

This paper sets out in detail the methods and results of a research study into ombudsman judicial review. These results are referred to in the article 'Judicial Review and the Ombud: A Systematic Analysis' Public Law [2020] 679. This paper details the claims made in the article. The claims are listed by reference to the sub-headings that they appear under in the article.

A study into ombudsman judicial review

Online appendix: Evidence of
Results

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A. THE OMBUDSMAN / JUDICIARY RELATIONSHIP

Systematic Study and Content Analysis Studies

A1. Methods

Our research used a content analysis methodology to interrogate systematically how judges make decisions, upon what grounds, and using which strategies. The technique was applied to a discrete area of case law: that involving ombuds operating in the UK.

The aim of content analysis studies is to analyse more comprehensively the content of judicial decisions.¹ Through content analysis ‘a scholar collects a set of documents, such as judicial opinions on a particular subject, and systematically reads them, recording consistent features of each and drawing inferences about their use and meaning’.² In other words, a fine-grained reading of judgments is attempted to establish the underlying factors used to justify a decision.

In our study this approach entailed reading a series of cases, and recording and coding targeted aspects of the decisions made. In order to frame our approach to coding design, we focused on two linked research questions:

- I. Does the bench adopt a policy of deference towards the ombudsman sector?
- II. Does the bench diverge from the principles of law contained in ‘generalist administrative law’?

To answer the first question we drew upon previous research aimed at isolating factors that indicate judicial activism or restraint. This approach went some way to answering our first research question, but also acted as useful framework to design a coding system that would comprehensively capture the modes of judicial reasoning employed, and thereby answer the second research question. This second research question was pursued through the more targeted reading of cases once they had been categorised by legal grounds.

We hypothesised that judicial activism may be indicated by a judgment that:

- 1) *Readily circumvents ‘threshold’ hurdles*: where the court is willing to wield its discretion to get around barriers to hearing the case, such as out of time applications;
- 2) *Quashes or supersedes the decision of a public authority, or majoritarianism*: where policies or, for our purposes, schemes adopted through the democratic process are rendered invalid;
- 3) *Employs non-traditional approaches to legislative interpretation, or interpretive fidelity*: the degree to which legislation is interpreted beyond its ‘ordinary meaning’;
- 4) *Departs from precedent, also known as interpretive stability*: judicial activism can be measured by the degree to which earlier court decisions or interpretations have been departed from;
- 5) *Reliance on substantive, rather than, procedural, judicial reasoning*: greater readiness to rely upon substantive grounds, such as irrationality, over procedural grounds, implies a greater degree of activism;

¹ Melanie Janelle Murchison and Richard Jochelson, ‘Canadian Exclusion of Evidence Under Section 24(2) of the Charter: An Empirical Model of Judicial Discourse’ (2015) 57(1) *Canadian Journal of Criminal Justice and Criminology* 115, 122-3.

² Mark A Hall and Ronald F Wright, ‘Systematic Content Analysis of Judicial Decisions’ (2008) 96(1) *California Law Review* 63, 64.

- 6) *Develops the common law*: the judicial fleshing out of an area of law, particularly in relation to the restrictions and obligations upon a public authority, may well indicate a degree of judicial policy-making.³

The general tenor of these indicators formed the basis for our approach to designing coding to capture the decision-making approach of the bench in navigating oversight of ombuds.

In terms of case selection, a number of challenges and choices were taken away from us by virtue of our selection of the discrete area of ombudsman case law. As well as raising a number of bespoke points of analysis connecting to the ombudsman institution, this choice of research focus offered the advantage of avoiding the need for sampling, which is required where the field of study deployed is too wide. Thus, as there were only 111 cases, the full dataset was manageable, given that the case range needed to study comprehensively one well-defined subset of cases is relatively limited.

