutory adjudication has altered the constitutional balance originally struck by Parliament between informal justice and procedural protection. It concludes that the future development of ombudsman schemes should be guided not by institutional preference but by constitutional principle, ensuring that accessibility is preserved without compromising the legitimacy of decision-making in increasingly complex cases.

Keywords

Constitutional Law • Administrative Law • Public Law • Administrative Justice • Ombudsmen • Informal Justice • Constitutional Legitimacy • Procedural Fairness • Rule of Law • Access to Justice • Democratic Accountability • Statutory Adjudication

About This Paper

This paper examines the constitutional role of statutory ombudsmen within the United Kingdom's system of administrative justice. It considers why Parliament created ombudsman schemes, the constitutional advantages they have delivered and the procedural limits inherent within models of informal adjudication.

The paper argues that the constitutional legitimacy of statutory ombudsmen cannot be assessed solely by reference to accessibility, speed or cost. Those qualities remain central to the success of the ombudsman model, but they must also be considered alongside the increasing legal, evidential and financial complexity of the disputes now falling within many statutory jurisdictions.

Rather than advocating institutional reform for its own sake, the paper asks a more fundamental constitutional question:

At what point does informal justice cease to provide the procedural safeguards necessary for the effective determination of increasingly complex disputes?

It is this question, rather than criticism of any individual institution, that forms the foundation of the analysis which follows.

Contents

Abstract

Introduction

Part I – The Constitutional Origins of the Ombudsman

Chapter 1 — Why Parliament Created Statutory Ombudsmen

Chapter 2 — The Constitutional Merits of Informal Justice

Part II – The Constitutional Limits of Informal Adjudication

Chapter 3 — Informality, Evidence and Procedural Fairness

Chapter 4 — Complexity and the Constitutional Boundaries of Ombudsman Jurisdiction

Part III – Accountability and Legitimacy

Chapter 5 — Accountability, Independence and Public Confidence

Chapter 6 — The Financial Ombudsman Service as a Constitutional Case Study

Conclusion

Bibliography

Table of Cases

Table of Legislation

Abstract

Statutory ombudsmen have become integral to the constitutional architecture of the modern administrative state. Created by Parliament to provide an accessible, independent and informal alternative to litigation, they have transformed access to justice by offering millions of individuals and businesses a means of resolving disputes that might otherwise be prohibitively expensive or complex to pursue through the courts. Their contribution to administrative justice is therefore both substantial and constitutionally significant.

The constitutional success of the ombudsman model, however, gives rise to an important question. As Parliament has progressively expanded the jurisdiction and significance of statutory ombudsmen, have the constitutional assumptions upon which the model was originally founded remained unchanged? Institutions originally intended to determine relatively straightforward disputes now routinely consider matters involving substantial financial consequences, complex contractual relationships, specialist regulatory frameworks, competing expert evidence and difficult questions of law. The increasing complexity of those disputes raises a broader constitutional issue concerning the continuing suitability of informal adjudication as the primary mechanism for their resolution.

This paper examines the constitutional position of statutory ombudsmen by considering both their considerable strengths and their inherent procedural limitations. It argues that the constitutional legitimacy of informal justice cannot be assessed solely by reference to accessibility, speed and cost, important though those considerations undoubtedly remain. Equally significant is whether the procedural characteristics of an ombudsman scheme remain proportionate to the complexity, evidential demands and legal consequences of the disputes entrusted to it.

The paper does not contend that statutory ombudsmen have ceased to perform an essential constitutional function, nor does it advocate replacing informal adjudication with conventional litigation. Rather, it advances the more limited proposition that every constitutional institution possesses practical and constitutional boundaries. As the jurisdiction of statutory ombudsmen expands, it becomes necessary to re-examine whether the balance originally struck by Parliament between accessibility, informality and procedural

protection continues to provide an appropriate constitutional framework for the resolution of increasingly complex disputes.

Using the Financial Ombudsman Service as an illustrative case study within a broader constitutional analysis, the paper considers whether the evolution of statutory ombudsman schemes has altered the constitutional balance between informal justice and procedural fairness. It concludes that the future legitimacy of statutory ombudsmen depends not upon abandoning the principles of informal justice, but upon ensuring that the procedural model adopted by Parliament remains proportionate to the nature, complexity and consequences of the disputes such institutions are asked to determine.

Ultimately, the paper argues that the constitutional question is not whether statutory ombudsmen perform a valuable public function—they unquestionably do—but whether the modern scope of their jurisdiction continues to reflect the constitutional assumptions upon which the institution of the statutory ombudsman was originally established.

Introduction

The statutory ombudsman occupies a distinctive position within the constitutional framework of the United Kingdom. Neither court, tribunal nor regulator, the modern ombudsman represents Parliament's attempt to provide an accessible, independent and informal means of resolving disputes that might otherwise require determination through the ordinary courts. Since their introduction, statutory ombudsman schemes have become an established and important feature of administrative justice, determining disputes across a wide range of sectors affecting millions of individuals and businesses each year. Their constitutional contribution to access to justice is considerable. By reducing cost, simplifying procedure and providing an alternative to formal litigation, they have enabled many disputes to be resolved that would otherwise have remained unresolved altogether.

The success of the ombudsman model has, however, produced an important constitutional consequence. As confidence in informal adjudication has increased, Parliament has progressively entrusted statutory ombudsmen with jurisdictions of increasing breadth, complexity and significance. Institutions originally established to determine relatively straightforward complaints now routinely consider disputes involving substantial financial consequences, complex contractual relationships, specialist regulatory obligations, competing expert evidence and difficult questions of law. The practical responsibilities of many statutory ombudsmen have therefore evolved considerably beyond the institutional context in which the modern ombudsman model first developed.

That constitutional evolution gives rise to the central question addressed in this paper.

Do the constitutional assumptions upon which statutory ombudsmen were originally founded remain appropriate to the disputes that Parliament now asks them to determine?

This question should not be misunderstood. It is not suggested that statutory ombudsmen have ceased to perform an important constitutional function. On the contrary, their contribution to administrative justice remains substantial. Nor is it argued that disputes presently falling within ombudsman jurisdiction should necessarily be transferred to the courts. Such a proposition would disregard the very real constitutional advantages of accessibility, proportionality and informality that Parliament sought to achieve through the creation of specialist ombudsman schemes.

The constitutional issue lies elsewhere.

