The Financial Ombudsman Service Investigator Stage

Structural Drift from Inquisitorial Justice to Institutional Deference

A submission on procedural fairness, evidential imbalance, and consumer detriment

Executive Summary

The Financial Ombudsman Service (FOS) was established by Parliament to provide consumers with an accessible, informal, and non-adversarial means of resolving disputes with regulated financial firms. Central to this framework is an inquisitorial model, under which FOS actively investigates complaints and determines outcomes by reference to what is fair and reasonable in all the circumstances, rather than through strict legal or evidential rules.

This model reflects a deliberate legislative choice. Parliament recognised that traditional adversarial litigation was ill-suited to disputes between consumers and financial institutions, given the imbalance of resources, information, and expertise. The FOS scheme was therefore designed to rebalance that inequality by placing responsibility on the decision-maker to investigate, evaluate context, and reach a fair outcome without requiring consumers to prove their case in the manner of litigants.

However, substantial and consistent consumer experience indicates that the investigator stage of the FOS process has, in practice, drifted away from this statutory design. Investigators are frequently perceived — and, in many cases, demonstrably observed — to operate in a manner that is adversarial in effect, even if not in intention.

In particular, investigator reasoning and correspondence increasingly exhibit the following characteristics:

- the application of a de facto burden of proof on consumers, contrary to the structure and purpose of the scheme;
- the treatment of firms' accounts as the default factual position, even where evidential support is limited or absent;
- an over-reliance on firm assertions, including statements of internal process compliance, without sufficient interrogation;
- a failure to address or properly mitigate the evidential imbalance inherent in disputes where firms control the relevant records.

This submission argues that these practices do not generally arise from individual bad faith or misconduct. Rather, they reflect a systemic procedural drift at investigator stage, shaped by institutional pressures, caseload management incentives, and the gradual re-importation of adversarial reasoning into a scheme designed to reject it.

The cumulative effect of this drift is significant. It risks undermining the fairness, accessibility, and consumer-protective purpose of the FOS scheme as established under the Financial Services and Markets Act 2000 (FSMA) and the FCA's Dispute Resolution (DISP) rules. It also threatens consumer confidence in the redress framework and, by extension, in the broader system of financial regulation.

This submission invites parliamentary scrutiny of whether the investigator stage of the Financial Ombudsman Service continues to operate in accordance with the inquisitorial, fairness-based model envisaged by Parliament, and whether structural reform or enhanced oversight is required to restore alignment with statutory intent.

Section 2 — Introduction and Scope of the Submission

This submission examines the operation of the investigator stage of the Financial Ombudsman Service (FOS) and its consistency with the statutory and regulatory framework governing consumer redress in the United Kingdom.

While the FOS is often described as an informal dispute resolution mechanism, it performs a central constitutional function within the UK's system of financial regulation. For a significant proportion of consumers, the FOS is not merely an alternative forum for resolving disputes, but the only realistic means of challenging the conduct of regulated financial institutions. Civil litigation is frequently inaccessible due to cost, complexity, delay, and the evidential demands placed on claimants. These barriers are particularly acute where disputes concern historic transactions, regulated advice, or internal decision-making processes that are documented primarily — or exclusively — by the firm.

The design of the FOS scheme reflects Parliament's recognition of these realities. The Ombudsman was intended to provide a practical remedy for consumers who lack the resources, legal expertise, or documentary records required to litigate on equal terms with financial institutions. Its effectiveness therefore depends not only on formal compliance with statutory rules, but on the manner in which those rules are applied in practice, particularly at first instance.

The investigator stage is of particular significance in this regard. It is the point at which the majority of complaints are resolved and, for many consumers, the only stage of the process they experience. Investigator views, while formally non-binding, exert considerable influence over outcomes. Consumers often lack the confidence, resources, or understanding of the process to challenge an investigator's conclusions or to seek escalation to an ombudsman. As a result, investigator reasoning has system-wide effects on access to redress.

This submission focuses on the procedural operation of the investigator stage rather than on the merits of individual complaint outcomes. It examines how evidence is obtained, assessed, and weighed; how credibility is evaluated; and how the "fair and reasonable" test is applied in practice. Particular attention is paid to the treatment of evidential imbalance between consumers and firms, and to the reasoning patterns through which investigators resolve uncertainty.

It is not contended that investigators act in bad faith, nor that the FOS scheme as a whole is failing. Rather, the concern is that incremental changes in investigative practice — driven by institutional pressures, efficiency imperatives, and evolving norms — have produced a structural drift away from the inquisitorial, consumer-protective model envisaged by Parliament.

By identifying and analysing this drift, the submission seeks to assist Parliament in assessing whether the investigator stage continues to operate in a manner consistent with the statutory purpose of the FOS, and whether additional oversight, clarification, or reform is required to safeguard procedural fairness and public confidence in the redress framework.

Section 3 — Statutory Framework and Parliamentary Intent

The Financial Ombudsman Service was established under Part XVI of the Financial Services and Markets Act 2000 (FSMA) as part of a comprehensive reform of financial regulation in the United Kingdom. Its creation followed a period marked by significant consumer detriment, regulatory failure,

and high-profile financial misconduct, which exposed the inadequacy of existing mechanisms for redress.