The purpose of the content analysis method is to provide a systematic way in which to empirically record/test the questions that the study is designed to answer, or the position of ‘conventional’ scholarship that the researcher wishes either to prove or refute. The code system focuses the attention of the researcher while they read the cases.⁴ In order to address our research questions, our coding was required to record:

- (i) the core outcomes of ombudsman judicial reviews, appeals, and permission hearings;
- (ii) the grounds of review used by the judiciary to resolve cases;
- (iii) the judicial strategies deployed in decision-making.

(i) CORE OUTCOMES

These coding questions involved recording basic facts about the cases in the data set, and required little by way of interpretation. Non-coded fields entailed recording: the case name, the date of the case, and the interested party. Coded fields included recording the type of claimant; the court; whether the parties had representation; whether the decision was judicial review, appeal, or permission; what stage of the ombudsman process was being challenged; whether permission to apply was granted; why permission was not granted; the outcome of judicial review; and the remedy.

(ii) GROUNDS OF REVIEW

The exercise of coding the basis upon which judges quash ombudsman decisions required some consideration of methods for choosing a taxonomy of administrative law. As a starting point, we relied upon Sarah Nason’s study of 482 cases heard in the Administrative Court during two

³ Cohn and Kremnitzer (n 4); Brice Dickson, ‘Activism and Restraint within the UK Supreme Court’ (2015) 21(1) *European Journal of Current Legal Issues*; Bradley C Canon, ‘Defining the Dimensions of Judicial Activism’ (1983) 66(6) *Judicature* 236; and Keenan D Kmiec, ‘The Origin and Current Meanings of Judicial Activism’ (2004) 92 *California Law Review* 1441, 1463-1476. This list was adapted from, and influenced by, these studies, taking into account relevance for the purpose of our research question. For example, Canon’s work also includes separate indicators on the bench’s involvement in establishing and making policy (Canon, 239). This is unlikely to be relevant for a study of the courts in England and Wales. We take great inspiration from Cohn and Kremnitzer’s traditional vision of activism, though our list is not as extensive as theirs. Ours is more limited, as we believed some aspects were captured under the broader headings we provided, and some by our mixed methods approach of combining content analysis with doctrinal analysis.

⁴ Hall and Wright (n 2) 80-81.

periods, from 1 January 2013 to 31 July 2013, and from 1 January 2015 to 31 July 2015.⁵ Instead of applying a prescribed taxonomy, Nason applied a method of constructive interpretation to ‘look from the bottom up and peel off a taxonomy of grounds by considering the legal arguments advanced and reasons for deciding in a sample of cases’.⁶ In other words, she interrogated the grounds that the Administrative Court actually used in deciding cases, and from that derived a workable taxonomy. As Nason’s method most approximated our own, we used her taxonomy as a starting template for our study. Mirroring the best practice guidance on designing coding, as outlined above, we refined and added to Nason’s categories by subjecting them to a pilot test, which led to an adaptation of the coding scheme in order to make it more appropriate for the research questions being asked and more closely aligned to the detail of case law on the ombudsman. We further mirrored the approach of Nason, by tweaking categories based upon the actual reasons and language advanced by the court. Table 1 summarises the coding scheme developed.

Table 1: Coding scheme for the grounds used in ombudsman case law

1. Ordinary common law statutory interpretation	2. Mistake	3. Discretionary impropriety	4. Quality of decision
1.1 Did the Ombudsman act within their statutorily delegated power/jurisdiction (including abuse of discretion) 1.2 Did the Ombudsman misinterpret statute/law	2.1 Error of fact 2.2 Mistaken	3.1 Relevant/ irrelevant considerations 3.2 Failure to exercise discretion 3.3 Fettering discretion	4.1 No reasons given 4.2 Inadequate reasons given 4.3 Incorrect remedy 4.4 Irrational 4.5 Incorrect application of fair and reasonable test
5. Procedural impropriety		6. Significant claims based on common law constitutional values, rights, or allocation of powers	7. Breach of ECHR
5.1 Unfair Hearing 5.2 Lack of hearing 5.3 Bias 5.4 Independence 5.5 Undue delay	5.6 Inadequate notice 5.7 Refusal to review decision 5.8 Right to reply 5.9 Bad service 5.10 Legitimate expectation 5.11 Duty to disclose	6.1 Breach of fundamental constitutional values (e.g. democracy, dignity, access to justice, judicial independence, rule of law) 6.2 Turns upon allocation of powers between particular institutions of the state (Abuse of Power)	

⁵ Sarah Nason, *Reconstructing Judicial Review* (Hart 2016) 25, 146.