Every model of adjudication possesses both strengths and limitations. Courts provide extensive procedural safeguards but often at significant financial cost. Arbitration offers expertise and confidentiality but ordinarily depends upon party agreement and private funding. Tribunals seek to combine accessibility with judicial procedure. Ombudsmen were designed to occupy a different constitutional space: one in which disputes could be resolved fairly without the complexity, delay and expense traditionally associated with litigation. The constitutional justification for informality was therefore clear. Procedure was simplified because the disputes being determined, and the public interest served, justified a different approach from that adopted by the courts.

Whether that constitutional balance remains appropriate as the nature of ombudsman jurisdiction has changed is a separate question.

Many contemporary statutory ombudsmen now determine disputes characterised by extensive documentary evidence, competing factual accounts, specialist expert opinion, complex statutory and regulatory frameworks and substantial financial consequences. Such disputes frequently require detailed assessments of credibility, causation, contractual interpretation and professional practice. In other contexts, these matters would often be resolved through procedures permitting disclosure, oral evidence, cross-examination and judicial determination. Ombudsman schemes intentionally adopt a different procedural model. The constitutional question is whether that model continues to provide an appropriate framework across the full breadth of the modern jurisdiction entrusted to statutory ombudsmen.

This issue has assumed increasing practical significance. Individuals and businesses may find that disputes involving life-changing financial consequences are determined through procedures designed to be informal rather than judicial. Regulated firms may likewise be

subject to decisions carrying substantial commercial implications. Parliament has deliberately chosen this model because accessibility and efficiency are important constitutional objectives. Nevertheless, accessibility cannot be considered in isolation. Constitutional legitimacy requires continual examination of whether the procedural characteristics of an adjudicative system remain proportionate to the disputes it is required to determine.

The paper argues that constitutional analysis of statutory ombudsmen has frequently concentrated upon their institutional virtues while giving comparatively less attention to their constitutional boundaries. Considerable scholarship has examined access to justice, administrative fairness, independence and accountability. Each remains essential. Less attention has been devoted to a prior constitutional question: whether the increasing complexity of disputes has altered the assumptions upon which informal adjudication was originally justified. Put differently, has the jurisdiction evolved more quickly than the procedural model designed to resolve it?

This paper does not begin from the premise that statutory ombudsmen are constitutionally deficient. Nor does it proceed upon the assumption that existing models of informal justice have become unfit for purpose. Such conclusions cannot properly be asserted without careful constitutional analysis. Instead, the paper asks whether Parliament should periodically re-examine the constitutional relationship between the nature of disputes entrusted to statutory ombudsmen and the procedural safeguards available for determining them. Every constitutional institution possesses limits. Identifying those limits is not an attack upon the institution; it is an essential part of understanding its proper constitutional role.

To address that question, the paper proceeds in six Parts. Part I examines why Parliament created statutory ombudsmen and the constitutional objectives the ombudsman model was intended to achieve. Part II considers the strengths of informal justice before examining the procedural limitations necessarily accompanying informality. Part III explores the constitutional implications of increasingly complex disputes and considers whether complexity itself has constitutional significance when determining the appropriate boundaries of ombudsman jurisdiction. Part IV examines accountability, institutional legitimacy and public confidence. Part V considers the Financial Ombudsman Service as an illustration of the broader constitutional questions identified throughout the paper. Finally, the paper concludes by considering whether the future development of statutory ombudsmen should be guided by renewed attention to the constitutional principles that justified their creation.

The ambition of this paper is therefore both limited and fundamental. It does not seek to diminish the constitutional importance of statutory ombudsmen. It seeks to understand it more precisely. Informal justice has become one of the defining features of the modern

administrative state. The question is not whether it has succeeded, but whether the constitutional boundaries of that success remain appropriately aligned with the increasingly demanding responsibilities Parliament has chosen to place upon it.

Part I – The Constitutional Origins of the Statutory Ombudsman

Chapter 1

Why Parliament Created Statutory Ombudsmen

No constitutional institution emerges in isolation. Each is created to address a constitutional problem that existing institutions are unable, or are considered ill-equipped, to resolve. The statutory ombudsman is no exception. Its origins lie not in dissatisfaction with the ordinary courts as institutions of justice, but in recognition that the courts could not, by themselves, provide an effective mechanism for resolving every dispute arising between individuals and increasingly complex systems of public administration and regulated commercial activity.

The constitutional challenge confronting Parliament during the latter half of the twentieth century was one of accessibility rather than legality. The courts remained the ultimate guardians of the rule of law, but litigation was frequently too expensive, too formal and too slow for many disputes affecting ordinary citizens. Small financial losses, complaints concerning maladministration and disputes requiring specialist knowledge often fell into what has been described as a constitutional gap. They were too significant to ignore, yet insufficiently valuable to justify the financial and procedural burdens associated with conventional litigation. In practical terms, many individuals possessed legal rights that they could not realistically enforce.

It was this problem that the statutory ombudsman sought to address.

Rather than replicating the procedures of the courts, Parliament adopted a different constitutional model. Ombudsmen were designed to investigate complaints independently, resolve disputes informally and provide remedies without requiring parties to engage in adversarial litigation. The constitutional objective was not to create another court. It was to establish a complementary institution capable of delivering justice in circumstances where

formal judicial processes were either inaccessible or disproportionate. Informality was therefore not an incidental characteristic of the ombudsman model. It was its defining constitutional feature.

That distinction is fundamental. Courts exist to determine legal rights through procedures designed to maximise procedural fairness, evidential reliability and legal certainty. Their legitimacy derives in large part from constitutional independence, public hearings, reasoned judgments, appellate supervision and adherence to precedent. Ombudsmen were never intended to replicate those characteristics in full. Parliament deliberately accepted that informal adjudication would involve fewer procedural safeguards because the advantages of accessibility, speed, proportionality and simplicity were considered to outweigh those limitations for the categories of dispute entrusted to the ombudsman model.

The constitutional justification for informality was therefore one of proportionality. Parliament recognised that procedural perfection is neither attainable nor always desirable. Every adjudicative process involves choices between competing constitutional values. Greater procedural safeguards generally improve the ability of decision-makers to resolve disputed issues with precision, but they also increase cost, delay and complexity. Simpler procedures enhance accessibility but necessarily reduce the procedural mechanisms available for testing contested evidence. The ombudsman model represented Parliament's judgment that, for many disputes, the constitutional benefits of accessibility outweighed the disadvantages associated with reduced procedural formality.

This constitutional compromise proved remarkably successful. Statutory ombudsmen transformed access to justice across numerous sectors of public and commercial life. Individuals who might never have contemplated litigation gained access to independent dispute resolution. Complaints could be investigated without the expense associated with legal representation. Institutions became subject to external scrutiny without requiring every disagreement to be resolved through the courts. Public confidence in administrative justice was strengthened by the availability of specialist, independent bodies capable of resolving disputes quickly and without prohibitive cost. The ombudsman model therefore became one of the most significant constitutional innovations in the development of modern administrative justice.