Parliament's response reflected a clear and deliberate policy judgment: consumer redress could not be left to the courts alone. Civil litigation was recognised as ill-suited to resolving disputes between consumers and financial institutions, particularly where the imbalance of power, information, and resources was pronounced. The cost, delay, formality, and evidential burdens inherent in litigation meant that many consumers were effectively excluded from justice, even where wrongdoing or unfair treatment had occurred.

The FOS scheme was therefore designed not as a simplified court, but as a fundamentally different model of dispute resolution, grounded in accessibility, informality, and substantive fairness.

The statutory emphasis on "fair and reasonable"

Sections 225–228 FSMA establish the Ombudsman scheme and define its essential characteristics. Central to these provisions is the requirement that complaints be determined by reference to what is "fair and reasonable in all the circumstances."

This statutory test is of particular significance. It reflects a conscious rejection of strict legalism and rigid evidential rules in favour of a broader evaluative judgment. Parliament did not require the Ombudsman to determine complaints solely by reference to whether a legal cause of action could be established, nor by which party could produce the most comprehensive evidential record. Instead, the legislation authorises decision-makers to consider context, regulatory standards, industry practice, and the realities of consumer–firm relationships.

The emphasis on fairness rather than proof is not incidental. It acknowledges that regulated firms operate within a privileged institutional environment, benefiting from professional expertise, internal systems, and regulatory permissions. Consumers, by contrast, typically engage with financial products episodically, often without legal or technical knowledge, and with limited access to contemporaneous records.

Regulatory obligations and evidential responsibility

The statutory framework assumes that financial firms bear regulatory responsibilities that are relevant to dispute resolution. These include obligations relating to record-keeping, disclosure, suitability, advice standards, and the fair treatment of customers. Where disputes arise, those obligations are intended to shape how evidence is assessed and how uncertainty is resolved.

Parliament did not envisage a scheme in which firms could rely on the absence of evidence - particularly evidence they were responsible for creating or retaining - as a basis for defeating complaints. Nor did it intend that consumers should be disadvantaged by evidential gaps arising from firms' own compliance failures.

The structure of FSMA therefore places implicit weight on the institutional role of firms and the responsibilities that flow from regulation, rather than treating disputes as contests between formally equal parties.

DISP as an expression of Parliamentary intent

The FCA's Dispute Resolution (DISP) rules give operational effect to the statutory purpose set out in FSMA. DISP explicitly frames the Ombudsman scheme as an alternative to litigation and rejects the adoption of a court-style adversarial model.

DISP emphasises informality, accessibility, and proportionality. Consumers are not expected to present their complaints in legal terms or to meet forensic evidential standards. The rules recognise that fairness may require flexibility in how evidence is treated and how conclusions are reached.

Importantly, DISP grants FOS wide powers to obtain information from firms and to draw conclusions where information is missing or incomplete. These powers reflect an understanding that evidential imbalance is structural, not incidental, and that active investigation is required to prevent that imbalance from distorting outcomes.

Within this framework, the role of the investigator is not merely procedural. It is central to the realisation of Parliamentary intent. The manner in which investigators interpret and apply the “fair and reasonable” test determines whether the Ombudsman scheme functions as the consumer-protective mechanism Parliament envisaged, or whether it drifts towards a model that replicates the deficiencies of adversarial litigation.

The rejection of an adversarial model

Taken together, FSMA and DISP represent a deliberate rejection of adversarial dispute resolution for consumer financial complaints. Parliament recognised that requiring consumers to prove their case in opposition to well-resourced firms would entrench, rather than mitigate, existing inequalities.

The statutory framework therefore entrusts the Ombudsman - and, by extension, investigators - with a quasi-inquisitorial responsibility. Decision-makers are expected to engage actively with the facts, interrogate firm conduct, and reach outcomes that reflect substantive fairness rather than procedural advantage.

It is against this legislative and regulatory backdrop that the operation of the investigator stage must be assessed.

Section 4 — The Inquisitorial Model and Its Implications

An inquisitorial process is defined not by informality alone, but by the active role of the decision-maker in establishing the relevant facts and determining the appropriate outcome. In such systems, the responsibility for investigation does not rest primarily with the parties, but with the adjudicating body itself. This approach is a recognised feature of administrative justice in contexts where individuals engage with institutional actors that possess superior resources, information, and expertise.

Within the Financial Ombudsman Service scheme, the adoption of an inquisitorial model reflects a deliberate policy choice. Parliament recognised that disputes between consumers and financial institutions do not take place on equal terms. Firms typically control the creation, retention, and interpretation of the documentary record, while consumers rely largely on recollection, inference, and contextual understanding. An inquisitorial approach is therefore essential if outcomes are to be substantively fair rather than procedurally convenient.

In inquisitorial systems, the decision-maker is expected to identify relevant issues proactively, rather than limiting consideration to the arguments advanced by the parties. This includes seeking clarification where accounts diverge, requesting further information where the record is incomplete, and interrogating assertions rather than accepting them at face value. The aim is not to adjudicate between two competing cases, but to determine, on the balance of probabilities and in light of context, what most likely occurred and what fairness requires in response.

This stands in contrast to adversarial models, in which parties define the issues, bear formal burdens of proof, and present evidence strategically. In such systems, evidential insufficiency is typically resolved against the party bearing the burden. Parliament expressly rejected this model for the FOS,

recognising that its application would entrench the very inequalities the scheme was intended to address.