⁶ *Ibid* 146.

The grounds

A few brief points of clarification are necessary on what we mean by some of these grounds. We borrow from Nason by providing an entire category for ‘ordinary common law statutory interpretation’, on the basis that challenges to decision-makers’ interpretation of their power or statute were the largest proportion of claims in her sample.⁷ Early pilot testing of the coding on our data sample suggests that the same is true of challenges to ombud decisions, or, at least, if it does not comprise the largest, it is one of the largest. Category 2, mistake, enables the capture of both error of fact, and objectively incorrect decisions. Something that is obviously error of fact would be, for example, where an individual was treated as a Ghanaian national, when they are in fact German.⁸ A mistake may be slightly different.⁹

Approaching the coding

It is inevitable that some measure of ambiguity will remain in how coding categories should apply to particular cases. Often, there is no obvious right way to resolve these judgement calls but such ambiguity is not disabling as long as coders are reasonably consistent in how they apply coding categories across a range of cases.¹⁰ In our study, to establish ‘reasonable consistency’ in application a few ground rules were applied.

First, in the event of ambiguity, either because of the nature of the facts or an apparent vagueness in the judge’s application of the law to the facts, to decide which category to code a judgment we followed Nason’s constructivist example. In other words, we chose to be true to the wording of the judgment, rather than favouring our own intuition about the dividing line between the two grounds (which is inherently more subjective). For example, in *R (Balchin) v Parliamentary Commissioner for Administration (No 3)*, the court is concerned with the PCA’s mistaken approach to a particular paragraph in its report, which it had clearly simply copied and pasted from an earlier report without adapting it to his new findings. In doing so, that part of the decision can be categorised a number of ways. It could be classed as simply irrational, it could be classed as a mistake, or it could be classed as inadequately reasoned. This is evident in the manner in which counsel in the case presented it in these three alternative classifications. In this case, the judge pronounced it as ‘failure to give adequate reasons for his decision’.¹¹ This is in spite of the fact that the judge himself refers to the reasoning as ‘flawed’, which, to another mind, would imply that it is more ‘mistaken’, or irrational, than inadequate. We nonetheless acknowledge that our interpretation is highly contestable, and in light of the requirement for content analysis to be an exercise that may be repeated by another, with very similar results, we have chosen to allow the language of the judgment to dictate the categorisation of grounds.

Second, where the ambiguity was too great to derive a clear meaning from the text, we inferred the ground that was being applied, but highlighted this exercise by a separate coding. Third, we captured all the arguments that were considered in depth within the judgment, noting those which were successful and those which were not. This allowed us to avoid reliance upon multiple and potentially repetitive grounds that may have been put forward by the claimant, and to focus only

⁷ Ibid 157.

⁸ *A v Secretary of State for the Home Department* [2013] EWHC 1272 (Admin). Error of fact can range from: 1) Simple fact finding made by decision-maker incorrectly; 2) More complex factual findings, which require a degree of evaluative judgment; 3) Primary decision-maker factually misinterpreted or misunderstood evidence presented at the hearing; 4) Decision on mistaken factual assumptions (Paul Craig, *Administrative Law* 510-512).

⁹ e.g. failing to take account inflation in a costs assessment: *R (South Tyneside Care Home Owners Association) v South Tyneside Council* [2013] EWHC 1827 (Admin). See Nason (n 5) 153.

¹⁰ Hall and Wright (n 2) 109.