Success, however, has constitutional consequences.

As Parliament observed the effectiveness of specialist ombudsman schemes, their jurisdiction progressively expanded. Additional sectors came within ombudsman supervision. The financial value of disputes increased. Legislative and regulatory frameworks became more sophisticated. Commercial relationships evolved in complexity. Consumer protection legislation expanded. Financial products, insurance arrangements, pensions, investments and professional regulation became increasingly technical. The modern

statutory ombudsman therefore began to determine disputes that differed substantially from many of those originally envisaged when informal adjudication first emerged as an alternative to litigation.

This evolution should not be regarded as constitutionally surprising. Successful institutions frequently acquire additional responsibilities over time. Parliament naturally entrusts effective institutions with broader functions as confidence in their capabilities increases. The expansion of ombudsman jurisdiction is therefore evidence of institutional success rather than institutional failure. Nevertheless, constitutional success does not remove the need for continuing constitutional examination. Institutions may evolve gradually whilst the assumptions underlying their procedural design remain largely unchanged. Where this occurs, it becomes necessary to ask whether the constitutional balance originally struck by Parliament continues to reflect the practical realities of the jurisdiction now exercised.

It is at this point that the central question addressed throughout this paper emerges with greater clarity. The issue is not whether statutory ombudsmen continue to perform a valuable constitutional role. Plainly they do. Nor is it whether Parliament acted correctly in expanding their jurisdiction. Parliament possesses unquestioned constitutional authority to define the responsibilities of statutory adjudicators. The issue is whether the procedural characteristics that originally justified informal adjudication remain proportionate to the increasingly complex disputes that now fall within many ombudsman schemes.

Answering that question requires careful examination of the constitutional strengths of informal justice. Only by understanding precisely why informality has proved such a successful constitutional model is it possible to identify the circumstances in which its advantages may begin to encounter constitutional limits. It is to those strengths that the analysis now turns.

Chapter 2

The Constitutional Merits of Informal Justice

The constitutional success of the statutory ombudsman cannot be explained solely by reference to institutional longevity or the number of disputes determined each year. Institutions endure because they perform constitutional functions that existing mechanisms cannot perform as effectively. The modern statutory ombudsman has become an established feature of the administrative state because it addresses a fundamental constitutional objective: the practical availability of justice.

The rule of law is commonly understood as requiring that legal rights should be capable of effective enforcement. Rights that exist only in theory, but cannot realistically be vindicated in practice, provide limited constitutional protection. For many individuals and small businesses, formal litigation presents substantial obstacles. Legal proceedings may involve considerable financial expense, procedural complexity, prolonged timescales and significant uncertainty regarding costs. Whilst the courts remain the ultimate constitutional guardians of legal rights, they cannot realistically provide the primary means of resolving every dispute arising within a modern regulatory and commercial environment.

It is against this constitutional background that the ombudsman model should be understood.

Parliament did not establish statutory ombudsmen because the courts had failed. It established them because the constitutional objectives of accessibility and proportionality required a different form of adjudication for many categories of dispute. Informality therefore represents a deliberate constitutional choice rather than a procedural compromise. It reflects the judgment that justice is not served merely by providing the most procedurally sophisticated process. Justice must also remain practically available to those whom the legal system exists to protect.

Accessibility is perhaps the greatest constitutional achievement of the ombudsman model. Individuals are ordinarily able to pursue complaints without legal representation, substantial court fees or detailed knowledge of procedural rules. Investigations are designed to be inquisitorial rather than adversarial. Decision-makers are expected to identify the relevant issues rather than leaving the quality of justice dependent upon the advocacy skills or financial resources of the parties. In constitutional terms, this represents a significant redistribution of access to justice. The ability to obtain independent adjudication is no longer confined primarily to those capable of funding litigation.

The importance of proportionality is equally significant. Not every dispute requires the full procedural apparatus of the High Court. Many complaints concern relatively modest financial losses or matters where the cost of formal litigation would be wholly disproportionate to the value of the dispute itself. In such circumstances, the constitutional objective is not procedural perfection but practical fairness. Informal adjudication enables disputes to be resolved in a manner broadly proportionate to their complexity, value and significance. Parliament was therefore entitled to conclude that a simpler procedural model could, in many cases, better promote justice than one characterised by extensive formality.

Speed represents a further constitutional strength. Justice delayed may undermine confidence as effectively as justice denied. Specialist ombudsman schemes were intended to provide a more efficient means of dispute resolution than conventional litigation, reducing delay whilst preserving independence and fairness. Timely determination benefits

not only complainants but also those against whom complaints are made. Businesses, public authorities and regulated firms possess legitimate interests in the prompt resolution of disputes affecting their legal obligations, commercial relationships and reputational standing. Efficient adjudication therefore contributes to constitutional certainty as well as administrative effectiveness.

The specialist nature of statutory ombudsmen also provides an important constitutional advantage. Courts necessarily determine disputes across an extensive range of legal disciplines. Ombudsmen, by contrast, ordinarily operate within carefully defined statutory jurisdictions. Through repeated engagement with similar categories of complaint they develop expertise concerning the regulatory frameworks, commercial practices and evidential issues characteristic of their respective sectors. That expertise enables adjudication to take place within an informed institutional context, reducing the need for extensive explanation of matters routinely encountered within the jurisdiction. Parliament was entitled to regard such expertise as capable of improving both consistency and practical understanding.

Informality further encourages flexibility. Judicial procedure is necessarily governed by detailed procedural rules designed to ensure fairness across a wide variety of cases. Ombudsmen generally possess greater procedural discretion, allowing investigations to be adapted to the circumstances of individual disputes. That flexibility may reduce unnecessary procedural complexity whilst enabling decision-makers to focus upon the substantive issues requiring determination. Constitutional legitimacy is therefore supported not simply by accessibility but by procedural adaptability.

Another significant constitutional merit lies in the reduction of systemic pressure upon the courts. Were every consumer, regulatory or administrative dispute to require judicial determination, the consequences for the justice system would be profound. Ombudsman schemes perform an important constitutional function by resolving substantial numbers of disputes outside conventional litigation whilst preserving the courts for those matters requiring judicial determination. They therefore complement, rather than compete with, the ordinary courts. The constitutional relationship is one of institutional partnership rather than institutional substitution.