A defining feature of inquisitorial justice is the treatment of evidential uncertainty. Where evidence is incomplete, inconsistent, or absent, the decision-maker must consider why that is so, who was responsible for creating or retaining the missing material, and what inferences can fairly be drawn. Uncertainty is not resolved mechanically in favour of the better-resourced party, but assessed in light of institutional responsibility and regulatory context.

Within the FOS scheme, this principle has particular significance. Financial firms are subject to extensive regulatory obligations relating to record-keeping, disclosure, and the documentation of advice and decision-making. These obligations exist precisely because such records are essential to accountability and consumer protection. An inquisitorial approach therefore requires investigators to engage critically with the absence or inadequacy of firm records, rather than treating such gaps as neutral facts.

The effectiveness of the Ombudsman scheme depends not only on the formal existence of inquisitorial powers, but on the investigative mindset adopted at first instance. Where investigators approach complaints as contests between two opposing narratives, adversarial logic re-enters the process by default. This need not occur through explicit statements of principle; it is often embedded subtly in reasoning patterns, language choices, and evidential expectations.

For example, treating a firm’s account as presumptively reliable unless disproved, or framing conclusions in terms of whether a consumer has “shown” or “demonstrated” their case, imports adversarial concepts into a framework that was designed to exclude them. Over time, such practices reshape the character of the scheme, even where formal commitments to fairness and informality remain unchanged.

The inquisitorial model therefore requires constant reinforcement. It depends on decision-makers recognising that neutrality does not mean passivity, and that fairness may require active engagement with imbalance rather than equal treatment of unequal parties. Where that recognition weakens, the scheme risks drifting towards a form of institutional deference that undermines its statutory purpose.

It is against this understanding of inquisitorial justice — as an active, context-sensitive, and fairness-oriented process — that the operation of the investigator stage must be evaluated.

Section 5 — The Intended Role of the Investigator

Within the Financial Ombudsman Service scheme, the investigator occupies a position of central importance. At investigator stage, the investigator is not merely an administrative intermediary or case manager, but the primary fact-finder and the first decision-maker to apply the statutory test of what is fair and reasonable in all the circumstances.

In an inquisitorial system, the responsibilities attached to this role are substantial. The investigator is expected to engage actively with the material before them, rather than passively evaluate what the parties choose to submit. This includes identifying the relevant issues in dispute, obtaining further information where necessary, and testing the coherence, plausibility, and consistency of competing accounts.

DISP provides investigators with broad powers to obtain information from both firms and consumers. However, the use of those powers is not neutral in effect. In disputes where firms control the creation and retention of most contemporaneous records, the investigator’s approach to evidence is determinative of whether the process mitigates or reinforces structural imbalance. An investigator who

treats the evidential record as fixed, or who relies primarily on what the firm elects to provide, risks reproducing the very inequality the scheme was designed to address.

The investigator's evaluative role extends beyond establishing what happened in a narrow factual sense. Investigators are required to consider relevant law, FCA rules and guidance, industry standards, and good practice. Importantly, they are not required — and are not permitted — to treat compliance with internal firm processes as determinative of fairness. A firm may be able to demonstrate adherence to its procedures and yet still have produced an outcome that was unfair to the consumer. Conversely, a consumer may be unable to identify procedural failings and yet still have suffered detriment.

The central question for the investigator is therefore not whether the firm can evidence compliance, but whether the substantive outcome experienced by the consumer was fair in light of the regulatory context and the circumstances of the case.

The investigator's provisional view is formally non-binding and is intended to facilitate efficient resolution of complaints. This informality is designed to benefit consumers by reducing delay and complexity. However, it also places a corresponding obligation on investigators to ensure that their reasoning is balanced, transparent, and intelligible. Where an investigator's reasoning is opaque, conclusory, or overly deferential to firm narratives, the absence of formal procedural safeguards becomes a source of unfairness rather than accessibility.

An investigator operating consistently with the inquisitorial model must therefore engage with credibility and plausibility, particularly where the evidential record is incomplete. This requires attention to the surrounding circumstances of the complaint, including the consumer's position, the nature of the product or service, and the firm's regulatory responsibilities at the relevant time. Where accounts conflict, the investigator must explain how those conflicts have been resolved, rather than defaulting to institutional assertions.

Crucially, the investigator's role is not to determine which party has constructed the stronger case, but to reach an independent view of what most likely occurred and what fairness requires in response. Where investigators instead approach complaints as contests between competing narratives, they risk importing adversarial logic into a scheme that was designed to reject it.

The integrity of the investigator stage is therefore essential to the proper functioning of the Ombudsman scheme as a whole. If investigators fail to exercise their inquisitorial responsibilities fully and consistently, the fairness of outcomes is compromised long before a complaint reaches an ombudsman. Given that the majority of complaints are resolved at investigator stage, this has system-wide implications for consumer protection and access to redress.

Section 6 — The Misapplication of Burden of Proof

A defining feature of the Financial Ombudsman Service scheme is the absence of a formal burden of proof on consumers. This is not an incidental characteristic but a central element of the statutory and regulatory design. DISP 3.6.1R requires that complaints be determined by reference to what is fair and reasonable in all the circumstances, rather than by application of adversarial evidential rules or by identifying which party has discharged a formal burden.