¹¹ *R (Balchin) v Parliamentary Commissioner for Administration (No 3)* [2002] EWHC 1876 (Admin) [51].

on the way in which they were demarcated by the court. Where the wording of the judge was directly synonymous with one of the above grounds, it would be recorded expressly. For example, the right to make representations obviously correlates to the right of reply. Fourth, where there were two separate submissions, both of which relied upon the same ground, these were recorded as two separate grounds. Where a case concerned multiple respondents, including an ombud scheme, the only grounds recorded would be those so far as they relate to the ombudsman. Finally, to add confidence to the results, we both coded a pilot set of cases separately. On comparison, the differences in the coding of the grounds deployed by the judiciary were extremely low and were resolvable by way of subsequent discussion.

(iii) MODES OF JUDICIAL REASONING

Overlaying the doctrinal grounds deployed in administrative law cases, our study sought to examine the modes of judicial reasoning adopted within judgments. The most relevant prior content analysis study for this purpose is that conducted into the decision making of the Court of Justice of the EU on copyright law by Favale et al.¹² Through coding, Favale et al capture two sources of information: (a) the extent to which the CJEU used precedent in its decision-making and (b) the interpretive techniques it used to apply legislation within its decisions. Both questions we explored in this study through the coding scheme outlined in Table 2.

Table 2: Coding scheme for recording modes of judicial reasoning deployed in ombudsman case law

Cases cited	Case law interpretation	Statutory interpretation
1.General legal principle case law (non ombudsman) only 2.Ombud Scheme (OS) specific case law only 3. Other ombudsman case law only 4. 1+2 5. 1+2+3 6. 1+3 7. 2+3	1. Confirm case law 2. Distinguish 3. Reject/reverse	1. Literal 2. Textual 3. Contextual
Judicial strategy	Any authoritative judicial statements	
1. Judicial guidance with finding against Ombudsman 2.Judicial guidance without finding against Ombudsman	1. Law 2. Good practice	

Overall, the categories of coding that we deployed strived to record interim conclusions on the way judicial reasoning, and decision-making strategy, has been exercised in the case law, and whether it displays any obvious indicators of activism.

In relation to statutory interpretation, generally, instances of the last category, *contextual*, would indicate a greater degree of ‘activism’ on the part of the court, for it gives the bench considerable space in their interpretations, and leaves the court open to criticism over the wielding of this interpretive power. Such decision-making strategy may be applied by fleshing out the contours of

¹² Marcella Favale, Martin Kretschmer and Paul C Torremans, ‘Is There an EU Copyright Jurisprudence? An Empirical Analysis of the Workings of the European Court of Justice’ (2016) 79(1) *Modern Law Review* 31 (tracing patterns of legal reasoning in the Court of Justice of the European Union towards copyright and database right cases), 52.

the obligations upon the ombudsman to conform to a particular standard in a judicial review grounds, or it may involve taking a contextual or purposive approach to the statutory parameters of the ombudsman's powers and obligations. Where such initial findings were made, we then fact-checked them through a more doctrinal reading of the judgment. The coding also records instances where the court has given authoritative statements on the law, and on good practice, relating to the ombudsman sector. Statements on the law may take the form of conclusive interpretations of the ombudsman's power, as outlined by its constitutive legislation. It can also be witnessed through common law development of the ombudsman's obligations under various review grounds, for example by fleshing out to what extent the ombudsman is required to comply with the duty to give reasons. Statements on good practice, or obiter dicta, may not carry the same authoritative weight, but take a more speculative tone about the standards that the ombudsman may be expected to reach. Such coding gave an indication of the role or function of judicial review in respect of ombudschemes. If there was evidence of statements of law or practice, the coding acted as a flag in order for us to return to the case to give it a more doctrinal reading.

A2. Ombudschemes chosen for analysis

In content analysis studies the sample of the decisions selected for analysis should be ‘similarly weighted’¹³ and reducible to an easily repeatable selection of cases.