These advantages explain why statutory ombudsmen have become firmly embedded within the constitutional landscape. Accessibility, proportionality, expertise, flexibility and efficiency represent genuine constitutional achievements. Any serious analysis of the ombudsman model must acknowledge that millions of disputes have been resolved through procedures that are simpler, less costly and more readily accessible than conventional litigation. For many citizens and businesses, the existence of an independent statutory ombudsman provides the only realistic opportunity to obtain impartial adjudication.

Recognition of these constitutional strengths is essential because it frames the discussion that follows. The argument advanced in this paper is not that the ombudsman model has failed. Quite the contrary. Its success is precisely what has made the constitutional question more pressing. Parliament has progressively entrusted statutory ombudsmen with disputes of increasing complexity because the model has proved effective across many areas of public administration. The constitutional issue is whether that expansion has altered the balance originally struck between procedural simplicity and procedural protection.

That balance lies at the heart of the constitutional legitimacy of informal justice. Every procedural safeguard carries both benefits and costs. Every simplification improves accessibility whilst potentially reducing opportunities to test disputed evidence. The constitutional challenge is therefore not to determine whether informal justice is preferable to formal justice in the abstract. It is to identify the point at which the complexity, value or consequences of a dispute become such that the procedural advantages of informality may be outweighed by the need for additional safeguards.

It is to that constitutional question that the paper now turns.

Part II – The Constitutional Limits of Informal Adjudication

Chapter 3

Informality, Evidence and Procedural Fairness

The constitutional strengths of informal justice are substantial. Accessibility, proportionality, specialist expertise and procedural flexibility explain why Parliament has repeatedly chosen the ombudsman model as an alternative to conventional litigation. Those strengths, however, cannot be considered in isolation. Every adjudicative model represents a balance between competing constitutional values. Procedures designed to maximise accessibility inevitably differ from those designed to maximise evidential reliability. The constitutional question is therefore not whether informality is desirable in principle, but whether the degree of informality adopted remains proportionate to the disputes entrusted to the institution exercising adjudicative authority.

This question lies at the heart of procedural fairness.

Procedural fairness has never required identical procedures in every context. The common law has consistently recognised that fairness is inherently flexible. What fairness requires depends upon the nature of the decision being made, the interests affected and the statutory framework within which the decision is taken. Parliament is therefore constitutionally entitled to establish different procedural models for different categories of dispute. A criminal trial demands safeguards that would be unnecessary for a minor administrative decision. Equally, a straightforward consumer complaint may not require the procedural formality appropriate to complex commercial litigation. Constitutional legitimacy does not depend upon uniform procedure. It depends upon procedural proportionality.

The principle of proportionality explains why informal adjudication has proved so successful. Where disputes are relatively modest in value, legally straightforward or capable of resolution upon largely uncontested evidence, simplified procedures may provide justice more effectively than formal litigation. The absence of extensive procedural requirements reduces cost, accelerates decision-making and enables individuals to pursue complaints without specialist legal assistance. In such circumstances, informality is not a constitutional weakness but one of the principal reasons the ombudsman model fulfils the objectives for which Parliament created it.

Difficulties arise where the evidential character of disputes changes.

Many modern statutory ombudsmen now determine complaints involving extensive documentary records, competing expert opinions, disputed factual accounts and questions requiring detailed evaluation of credibility. The legal framework may involve complex statutory provisions, intricate contractual arrangements or specialist regulatory obligations. Financial consequences may be substantial for both complainants and respondents. The practical determination of such disputes may depend not upon the identification of the applicable legal principles, but upon the reliability of contested evidence and the weight properly to be attached to competing factual narratives.

It is in these circumstances that the constitutional limitations of informal adjudication become more apparent.

Traditional judicial procedure has evolved over centuries in response to precisely these evidential difficulties. Disclosure assists in ensuring that relevant material is available to both parties. Oral evidence enables decision-makers to explore factual disputes directly. Cross-examination provides a structured mechanism through which the reliability and consistency of evidence may be tested. Expert witnesses are subject to examination and challenge. Procedural rules govern the admissibility and presentation of evidence. Appeals provide opportunities to correct legal error. None of these safeguards guarantees that every judicial decision will be correct. Their constitutional significance lies elsewhere. They seek to improve the reliability of fact-finding where disputes depend upon contested evidence.

Statutory ombudsmen were not designed to replicate those procedures in full. Parliament deliberately rejected the complexity associated with formal litigation in favour of a model intended to be quicker, more accessible and less adversarial. That constitutional choice was both rational and legitimate. The existence of fewer procedural safeguards is therefore not evidence of institutional deficiency. It is an inherent characteristic of the ombudsman model itself.

The constitutional issue is whether the procedural simplifications that are entirely appropriate for many disputes remain equally appropriate when disputes become substantially more complex.

This is not a question capable of a universal answer. Complexity is not determined solely by financial value. A modest claim may raise exceptionally difficult evidential questions, whilst a high-value dispute may turn upon relatively straightforward issues of law. Nor does procedural fairness require that every dispute involving contested facts should automatically be determined by a court. Specialist adjudicators frequently resolve difficult questions effectively through careful investigation and detailed written analysis. The constitutional inquiry is therefore one of degree rather than category.

Nevertheless, certain characteristics of disputes inevitably place increasing demands upon any informal adjudicative process. Allegations of dishonesty, fraud or deliberate misrepresentation may require careful evaluation of credibility. Technical engineering failures, actuarial calculations, insurance causation, financial suitability assessments and professional negligence frequently depend upon competing expert evidence. Multi-party contractual arrangements may generate factual and legal issues extending well beyond the experience of ordinary consumers. As these characteristics accumulate, the constitutional advantages of procedural simplicity begin to compete more directly with the constitutional advantages of more rigorous evidential safeguards.

It is important to distinguish this observation from criticism of individual ombudsman schemes. The argument advanced here does not suggest that informal adjudicators are incapable of determining complex disputes. Nor does it imply that judicial procedure invariably produces superior outcomes. Courts themselves occasionally reach inconsistent conclusions, and formal litigation is neither inexpensive nor immune from error. The constitutional comparison is therefore not between perfect justice and imperfect justice. It is between different procedural models, each embodying different constitutional priorities and each involving inevitable trade-offs.

The question is whether those trade-offs remain appropriately balanced across the entirety of the jurisdiction Parliament has entrusted to modern statutory ombudsmen.

If the procedural characteristics of an institution remain substantially unchanged whilst the complexity of its jurisdiction increases significantly, constitutional analysis must ask whether the original balance between accessibility and procedural protection continues to reflect the realities of contemporary adjudication. Such examination is not evidence of institutional scepticism. It is an ordinary consequence of constitutional development. Every institution exercising public authority should remain subject to periodic evaluation to ensure that the assumptions upon which its procedural model was originally justified continue to correspond with the functions it is now required to perform.