This approach reflects Parliament's recognition that consumers are rarely in a position to prove their case in the manner expected of litigants. Financial disputes frequently concern historic transactions, regulated advice, or internal decision-making processes documented primarily by the firm. To require consumers to establish their claims through documentary proof would be to defeat the very purpose of an alternative, informal redress scheme.

Despite this, investigator reasoning often adopts language and analytical structures that replicate adversarial burden-allocation in practice, even where it is not articulated explicitly. Consumers are asked to “demonstrate,” “evidence,” or “show” that particular events occurred or that certain information was not provided, often many years after the fact. Where consumers are unable to do so, the absence of proof is treated as decisive.

At the same time, firms’ accounts are frequently treated as the default factual position, even where those accounts are supported only by general assertions or descriptions of standard processes rather than by contemporaneous records. The combined effect is to place a de facto burden on the consumer to disprove the firm’s version of events. This reverses the evaluative logic of the Ombudsman scheme.

In an inquisitorial framework, the correct question is not whether the consumer has proved their case, but whether, having considered all the circumstances, the investigator is satisfied that the outcome complained of was fair. Where evidence is incomplete or contested, the investigator is required to engage with plausibility, consistency, and regulatory context, rather than resolve uncertainty mechanically against the complainant.

The misapplication of burden-based reasoning often occurs subtly, through default assumptions embedded in language. Phrases such as “there is no evidence to suggest,” “the consumer has not shown that,” or “I have not seen anything to support” carry implicit expectations about who must prove what. In an adversarial setting, such formulations are unremarkable. In the context of the FOS scheme, they import a logic that the statutory framework was designed to exclude.

This approach has significant consequences. Complaints may be dismissed not because the investigator is satisfied that the firm acted fairly, but because the consumer cannot conclusively establish unfairness. This shifts the focus of the inquiry away from substantive fairness and towards evidential sufficiency, undermining the purpose of the “fair and reasonable” test.

For consumers, the experience is often one of procedural hostility, even where no hostility is intended. Requests for proof that cannot reasonably be supplied, coupled with acceptance of firm narratives as sufficient, create the perception that the process is adversarial and that escalation is unlikely to succeed. This perception discourages further engagement with the scheme and contributes to attrition at investigator stage.

The impact of this misapplication is therefore both individual and systemic. At an individual level, it may result in unfair outcomes. At a systemic level, it erodes confidence in the Ombudsman scheme as an accessible alternative to litigation and risks transforming a consumer-protective mechanism into one that reproduces the disadvantages of the court process without its procedural safeguards.

Correcting this drift requires a reassertion of the principle that evidential uncertainty should not be resolved by default against consumers, particularly where firms bear regulatory responsibility for the creation and retention of records. The investigator’s task is not to ask whether the consumer has proved their case, but whether, in all the circumstances, fairness requires redress.

Section 7 — Evidential Imbalance and Control of Records

A central feature of disputes between consumers and financial institutions is the asymmetrical control of evidence. Regulated firms are responsible for generating, retaining, and interpreting the majority of contemporaneous records relevant to consumer complaints. These records commonly include call recordings and transcripts, internal system notes, advice and suitability documentation, decision-making logs, policy terms, and records of communications.

This evidential imbalance is not incidental. It is a foreseeable and inherent consequence of the way in which financial services are delivered and regulated. Parliament and the FCA have long recognised this reality, which is why firms are subject to extensive record-keeping, disclosure, and documentation obligations. These obligations exist precisely because such records are essential to accountability, transparency, and consumer protection.

Within the Financial Ombudsman Service scheme, this imbalance has direct implications for how complaints should be investigated and resolved. An inquisitorial process cannot proceed on the assumption that evidential gaps are neutral. Where relevant evidence is missing, incomplete, or ambiguous, the investigator must consider why this is the case and who bore responsibility for creating or retaining the missing material.

DISP 3.5.1R expressly empowers the Ombudsman Service to require firms to provide information it reasonably considers necessary for the determination of a complaint. The rule also permits the Ombudsman to draw conclusions where information is not provided. This power reflects an understanding that firms' cooperation is integral to the proper functioning of the scheme, and that failures in cooperation or record-keeping should not advantage the firm in dispute resolution.

Despite this, investigator reasoning frequently treats the absence of firm records as a simple absence of evidence, rather than as a potential indicator of regulatory non-compliance. Complaints are dismissed on the basis that there is "insufficient evidence" to support the consumer's account, even where the firm cannot produce contemporaneous documentation to substantiate its own version of events.

This approach risks reversing the evidential logic of the scheme. Where a firm cannot evidence its position — particularly in circumstances where regulatory obligations required it to do so — fairness may require uncertainty to be resolved against the firm rather than the consumer. To do otherwise is to permit firms to benefit from their own evidential deficiencies.

An inquisitorial approach would instead engage with the plausibility and consistency of the consumer's account, the regulatory standards applicable at the relevant time, and the nature of the firm's obligations. It would ask whether the consumer's account coheres with the surrounding circumstances and whether the firm's inability to produce records undermines the credibility of its assertions.

This does not imply that consumer accounts must always be accepted in the absence of firm evidence. Rather, it requires investigators to recognise that absence of evidence is itself a fact, and one that must be evaluated in context. Where a firm's records are incomplete or unavailable, the investigator must explain how that absence has been taken into account, rather than treating it as neutral.