To provide an organising theme, the field of study for this research has been confined to one body of cases: namely the case law on the ombudsman institution. As well as raising a number of bespoke points of analysis connecting to the ombudsman institution, this choice of research focus offers the advantage of avoiding the need for sampling, which is required where the field of study deployed is too wide. Thus because the case range involved in studying comprehensively the ombudsman sector is relatively limited, it was viable to code them all. Through a survey of three law databases and legal digests,¹⁴ 111 cases were identified in which a determination of an ombudsman had been challenged in the senior courts *and* heard by way of a full hearing.¹⁵ A further 132¹⁶ cases were identified in which a permission for judicial review had been heard by way of an oral hearing.

A number of points of qualification need to be raised regarding the sample.

- In UK law there is no one definition of what an ombudsman is, whilst many public bodies that are not labeled as an ‘ombudsman’ offer a complaint-handling service. For the purposes of this study the title was not deemed an important consideration, instead we included in our study all schemes that we perceived met the definition deployed by the International Ombudsman Institute:¹⁷ namely an ombudsman is a body which ‘offers independent and objective consideration of complaints, aimed at correcting injustices caused to an individual as a result of maladministration’. Maladministration was broadly interpreted to include all instances of ‘service failure’. Adopting this definition, we identified in the UK 19 statutory complaint schemes that fit the definition and that have

¹³ Hall M. and Wright R. (2009) ‘Systematic Content Analysis of Judicial Opinions’ (2008) 96 California Law Review 63, 66.

¹⁴ British and Irish Legal Information Institute, Westlaw and LexisNexis

¹⁵ We know of one extra case (*Dorling v FOS*) for which we could not obtain a copy of the judgment. As noted below, we anticipate that other cases have been heard that are not included in this dataset but we have good reason to believe that there will not be many.

¹⁶ One case, *McDonald v Judicial Appointments & Conduct Ombudsman & Ors* [2013] EWHC 1755 (Admin), involved both the Parliamentary Ombudsman and the Judicial Conduct and Appointments Ombudsman. This case was only coded once.

¹⁷ International Ombudsman Institute (2012) *Bylaws*, Adopted by the General Assembly in Wellington, New Zealand, 13 November 2012, preamble. See also the definition of the Ombudsman Association -

operated over the period of study,¹⁸ and 2 non-statutory schemes that might in principle be challengeable by way of judicial review.¹⁹

- For this study we chose to *include* the Scottish Legal Complaints Commission (SLCC) which contains a built-in statutory appeal process within its scheme arrangements. This choice was made because the grounds that can be used in appeal broadly map the grounds of law available in judicial review.
- We also chose to *include* some schemes that operate multiple functions, including the SLCC, the Legal Ombudsman and the Independent Police Complaints Commission (renamed Independent Office for Police Conduct in 2018). In order to retain the consistency of the overall sample, with these schemes particular care had to be taken to identify for analysis only those cases which relate to a complaint about ‘services’, and to exclude those cases which were dealing predominantly with matters outside the standard ombudsman template, such as disciplinary or conduct complaints.
- For this study we chose to *exclude* the case law on the Pensions Ombudsman. The Pensions Ombudsman also operates a statutory appeal process²⁰ but the appeal remit is potentially broader than judicial review being on ‘any point of law’, and operated through a different court (namely the Chancery division as opposed to the Administrative Court). A further consideration were the numbers of appeal cases from the Pensions Ombudsman, which were in excess of 160 ie more than the entire collection of appeal/judicial review cases from the other ombudsman schemes put together. There was a concern that this scale of cases might warp the overall result. Finally, the remit of the Pensions Ombudsman is subtly different in a number of respects to other ombudsman schemes,²¹ and a view was taken that the comparison would be less robust as a result.
- We also chose to *exclude* the case law on the Northern Ireland Police Ombudsman. We took the view that the complexity of the office’s jurisdiction made comparisons with other ombudsman schemes difficult to sustain. Older complaint handling schemes in the legal and police complaints sector were also excluded from this study on the basis of material differences in the manner and form in which these former processes operated, such as different functions and status of independence.