This chapter therefore reaches a deliberately limited conclusion. Informality is not constitutionally problematic in itself. It remains one of the principal strengths of the statutory ombudsman model. The constitutional issue arises only where the procedural simplifications inherent within informal justice may no longer be proportionate to the evidential and legal demands of particular categories of dispute. Identifying where that point lies is neither straightforward nor susceptible to rigid definition. It is, however, a constitutional question that cannot be ignored.

The next chapter examines that question directly by considering whether increasing jurisdictional complexity itself has constitutional significance. It asks whether there are circumstances in which the nature of the dispute, rather than the identity of the decision-maker, should influence the constitutional boundaries of informal adjudication.

Chapter 4

Complexity and the Constitutional Boundaries of Ombudsman Jurisdiction

The preceding chapter argued that the constitutional legitimacy of informal adjudication depends not upon the existence or absence of particular procedural safeguards, but upon the proportionality between the procedural model adopted and the disputes entrusted to it. That conclusion gives rise to a broader constitutional question. If procedural fairness is inherently contextual, should the constitutional appropriateness of the ombudsman model also depend upon the nature of the disputes it is required to determine?

This question has received comparatively limited attention within discussions of statutory adjudication. Constitutional debate has generally concentrated upon whether ombudsmen should exist, whether they are sufficiently independent and whether they provide an

accessible alternative to litigation. These questions remain fundamental. Less attention has been devoted to whether the jurisdiction entrusted to modern ombudsmen has evolved in ways that alter the constitutional assumptions upon which informal adjudication was originally justified.

The constitutional significance of jurisdictional complexity should not be underestimated.

When Parliament first adopted the ombudsman model, the principal objective was to provide a practical means of resolving disputes that would otherwise be unlikely to reach the courts because of cost, delay or procedural complexity. Informality was therefore not simply a procedural preference; it was the constitutional mechanism through which accessibility was achieved. The legitimacy of the model depended upon the proposition that simpler procedures were capable of producing fair outcomes within the categories of dispute Parliament intended ombudsmen to determine.

That proposition becomes more difficult to evaluate as the jurisdiction expands.

Many statutory ombudsmen now determine disputes involving sophisticated financial products, extensive contractual documentation, detailed regulatory obligations, technical engineering evidence, insurance causation, pension transfers, professional advice, allegations of systemic misrepresentation and substantial financial consequences. Some disputes involve events extending over many years, numerous documentary records and sharply contested factual narratives. Others require careful evaluation of expert opinion or detailed consideration of complex statutory and regulatory frameworks. Such cases may bear only limited resemblance to the relatively straightforward disputes that originally characterised much informal adjudication.

The constitutional issue is not that these disputes are incapable of being determined outside the courts. Parliament is fully entitled to allocate adjudicative responsibility as it considers appropriate. The issue is whether increasing jurisdictional complexity changes the constitutional balance between accessibility and procedural protection.

Every adjudicative process reflects an underlying procedural philosophy.

The courts are designed upon the assumption that the reliability of decision-making is enhanced through structured evidential testing, adversarial participation and judicial determination. Ombudsmen proceed upon a different constitutional assumption. They rely upon independent investigation, procedural flexibility and the ability of specialist decision-makers to identify and evaluate the relevant issues without the full procedural apparatus of litigation. Neither philosophy is inherently superior. Each represents a different constitutional response to different categories of dispute.

Difficulty arises where the characteristics of the dispute begin to resemble those for which the alternative procedural philosophy was designed.

A dispute centred upon competing expert reports may benefit from structured examination of expert methodology. Allegations of dishonesty may depend heavily upon careful assessment of credibility. Cases involving extensive contractual negotiations may require detailed exploration of documentary context. Technical issues concerning engineering, financial modelling or actuarial analysis may generate evidential questions of exceptional complexity. In each of these situations, the constitutional issue is not whether an ombudsman can reach a conclusion. It is whether the procedural model available provides the most appropriate means of resolving disputes of that nature whilst maintaining confidence in the fairness of the outcome.

This observation has implications extending beyond the interests of the immediate parties.

Public confidence in statutory adjudication depends not only upon confidence in individual decision-makers but also upon confidence that the institutional process is proportionate to the disputes it determines. A complainant whose dispute turns upon expert engineering evidence may reasonably expect that competing technical opinions will be examined with appropriate rigour. A regulated business facing allegations carrying significant financial or reputational consequences may likewise expect procedures capable of testing contested evidence fairly. Constitutional legitimacy therefore concerns the integrity of the process as much as the correctness of the outcome.

It follows that jurisdictional expansion is not constitutionally neutral.

As Parliament enlarges the jurisdiction of statutory ombudsmen, it necessarily enlarges the range of disputes determined through informal procedures. That development may represent an entirely appropriate constitutional response to changing patterns of regulation and consumer protection. Equally, it may require periodic reconsideration of whether procedural arrangements originally designed for a narrower jurisdiction continue to provide an appropriate framework for increasingly complex adjudication. Constitutional institutions are not static. Their legitimacy depends upon continual alignment between institutional design and institutional function.

This point is particularly important because complexity is cumulative rather than binary. Rarely does a dispute become constitutionally significant because of one characteristic alone. More commonly, complexity emerges through the interaction of multiple factors: substantial financial consequences, competing expert evidence, contested factual accounts, extensive documentary material, specialist regulatory frameworks and difficult questions of law. Individually, each may be manageable within an informal process. Collectively, they may place increasing pressure upon the procedural assumptions underpinning that process.

The constitutional response need not be to abandon informal justice.

Indeed, such a response would risk undermining many of the very advantages that have made statutory ombudsmen so valuable. Accessibility, speed, proportionality and specialist expertise remain compelling constitutional objectives. The question is whether a single procedural model should necessarily govern every category of dispute falling within an increasingly diverse jurisdiction, or whether constitutional legitimacy may require greater procedural differentiation according to the nature and complexity of the issues to be determined.

That question has practical significance beyond institutional design. It concerns the confidence with which citizens, businesses, Parliament and the wider public can regard informal adjudication as an appropriate exercise of delegated public authority. Constitutional legitimacy is strengthened when the procedural characteristics of an institution remain proportionate to the functions it performs. Where institutional responsibilities evolve significantly, constitutional analysis requires consideration of whether the procedural framework should evolve alongside them.