Failure to do so has systemic consequences. It creates incentives for poor record-keeping, undermines regulatory objectives, and shifts the risk of evidential uncertainty onto consumers who are least able to bear it. Over time, this erodes confidence in the Ombudsman scheme and diminishes its effectiveness as a consumer-protective mechanism.

Addressing evidential imbalance therefore requires more than the formal existence of information-gathering powers. It requires a consistent investigative approach that recognises institutional responsibility for records and treats evidential gaps as matters requiring explanation and evaluation, not as automatic grounds for rejecting complaints.

Section 8 — Over-Reliance on Firms' Assertions

A recurring feature of investigator reasoning within the Financial Ombudsman Service is the uncritical acceptance of firms' assertions as determinative of disputed facts. This tendency is most commonly

expressed through formulations such as “the business says it followed its process,” “the firm has explained that,” or “I have no reason to doubt the firm’s account.”

While such statements may appear neutral on their face, they carry significant evaluative weight. In practice, they often operate as a substitute for evidential analysis, allowing institutional narratives to be treated as reliable in the absence of corroborating documentation or independent scrutiny.

This approach is problematic for several reasons. First, regulated firms are interested parties in complaints brought against them. Their submissions are not neutral explanations but positions advanced in response to allegations of unfair treatment. To accept such assertions without interrogation is inconsistent with the investigator’s role as an independent fact-finder.

Second, assertions about internal processes do not equate to evidence that those processes were followed in a particular case, nor that their application produced a fair outcome. A firm may describe its standard procedures accurately while still failing to demonstrate that those procedures were applied correctly, consistently, or at all in the circumstances complained of. Reliance on process descriptions therefore risks conflating institutional policy with factual proof.

Third, the emphasis on firm assertions often displaces the broader evaluative inquiry required by DISP 3.3.1R, which requires consideration not only of law and regulatory rules, but also of industry standards, good practice, and fairness in the round. A firm’s explanation may be procedurally coherent and yet still inconsistent with good practice or with the reasonable expectations of a consumer.

The tendency to accept firm assertions is frequently reinforced by language that implicitly assigns default credibility to institutional accounts. Statements such as “I have no reason to doubt the firm” frame the inquiry around the absence of reasons for scepticism, rather than around the presence of positive evidence. This subtly reverses the investigative burden, requiring the consumer to generate doubt rather than requiring the firm to substantiate its position.

In an inquisitorial framework, the appropriate question is not whether there is a reason to doubt a firm’s account, but whether the account is supported by evidence, consistent with regulatory obligations, and plausible in the circumstances. Where such support is lacking, the investigator is required to engage critically with the assertion rather than accept it by default.

The over-reliance on firm narratives also interacts with evidential imbalance in a manner that compounds unfairness. Where firms control the relevant records, their ability to advance plausible-sounding explanations without documentary support places consumers at a structural disadvantage. Investigators who accept such explanations effectively allow firms to benefit from their own evidential control.

This pattern has broader implications for the integrity of the Ombudsman scheme. If institutional assertions are treated as sufficient in the absence of evidence, firms have reduced incentives to maintain comprehensive records or to cooperate fully with investigations. Over time, this undermines regulatory objectives and weakens the scheme’s capacity to deliver fair outcomes.

Correcting this tendency does not require investigators to adopt a sceptical or adversarial stance towards firms. Rather, it requires a reaffirmation of the principle that assertions are not evidence, and that institutional status does not confer automatic credibility. Investigators must engage actively with firm explanations, test them against the evidential record, and explain why they are accepted or rejected in the context of the complaint.

Where this engagement is absent, the investigator’s role risks shifting from independent examiner to passive conduit for the firm’s position, eroding the inquisitorial character of the process and diminishing confidence in its fairness.

Section 9 — Tone, Language, and Procedural Fairness

Procedural fairness is not determined solely by outcomes. It is also shaped by the tone, structure, and transparency of the decision-making process. Within the Financial Ombudsman Service, investigator correspondence plays a central role in shaping consumer perceptions of impartiality, accessibility, and legitimacy.

Consumers consistently report that the tone and language adopted at investigator stage can feel defensive, dismissive, or implicitly adversarial, even where no such intention exists. Communications may focus narrowly on rebutting the complaint rather than explaining how the investigator has approached the task of investigation. Requests for evidence are sometimes framed in a manner that assumes access to records consumers could not reasonably possess, while limited explanation is provided as to how conflicting accounts have been evaluated.

Language choices matter because they reveal — and reinforce — underlying reasoning structures. Phrases such as “there is no evidence to suggest,” “I have no reason to doubt,” or “the firm’s explanation appears reasonable” embed assumptions about default credibility and burden allocation. In an adversarial context, such language is unremarkable. In an inquisitorial scheme, it signals a shift away from active investigation and towards passive assessment of competing claims.

A procedurally fair process requires investigators to explain how conclusions have been reached, not merely what those conclusions are. Where accounts conflict, fairness demands an articulation of how credibility, plausibility, and context have been weighed. Conclusory statements that simply assert acceptance of one party’s account provide little insight into the reasoning process and leave consumers unable to understand or meaningfully challenge the outcome.