¹⁸ The Parliamentary Ombudsman (Parliamentary Commissioner Act 1967); Northern Ireland Assembly Ombudsman (The Ombudsman (Northern Ireland) Order 1996); Commissioner for Complaints in Northern Ireland (The Commissioner for Complaints (Northern Ireland) Order 1996); Local Government Ombudsman (Local Government Act 1974, as amended); Health Services Ombudsman (Health Service Commissioners Act 1993); Pensions Ombudsman (Pension Schemes Act 1993); Housing Ombudsman (Housing Act 1996, section 51 and Schedule 2); Police Ombudsman Northern Ireland (Police (Northern Ireland) Act 1998, 2000, 2003); Financial Ombudsman Service (Financial Services and Markets Act 2000 (as amended)); Scottish Public Services Ombudsman (Scottish Public Services Ombudsman Act 2002); Independent Police Complaints Commission (renamed Independent Office for Police Conduct in 2018) (Police Reform Act 2002); Office of the Independent Adjudicator for Higher Education (Higher Education Act 2004); Judicial Conduct and Appointments Ombudsman (Constitutional Reform Act 2005); Public Services Ombudsman for Wales (Public Services Ombudsman (Wales) Act 2005, 2019); Police Investigations and Review Commissioner (Police, Public Order and Criminal Justice (Scotland) Act 2006, Police and Fire Reform (Scotland) Act 2012); Scottish Legal Complaints Commission (Legal Profession and Legal Aid (Scotland) Act 2007); Legal Ombudsman (Legal Services Act 2007); Service Complaints Ombudsman (Armed Forces Service Complaints and Financial Assistance Act 2015); Northern Ireland Judicial Appointments Ombudsman (Northern Ireland Public Services Ombudsman Act 2016, s.58 and sch.6); Northern Ireland Public Services Ombudsman (Northern Ireland Public Services Ombudsman Act 2016).

¹⁹ The Prisons and Probation Ombudsman, and Ombudsman Services.

²⁰ Pensions Schemes Act 1993, s. 151(4).

²¹ Eg the Pensions Ombudsman can ‘investigate and determine ... any dispute of fact or law ... in relation to an occupational or personal pension scheme ...’ (Pensions Schemes Act 1993, s.146(1)(c)).

- Due to the lack of full harmonisation in the way that cases are reported, it is not possible to verify that all cases on the ombudsman have been captured, particularly for the pre-2000 period when cases were not published online as a matter of routine. However, only one scheme in the sample, the Local Government Ombudsman, was involved in judicial review proceedings that led to a full hearing prior to 1993, and existing legal databases have been expanded to include pre-internet era case law. Hence the margin for missing cases is small. Further, where possible, the amount of cases uncovered has been verified with the ombudsman scheme concerned.

Possible limitations of the sample

Any sample choice will have drawbacks which the researcher needs to be aware of and ideally transparent about. For instance, an objection to the sample selected in this study might be that within it there will be significant variances in judicial decision-making which are entirely explainable by the function-specific or design-specific nature of the schemes under scrutiny. To compensate for this possibility, within this study such variances were sought out at the analysis stage and in part drove a follow-up research stage in which interviews were conducted with relevant staff within ombudsman schemes.

An additional limitation to framing a study around all ombudsman case law is that content analysis studies work best when the collection of decisions being analysed (ie the sample frame) ‘hold essentially equal value’.²² As already noted, although most of the cases under study were heard by way of judicial review, legal proceedings against one scheme included in the study (the SLCC) are heard through a different process, an appeal. This inclusion is justified because of the heavily constrained form of appeal which operates within the SLCC scheme, through which the legal grounds for appeal in essence match those available in judicial review.²³

There is also a problem in analysing all judicial review of ombudsman cases in that cases will be resolved at different levels of the court structure. Whilst most cases are resolved at first instance, a significant number are dealt with on appeal. Plausibly, therefore, some of the decisions in the sample will achieve a greater impact than others by virtue of the different levels of the court hierarchy. It may even be that cases about certain schemes hold greater value than others. Such variances were taken account of and explored in the analysis stage.