The argument advanced in this chapter is therefore deliberately cautious. It does not contend that modern statutory ombudsmen have exceeded their constitutional role, nor that complex disputes should automatically fall outside their jurisdiction. Rather, it suggests that jurisdictional complexity should itself become an explicit constitutional consideration when evaluating the future development of statutory ombudsman schemes. The question is not simply whether institutions possess legal authority to determine increasingly complex disputes, but whether the procedural model through which that authority is exercised continues to provide a constitutionally proportionate means of doing so.

This conclusion provides the bridge to the final substantive part of the paper. If constitutional legitimacy depends upon maintaining an appropriate relationship between institutional function and procedural design, it becomes necessary to consider how statutory ombudsmen themselves remain accountable for the exercise of the significant public authority Parliament has entrusted to them. It is to that question of accountability, legitimacy and public confidence that the analysis now turns.

Part III – Accountability and Legitimacy

Chapter 5

Accountability, Independence and Public Confidence

The constitutional legitimacy of statutory ombudsmen depends upon more than the fairness of individual decisions. Every institution exercising public authority must command public confidence not only because of the outcomes it reaches, but because of the constitutional arrangements through which those outcomes are produced. Independence, accountability and transparency are therefore not optional institutional characteristics. They are the constitutional conditions upon which the continuing exercise of delegated public power depends.

The relationship between independence and accountability has long occupied a central position within public law. At first sight the two concepts appear to pull in opposite directions. Independence requires that decision-makers remain free from external influence. Accountability requires that those same decision-makers remain answerable for the exercise of their authority. Properly understood, however, these principles are complementary rather than contradictory. Independence protects the integrity of adjudication. Accountability protects the legitimacy of the institution exercising it. Constitutional confidence depends upon the coexistence of both.

This balance assumes particular importance in relation to statutory ombudsmen.

Unlike the ordinary courts, ombudsmen generally exercise final adjudicative authority in a substantial number of disputes without the routine availability of appeals on the merits. Their decisions frequently determine issues of considerable financial and personal importance. In many cases, parties will have no practical opportunity to obtain a comprehensive reconsideration of the substance of the dispute before a judicial body. That institutional reality does not diminish the legitimacy of the ombudsman model, but it does increase the constitutional importance of ensuring that appropriate mechanisms exist through which the institution itself remains accountable.

The constitutional purpose of accountability should not be misunderstood.

Accountability does not exist to expose institutions to political pressure or public popularity. Nor is it intended to permit dissatisfaction with individual outcomes to undermine

institutional independence. Every adjudicative body will disappoint one party to a dispute. Constitutional accountability is concerned with something different. It asks whether an institution exercising delegated public authority remains capable of demonstrating that its procedures, decision-making processes and institutional practices continue to justify the confidence Parliament placed in it when conferring statutory authority.

Public confidence is therefore inseparable from institutional legitimacy.

Confidence cannot reasonably be expected to arise solely because Parliament has created an institution or because decision-makers act conscientiously. Confidence is strengthened where institutions are capable of explaining how they exercise public authority, how consistency is maintained across comparable disputes, how procedural fairness is safeguarded and how legitimate concerns regarding institutional performance are examined and, where appropriate, addressed. Constitutional legitimacy depends not merely upon acting independently, but upon being seen to exercise independence through processes capable of informed public evaluation.

This principle becomes increasingly significant as ombudsmen determine disputes of greater legal and financial consequence.

The more substantial the interests affected by adjudication, the greater the constitutional importance of maintaining confidence that institutional processes remain proportionate to the responsibilities entrusted to them. That confidence cannot rest solely upon statutory authority. It must also be supported by institutional arrangements capable of demonstrating fairness, consistency and accountability in practice.

One consequence of this principle is that constitutional accountability must extend beyond the correctness of individual decisions.

An institution may determine the overwhelming majority of disputes fairly whilst nevertheless giving rise to legitimate constitutional questions concerning broader institutional issues. For example, prolonged delays in determining complaints may undermine one of the principal constitutional objectives for which Parliament established an ombudsman scheme—timely access to justice. Significant inconsistency between decision-makers, if established by evidence, may raise questions concerning institutional coherence. Persistent uncertainty regarding procedural expectations may affect confidence in the fairness of adjudication. These are not criticisms of individual decision-makers. They are questions concerning the institutional performance of bodies exercising delegated public authority.

Equally, the absence of criticism cannot itself be taken as evidence that constitutional accountability is operating effectively.

An institution may command public confidence because its processes are transparent, because independent scrutiny is robust and because its decision-making is capable of meaningful examination. Alternatively, confidence may be weakened if important questions concerning institutional practice cannot readily be evaluated by Parliament, the courts, academic researchers or the wider public. Constitutional legitimacy depends not upon the absence of disagreement but upon the availability of mechanisms through which institutional performance can be examined objectively and independently.

It is therefore necessary to distinguish between **institutional independence** and **institutional insulation**.

The former is constitutionally indispensable. Adjudicators must remain free from improper external influence, political direction and commercial pressure. The latter is constitutionally undesirable. Institutions exercising significant public authority should not become so insulated from informed scrutiny that meaningful evaluation of their institutional performance becomes increasingly difficult. Independence protects decision-making. Insulation risks weakening accountability. The constitutional challenge is to preserve the former whilst avoiding the latter.

This distinction is especially relevant to statutory ombudsmen because of the unique constitutional position they occupy. They are neither conventional courts nor executive departments. They exercise adjudicative functions whilst remaining part of the broader administrative state. Their constitutional legitimacy therefore depends upon maintaining a delicate equilibrium between decisional independence and institutional accountability. Excessive external interference would undermine impartiality. Excessive institutional insulation would weaken public confidence. The constitutional objective is not to maximise either independence or accountability in isolation, but to ensure that each reinforces the other.

The discussion throughout this paper has consistently returned to one central proposition: constitutional legitimacy depends upon maintaining an appropriate relationship between institutional design and institutional function. Accountability forms an essential part of that relationship. As the jurisdiction of statutory ombudsmen has expanded, the constitutional significance of the institutions themselves has increased accordingly. It follows that questions concerning transparency, consistency, timeliness and institutional performance are no longer matters of administrative management alone. They are constitutional questions because they concern the continuing legitimacy of the exercise of delegated public authority.

The analysis now turns to the Financial Ombudsman Service, not as an institution singled out for criticism, but as an illustration of the broader constitutional principles developed throughout this paper. The purpose of that examination is to consider how those principles

operate in practice and whether the constitutional questions identified throughout this analysis are capable of informing discussion concerning the future development of statutory ombudsman schemes more generally.