The importance of transparent reasoning is heightened by the informality of the investigator stage. Because investigator views are non-binding and do not follow a formal hearing process, consumers are afforded fewer procedural safeguards than in adversarial proceedings. This makes clarity and openness in reasoning all the more important. Where reasoning is opaque, informality ceases to be a benefit and instead becomes a source of disadvantage.

For vulnerable or unrepresented consumers, these issues are particularly acute. Many consumers engaging with the FOS are unfamiliar with regulatory concepts, evidential standards, or dispute resolution processes. Language that appears neutral to institutional actors may be experienced as authoritative and discouraging by complainants, reinforcing perceptions that the process is weighted in favour of firms.

Procedural fairness also encompasses the manner in which investigators respond to challenges or additional submissions. Where consumers raise concerns about evidential gaps or the treatment of firm assertions, responses that reiterate conclusions without engagement can exacerbate feelings of exclusion and powerlessness. This contributes to disengagement and reduces the likelihood that consumers will seek escalation to an ombudsman.

Taken together, issues of tone, language, and reasoning transparency are not merely matters of communication style. They are substantive components of procedural justice. When investigator correspondence consistently adopts language that implies default acceptance of firm accounts, minimises evidential imbalance, or frames the inquiry in adversarial terms, it undermines confidence in the scheme’s fairness regardless of the outcome reached.

Addressing these concerns requires more than stylistic guidance. It necessitates a reaffirmation of the inquisitorial ethos at investigator stage, including the expectation that investigators explain their reasoning in a manner that demonstrates active engagement with the evidence, sensitivity to

imbalance, and independence from institutional narratives.

Section 10 — Structural Drivers of Institutional Deference

The concerns identified in the preceding sections should not be understood as the product of individual bias or misconduct. Rather, they arise from a set of structural and institutional conditions within which investigators operate, which together produce a tendency towards institutional deference even where fairness may require closer challenge.

One such factor is the asymmetry of participation in the Ombudsman scheme. Financial firms are repeat participants. They engage with the FOS regularly, often through dedicated complaints teams or external advisers who are familiar with regulatory language, evidential expectations, and the practical operation of the scheme. Consumers, by contrast, are almost always one-off users. They approach the process without institutional knowledge, legal representation, or familiarity with investigative norms.

This repeat-player dynamic subtly shapes interactions. Firms are adept at framing responses in a manner that aligns with regulatory expectations, referencing internal processes, policies, and standard practices in ways that appear coherent and authoritative. Consumers, meanwhile, describe experiences in narrative terms, often without reference to regulatory concepts or evidential frameworks. In the absence of active investigative engagement, this asymmetry can lead institutional narratives to be treated as more credible or persuasive by default.

Caseload pressure is another significant factor. Investigators operate under substantial workloads and are required to manage large volumes of complaints within constrained timeframes. Early-stage resolution is encouraged as a means of maintaining throughput and controlling costs. While efficiency is a legitimate institutional objective, it can have unintended consequences for investigative depth.

Where pressures to resolve cases quickly are acute, there is a natural tendency to rely on readily available narratives rather than to pursue additional lines of inquiry. Firm submissions that present a clear, process-based explanation may therefore be more likely to be accepted at face value than consumer accounts that require contextual evaluation or further investigation. Over time, this dynamic can normalise a more deferential approach to institutional explanations.

The non-binding nature of investigator views also plays a role. Because investigator conclusions are formally provisional and subject to escalation, they are sometimes treated as less consequential than ombudsman decisions. However, in practice, investigator views resolve the majority of complaints. The absence of systematic scrutiny of investigator reasoning — particularly where cases do not escalate — means that reasoning patterns can persist without correction.

This dynamic is compounded by the fact that escalation to an ombudsman requires active consumer engagement. Many consumers lack the confidence, stamina, or understanding to challenge an investigator’s conclusions, particularly where those conclusions are framed in authoritative or technical language. As a result, investigator-stage outcomes exert a gatekeeping function that shapes overall redress patterns.

Institutional familiarity also influences reasoning. Investigators work within an environment where engagement with firms is routine and ongoing. Over time, this familiarity can foster a shared understanding of what constitutes a “reasonable” explanation or an acceptable level of evidence. While this may improve efficiency, it risks narrowing the perspective through which consumer complaints are assessed.

None of these factors, taken individually, imply partiality. However, taken together, they create conditions in which institutional explanations are more readily accepted, evidential gaps are less likely

to be interrogated, and consumer narratives are more easily discounted. The result is a form of systemic deference that operates beneath the level of conscious intent.

Recognising these structural drivers is essential to understanding why procedural drift occurs even in the absence of bad faith. It also underscores the need for institutional safeguards, training, and oversight mechanisms that actively reinforce the inquisitorial ethos and counteract the gravitational pull of efficiency and familiarity.

Section 11 — Regulatory Significance: Maladministration and DISP Inconsistency

Many of the concerns identified in the preceding sections may, when viewed in isolation, appear to amount to matters of case handling, judgment, or discretion. However, when these issues arise with consistency and regularity, they take on a broader regulatory significance. The cumulative effect of these practices raises credible questions about maladministration, procedural unfairness, and systemic inconsistency with the FCA's Dispute Resolution (DISP) rules.

Maladministration in this context does not require proof of misconduct, bias, or bad faith. It encompasses failures of process, reasoning, or approach that undermine the proper functioning of an administrative scheme. Where investigators routinely place a de facto burden of proof on consumers, fail to engage with evidential imbalance, or accept firm assertions without scrutiny, these are not isolated errors but indicators of a procedural pattern.