Chapter 6

The Financial Ombudsman Service as a Constitutional Case Study

The constitutional framework developed throughout this paper has been intentionally expressed in general terms. Questions concerning the relationship between accessibility, procedural fairness, institutional accountability and constitutional legitimacy arise wherever Parliament entrusts specialist bodies with responsibility for determining disputes outside the ordinary courts. Nevertheless, constitutional theory acquires greater value when examined against the practical operation of an existing institution. The Financial Ombudsman Service therefore provides an appropriate case study through which the broader constitutional principles identified in this paper may be considered.

The choice of the Financial Ombudsman Service is neither accidental nor intended to single it out for criticism. Few statutory ombudsmen exercise jurisdiction on a comparable scale or determine disputes of comparable legal, financial and regulatory complexity. Established to provide an accessible alternative to litigation within the financial services sector, the institution now determines disputes concerning banking, insurance, investments, pensions, consumer credit, mortgages, payment services and numerous other areas of regulated financial activity. Many complaints involve substantial financial consequences. Others require consideration of sophisticated regulatory frameworks, complex contractual relationships and detailed evidential disputes. The institution therefore illustrates, perhaps more clearly than any other statutory ombudsman, the constitutional evolution examined throughout this paper.

Measured against the constitutional objectives identified in Part I, the achievements of the Financial Ombudsman Service are significant. It has enabled very large numbers of consumers to obtain independent adjudication without the expense and procedural complexity associated with court proceedings. Many complaints that would never have been litigated have nevertheless received impartial determination. Specialist expertise has developed across highly technical areas of financial regulation. The institution has also contributed to wider improvements in industry practice by identifying recurring causes of

complaint and encouraging higher standards of consumer protection. These constitutional achievements should not be understated. They explain why Parliament chose to create a specialist ombudsman rather than requiring every financial dispute to be resolved through conventional litigation.

Equally, the institution has not been immune from sustained public debate.

Over a number of years, concerns have been expressed by complainants, regulated firms, parliamentary committees, practitioners and academic commentators regarding matters including delay, consistency, transparency, operational performance and the increasing complexity of the disputes falling within the jurisdiction. Not all such criticisms are well founded. Some reflect disagreement with individual outcomes rather than legitimate concerns regarding institutional process. Others arise from the inherent difficulty of determining complex disputes within an informal adjudicative framework. Nevertheless, the persistence of these debates is itself constitutionally significant. Institutions exercising extensive delegated public authority should expect their procedures and performance to remain subject to continuing public examination.

The constitutional importance of this observation lies not in the existence of criticism but in the nature of the questions being asked.

Many criticisms directed towards the Financial Ombudsman Service concern matters extending beyond individual decisions. Questions have been raised regarding the time required to determine complaints, the consistency of outcomes across comparable disputes, the transparency of institutional decision-making, the procedural handling of complex evidential issues and the suitability of an informal adjudicative model for disputes involving substantial financial consequences. Whether those criticisms are ultimately justified is not the central issue for present purposes. The constitutional point is that they concern institutional design rather than individual adjudication. They therefore engage the constitutional principles developed throughout this paper.

The Financial Ombudsman Service illustrates with particular clarity the tension between accessibility and procedural complexity.

On the one hand, it continues to provide an accessible forum capable of resolving disputes that would otherwise remain beyond the practical reach of many consumers. On the other, the disputes brought before it increasingly resemble forms of litigation traditionally associated with the courts. Complaints may involve extensive documentary evidence accumulated over many years, conflicting expert opinion, detailed regulatory obligations, allegations of misrepresentation, disputed factual narratives and significant financial consequences for both consumers and regulated firms. Such disputes inevitably place greater pressure upon procedures originally designed to remain informal.

This constitutional tension should not be interpreted as evidence that the institution has exceeded its statutory authority. Parliament has deliberately entrusted the Financial Ombudsman Service with a broad jurisdiction and has determined the procedural framework within which that jurisdiction is exercised. The constitutional question is not whether the institution acts lawfully. It is whether the continuing expansion in the complexity of disputes has altered the balance originally struck between accessibility, efficiency and procedural protection.

The answer to that question cannot sensibly be reduced to a binary conclusion.

It would be unrealistic to suggest that every complex financial dispute should be transferred to the courts. Such an approach would undermine the constitutional advantages that Parliament deliberately sought to secure through the creation of an accessible ombudsman scheme. Equally, it would be difficult to maintain that increasing complexity has no constitutional implications for procedural design. As disputes become more technically demanding, involve larger financial consequences and depend more heavily upon contested evidence, legitimate constitutional questions inevitably arise concerning whether existing procedures continue to provide the degree of procedural protection appropriate to the nature of the disputes being determined.

The constitutional challenge is therefore one of calibration rather than replacement.

An ombudsman scheme does not lose legitimacy because difficult cases come before it. Nor does complexity itself render informal adjudication constitutionally inappropriate. Rather, complexity requires continual evaluation of whether institutional procedures, transparency arrangements and accountability mechanisms remain proportionate to the responsibilities Parliament has entrusted to the institution. Constitutional legitimacy is not preserved by resisting such examination. It is strengthened by it.

The Financial Ombudsman Service also illustrates a broader constitutional lesson. Public confidence in statutory adjudication cannot rest solely upon statutory authority, institutional expertise or the conscientiousness of individual decision-makers. Confidence depends equally upon the willingness of institutions exercising significant public authority to remain open to informed constitutional scrutiny. Questions concerning delay, consistency, procedural fairness and transparency should therefore be understood not as threats to institutional independence but as ordinary features of constitutional accountability within a democratic society.

The analysis developed throughout this paper does not conclude that the Financial Ombudsman Service has become constitutionally illegitimate, nor that it is incapable of resolving complex financial disputes fairly. Such conclusions would require careful empirical investigation extending well beyond the scope of this paper. It does, however, suggest that

the institution exemplifies a wider constitutional phenomenon. As Parliament progressively expands the jurisdiction and practical significance of statutory ombudsmen, the constitutional assumptions underpinning informal justice require equally careful re-examination. The continuing legitimacy of the ombudsman model depends not only upon preserving its accessibility but upon ensuring that procedural design evolves in step with institutional responsibility.

For that reason, the Financial Ombudsman Service should not be viewed as an isolated institution facing isolated challenges. It represents a constitutional illustration of a broader question confronting the modern administrative state. How should Parliament ensure that institutions created to provide accessible and informal justice continue to command public confidence as the disputes entrusted to them become increasingly complex, financially significant and legally demanding? It is to that broader constitutional question that the conclusion of this paper now returns.