DISP 3 establishes clear expectations for how complaints should be handled and determined. Complaints must be assessed by reference to what is fair and reasonable in all the circumstances, taking into account relevant law, regulatory rules and guidance, industry standards, and good practice. The rules also empower the Ombudsman Service to obtain information from firms and to draw conclusions where information is not provided.

Where investigator practice departs from these principles in a systematic way, there is a risk that the scheme is operating inconsistently with its regulatory mandate. In particular, patterns of reasoning that resolve uncertainty against consumers, or that treat the absence of firm records as neutral rather than probative, sit uneasily with the regulatory logic underpinning DISP.

The regulatory significance of these issues is heightened by the scale and reach of the Financial Ombudsman Service. The investigator stage resolves the majority of complaints brought to the FOS. As a result, reasoning patterns at this stage shape outcomes across the system and influence the overall distribution of redress between consumers and firms. Where those patterns systematically disadvantage consumers, the impact is not marginal but structural.

There is also a risk that such practices undermine broader regulatory objectives. If firms are able to rely on general assertions of process compliance, or benefit from incomplete records, the incentive to maintain high standards of documentation and transparency is weakened. This runs counter to the FCA's emphasis on record-keeping, accountability, and the fair treatment of customers.

From a Parliamentary perspective, these issues engage questions of institutional accountability. The FOS is an independent statutory body exercising delegated authority. While its independence from firms and regulators is a strength, it also means that Parliament has a legitimate interest in ensuring that the scheme operates in accordance with its statutory purpose and regulatory framework.

Where credible evidence suggests that the investigator stage is functioning in a manner that departs from inquisitorial principles and disadvantages consumers, this warrants scrutiny not as a matter of individual grievance, but as a question of whether the redress architecture is operating as intended.

The concerns outlined in this submission therefore raise issues that extend beyond the resolution of individual complaints. They go to the heart of whether the Financial Ombudsman Service continues to fulfil its role as a consumer-protective mechanism within the UK's system of financial regulation, or whether procedural drift has diluted that function in ways that require corrective attention.

Section 12 — The Corrective Role of Ombudsmen

Escalation from an investigator to an ombudsman frequently results in a material change in reasoning and outcome. This divergence is not incidental. It provides important diagnostic insight into how complaints are being handled at first instance and what may be lost when inquisitorial principles are not fully applied at investigator stage.

Ombudsmen, by virtue of their role and seniority, tend to engage more directly with issues of evidential imbalance, credibility, and contextual fairness. Their decisions are more likely to articulate why particular accounts are accepted or rejected, how regulatory obligations shape evidential expectations, and how uncertainty has been resolved in light of fairness rather than proof. In many cases, ombudsman decisions explicitly revisit matters that were treated as determinative by investigators, such as the absence of consumer documentation or the presence of firm process explanations.

The fact that ombudsman decisions often differ from investigator views does not, of itself, indicate error. The scheme is designed to allow reconsideration. However, the frequency and nature of divergence raises legitimate questions about the reliability and consistency of first-tier decision-making. Where ombudsmen repeatedly reframe issues away from evidential sufficiency and towards substantive fairness, it suggests that investigator reasoning may be too narrowly focused on adversarial concepts at the expense of inquisitorial evaluation.

Importantly, the corrective role of ombudsmen is not experienced evenly across the consumer population. Escalation requires awareness of the right to challenge an investigator's view, confidence in doing so, and the resilience to continue engaging with the process. Many consumers, particularly those who are vulnerable, unrepresented, or fatigued by the process, do not pursue escalation. As a result, ombudsman intervention corrects only a subset of cases, leaving many investigator-stage outcomes effectively final.

This creates a structural asymmetry within the scheme. Consumers who persist to ombudsman stage may benefit from deeper scrutiny and a more balanced application of inquisitorial principles, while those who disengage earlier do not. The investigator stage thus operates as a gatekeeping mechanism, filtering complaints before full scrutiny is applied.

From a systemic perspective, this is significant. If investigator-stage reasoning disproportionately resolves cases in favour of firms, and only a minority of those outcomes are revisited, the overall distribution of redress may be skewed even where the scheme's ultimate decision-making framework remains fair in theory.

The corrective role of ombudsmen therefore highlights both the strengths and weaknesses of the current structure. It demonstrates that the scheme is capable of applying inquisitorial principles effectively, but also that those principles may not be consistently embedded at first instance. Rather than viewing ombudsman intervention as a routine safeguard, it may be more appropriate to ask why such intervention is so often necessary.

Ensuring that inquisitorial reasoning is applied rigorously at investigator stage would not only improve fairness for consumers but also reduce the need for escalation, enhancing efficiency without sacrificing substantive justice. The divergence between investigator and ombudsman decisions should therefore be understood not as an anomaly, but as evidence of where procedural reinforcement may be

required.

Section 13 — Access to Justice, Attrition, and Systemic Impact

The operation of the investigator stage has significant implications for access to justice within the financial redress system. While the Financial Ombudsman Service is formally accessible and free at the point of use, practical accessibility depends on how the process is experienced by consumers in reality, not merely on how it is described in statute or guidance.

A defining feature of the investigator stage is that investigator views are non-binding. In theory, this provides consumers with flexibility and preserves their right to seek escalation. In practice, however, investigator conclusions carry substantial persuasive weight. For many consumers, the investigator's view is experienced as authoritative and final, particularly where it is expressed in confident or technical language and framed as a definitive assessment of the evidence.

This dynamic creates a form of soft coercion. Consumers may feel that further challenge is unlikely to succeed, that they lack the expertise to rebut the investigator's reasoning, or that escalation will merely prolong an already stressful process. Where the investigator's view appears to rest on evidential insufficiency or default acceptance of the firm's account, consumers may conclude that the system is stacked against them.

The result is attrition. Complaints are abandoned not because consumers are satisfied with the outcome, but because they feel unable or unwilling to continue. This effect is particularly pronounced among vulnerable consumers, including those experiencing financial distress, health issues, or limited confidence in formal processes. The informal nature of the scheme does not insulate against this; in some cases, it exacerbates it by depriving consumers of clear procedural signposts.

Attrition has systemic consequences. Because the majority of complaints are resolved at investigator stage, patterns of reasoning at this stage shape overall redress outcomes across the scheme. Where investigator practice systematically disadvantages consumers through burden-shifting, evidential deference, or uncritical acceptance of firm narratives, the cumulative effect is a distortion of redress in favour of firms, even in the absence of formal bias.

This distortion is largely invisible. Cases that do not escalate leave no public decision record, no ombudsman reasoning, and no opportunity for external scrutiny. As a result, systemic issues at investigator stage may persist without detection, reinforced by the apparent efficiency of early resolution.

From an access-to-justice perspective, this raises important concerns. A redress scheme that resolves complaints efficiently but discourages challenge through procedural imbalance risks prioritising throughput over fairness. While efficiency is a legitimate objective, it cannot be pursued at the expense of the scheme's core consumer-protective purpose.

The impact of attrition also interacts with institutional incentives. Where early resolution reduces caseload pressure and resource demands, there is a risk that procedural shortcuts become normalised, particularly where they are not subject to systematic review. Over time, this can shift institutional culture in ways that are difficult to reverse.

Ensuring genuine access to justice therefore requires more than the formal availability of escalation rights. It requires that the investigator stage operates in a manner that encourages informed engagement, explains reasoning transparently, and applies inquisitorial principles consistently. Where consumers disengage because the process feels adversarial, opaque, or deferential to institutional actors, the scheme's accessibility is compromised in substance, even if preserved in form.

Section 14 — Conclusion and Parliamentary Implications

The investigator stage of the Financial Ombudsman Service occupies a pivotal position within the UK's financial redress framework. It is the stage at which the vast majority of complaints are resolved, and for many consumers, it represents the only substantive engagement they have with the Ombudsman scheme. As such, the manner in which investigators approach evidence, reasoning, and fairness has consequences that extend well beyond individual disputes.

This submission has argued that the investigator stage is experiencing a structural drift away from the inquisitorial, consumer-protective model envisaged by Parliament, and towards a mode of decision-making that is adversarial in effect, institutionally deferential, and insufficiently responsive to evidential imbalance. This drift does not generally arise from individual bad faith or misconduct. Rather, it reflects the cumulative impact of caseload pressures, repeat-player dynamics, institutional familiarity, and the gradual re-importation of adversarial reasoning into a scheme explicitly designed to reject it.

When investigators implicitly place the burden of proof on consumers, treat firm narratives as the default factual position, accept assertions without adequate scrutiny, or resolve evidential uncertainty against complainants, they undermine the statutory emphasis on what is "fair and reasonable in all the circumstances." In doing so, they risk replicating the very disadvantages that the Ombudsman scheme was created to overcome.

The consequences of this drift are systemic. It contributes to consumer disengagement and attrition, distorts redress outcomes at scale, weakens incentives for robust firm record-keeping, and diminishes public confidence in the financial regulatory system. While escalation to an ombudsman can and often does correct these issues, reliance on escalation alone is insufficient. Many consumers do not persist to that stage, meaning that procedural weaknesses at investigator level often go unremedied.

From a Parliamentary perspective, these concerns engage questions of institutional accountability, access to justice, and regulatory effectiveness. The Financial Ombudsman Service exercises delegated authority under FSMA and performs a vital public function. Parliament therefore has a legitimate interest in ensuring that the scheme continues to operate in accordance with its statutory purpose and does not, through incremental procedural change, depart from the model it was designed to embody.

This submission does not propose a return to formalism or litigation-style adjudication. On the contrary, it calls for a reaffirmation of inquisitorial principles at investigator stage: active investigation, proper treatment of evidential imbalance, transparent reasoning, and independence from institutional narratives. These principles are not burdensome additions to the scheme; they are its foundation.

Parliamentary scrutiny provides an opportunity to consider whether additional guidance, oversight, training, or transparency mechanisms are required to reinforce these principles and to ensure consistency between investigator practice and ombudsman decision-making. Addressing these issues would strengthen the legitimacy of the Ombudsman scheme, enhance consumer confidence, and support the broader objectives of financial regulation.

The Financial Ombudsman Service remains a cornerstone of consumer protection in the UK. Ensuring that its investigator stage operates in full alignment with Parliamentary intent is therefore not a matter of administrative refinement, but of maintaining the integrity of the redress system itself.