Conclusion

The statutory ombudsman has become one of the most important constitutional innovations within the modern administrative state. Created by Parliament to provide an accessible, independent and informal alternative to litigation, statutory ombudsmen have transformed access to justice across a broad range of public and regulated sectors. Millions of disputes that might otherwise have remained unresolved have instead received independent adjudication through procedures designed to be quicker, less costly and less formal than conventional court proceedings. Their constitutional contribution to administrative justice is therefore substantial. Any evaluation of the ombudsman model must begin by recognising that success.

The purpose of this paper has not been to challenge that achievement. It has instead sought to examine a different constitutional question arising from the very success of the model itself. Parliament has progressively expanded the jurisdiction, complexity and significance of statutory ombudsmen over many decades. Institutions originally designed to determine relatively straightforward complaints now routinely determine disputes involving substantial financial consequences, specialist regulatory frameworks, extensive documentary evidence, expert opinion and difficult questions of law. That constitutional evolution invites a corresponding question. Have the procedural assumptions underpinning informal adjudication evolved at the same pace as the responsibilities entrusted to it?

The argument advanced throughout this paper has been deliberately limited. It has not suggested that statutory ombudsmen have become constitutionally illegitimate, nor that informal justice should give way to formal litigation. Such propositions would ignore the very constitutional advantages that justified the creation of ombudsman schemes in the first

place. Accessibility, proportionality, specialist expertise and procedural flexibility remain compelling constitutional virtues. They continue to provide an effective means of resolving disputes that would otherwise be beyond the practical reach of many citizens and small businesses.

Equally, constitutional legitimacy requires more than historical success. No constitutional institution should be regarded as immune from continuing examination merely because it has performed an important public function. The constitutional history of the United Kingdom demonstrates the opposite. Parliament, the courts, regulators, tribunals and executive institutions have each evolved in response to changing social, economic and legal circumstances. Statutory ombudsmen should be no different. Institutions exercising significant delegated public authority must remain capable of demonstrating that their procedural design continues to reflect the responsibilities they have been asked to discharge.

This paper has argued that every adjudicative model embodies constitutional trade-offs. The procedural safeguards associated with judicial determination increase the reliability with which disputed evidence may be examined, but they also increase cost, delay and complexity. Informal adjudication improves accessibility and proportionality, but necessarily proceeds with fewer procedural mechanisms than those available within conventional litigation. Neither model is constitutionally superior in every circumstance. Each reflects Parliament's judgment concerning the balance most appropriate to the categories of dispute entrusted to it.

The constitutional significance of that observation lies in its implications for institutional evolution. If the nature of disputes changes substantially over time, it cannot automatically be assumed that the procedural balance originally struck remains equally appropriate. Informality is not a fixed constitutional virtue. It is constitutionally justified because it provides a proportionate means of resolving particular kinds of dispute. Where disputes become progressively more complex, involve greater financial consequences or depend increasingly upon contested evidence and specialist expertise, constitutional analysis requires careful consideration of whether the existing procedural model continues to provide an appropriate balance between accessibility and procedural fairness.

The Financial Ombudsman Service has been considered throughout this paper as an illustration of these broader constitutional themes. The institution demonstrates both the remarkable strengths of the statutory ombudsman model and the increasingly demanding responsibilities that modern ombudsman schemes have assumed. The continuing public debate concerning matters such as delay, consistency, transparency and the handling of complex disputes should not be dismissed merely as dissatisfaction with individual outcomes. Equally, neither should it be assumed that such concerns establish institutional failure. The constitutional importance of these debates lies elsewhere. They demonstrate

that the legitimacy of informal adjudication depends upon continual examination of whether institutional procedures remain proportionate to institutional responsibilities.

For that reason, the principal contribution of this paper is not the advancement of a particular institutional reform. It is the suggestion that constitutional debate concerning statutory ombudsmen should move beyond the binary question of whether the model works. The more important constitutional inquiry is whether the relationship between jurisdiction, procedure and accountability remains appropriately balanced as the responsibilities of statutory ombudsmen continue to evolve. Accessibility and fairness are not competing constitutional objectives. They are complementary principles that must be reconciled through institutional design. The legitimacy of informal justice ultimately depends upon maintaining that balance.

The constitutional position of statutory ombudsmen should therefore be understood neither as settled nor as static. Parliament did not create ombudsmen simply to reduce the burden upon the courts or to provide a cheaper form of dispute resolution. It created them because accessible justice is itself a constitutional value. That value remains as compelling today as it was when the modern ombudsman model first emerged. The constitutional challenge for the future is to ensure that accessibility is preserved whilst recognising that the disputes entrusted to statutory ombudsmen have evolved considerably. The legitimacy of informal justice depends not upon preserving institutional arrangements unchanged, but upon ensuring that the procedural framework through which public authority is exercised continues to reflect the realities of the jurisdiction it serves.

Ultimately, every constitutional institution must periodically be judged against the purpose for which Parliament created it. Statutory ombudsmen are no exception. Their enduring constitutional importance is beyond serious dispute. Whether the procedural model through which they now exercise increasingly significant adjudicative authority continues to reflect the constitutional assumptions upon which that importance was originally founded is a question that deserves continuing attention from Parliament, the judiciary, policymakers, academics and the institutions themselves. It is not a question directed against the ombudsman model. It is a question directed towards its continued constitutional legitimacy.

Postscript

The constitutional questions examined throughout this paper are not confined to any individual statutory ombudsman, nor are they directed towards any particular institution. They arise wherever Parliament entrusts significant adjudicative authority to bodies

operating outside the ordinary courts. As the modern administrative state continues to evolve, those questions are likely to become increasingly important.

The constitutional success of statutory ombudsmen should not discourage examination of their constitutional boundaries. Quite the opposite. Institutions exercising substantial public authority command the greatest public confidence when their underlying assumptions remain open to informed constitutional scrutiny. Accessibility, efficiency and informality are enduring constitutional virtues, but they are not constitutional absolutes. Like every principle of public law, they derive their legitimacy from the purpose they are intended to serve.

The enduring contribution of the statutory ombudsman has been to make justice more accessible. That achievement should neither be underestimated nor lightly disturbed. Yet constitutional history demonstrates that institutions must continually adapt as the functions entrusted to them evolve. The question is therefore not whether statutory ombudsmen continue to perform an indispensable public function. They plainly do.

The question is whether the constitutional balance between accessibility, procedural fairness and institutional accountability remains aligned with the increasingly complex disputes Parliament now asks them to determine.

That is ultimately a question for Parliament.

It is a question for the judiciary.

It is a question for policymakers and constitutional scholars.

Above all, it is a question for a constitutional democracy committed not merely to the availability of justice, but to ensuring that the institutions through which justice is delivered continue to command public confidence, constitutional legitimacy and the enduring trust of those whom they exist to serve.