Another objection might be that within the sample there will be significant variances in judicial decision-making entirely explainable by the function-specific or design-specific nature of the schemes under scrutiny. Within the study such variances were sought out and in part drove a follow-up research stage in interviews with relevant staff within ombudsman schemes.

Another possibility is that the main sample of cases under scrutiny deliberately excludes from the analysis other relevant cases on ombuds that may tell a different story about the role of the judiciary. For instance, the work of the ombudsman has been challenged in employment law and under the Freedom of Information Act. Perhaps most significantly, there are now a series of cases in which the response of public bodies to decisions of ombuds has been challenged in public law. To capture these cases, our study does layer onto the project an additional stage of research to

²² Ibid, 66

²³ Legal Profession and Legal Aid (Scotland) Act 2007, s. 21(4) provides:

The grounds referred to in subsection (1) are -

- a. that the Commission’s decision was based on an error of law;
- b. that there has been a procedural impropriety in the conduct of any hearing by the Commission on the complaint;
- c. that the Commission has acted irrationally in the exercise of its discretion;
- d. that the Commission’s decision was not supported by the facts found to be established by the Commission.

consider their impact and the response of the judiciary. This second sample is small and includes only 4 cases, but is potentially very significant in terms of its influence on practice in the sector.

Case Selection

A3. Judicial Review and Appeal cases heard by way of full hearing in which the determination of a UK based ombudsman scheme has been considered:

1978-December 2019

NB. List obtained from publically accessible legal databases and legal digests. Where possible this list has been verified with the relevant ombuds. Due to the absence of a formal commitment to publish all High Court cases over the period, it is likely that there will be a small body of cases involving ombuds that have not been identified in this list, but our view is that it is unlikely to be a significant number. See *Methodology* for a full description of the choice of schemes (and nature of cases) to include in the sample and for a discussion of the search methods. One case on this list (R (Doling) v Financial Ombudsman Service CO/2274/2019) we have not included in the results as we have not been able to obtain a full copy of the judgment.

	Name
NORTHERN IRELAND COMMISSONER FOR COMPLAINTS	
1	Armagh City Council, Re Judicial Review [2014] NICA 44
2	JR55 [2016] UKSC 22
LOCAL GOVERNMENT OMBUDSMAN	
3	R v Local Commissioner for Administration ex parte Bradford MBC [1979] 1 QB 287
4	R v Commissioner for Local Administration ex p Eastleigh BC [1988] QB 855
5	R v Commissioner for Local Administration ex parte Croydon LBC [1989] 1 All ER 1033
6	R. v Commissioner for Local Administration Ex p. Blakey; [1994] 1 All E.R. 961
7	R. v Commissioner for Local Administration for England Ex p. Odds [1995] E.G. 168 (C.S.)
8	R. v Commissioner for Local Administration Ex p. S [1998] EWHC Admin 1062
9	R v Local Commissioner For Local Government Ex p Liverpool [2000] EWCA Civ 54
10	R. (Hughes) v Local Government Ombudsman [2001] EWHC Admin 349;
11	R v Local Commissioner For Local Government Ex p Turpin [2002] JPL 326
12	R v Local Commissioner For Local Government Ex p Doy [2001] EWHC Admin 361
13	R v Local Commissioner For Local Government Ex p Maxhuni [2002] EWCA Civ 973
14	R v Local Commissioner For Local Government Ex p Scholarstica Umo [2003] EWHC 3202
15	Taylor v Commission for Local Administration In England [2003] EWHC 1126 (Admin) (01 May 2003)
16	R v Local Commissioner For Local Government Ex M [2006] EWHC 2847 (Admin)
17	R v The Commission for Local Administration In England & Ors Ex p Adams [2011] EWHC 2972
18	Akanho v Local Government Ombudsman [2014] EWHC 766 (Admin)
19	R (on the application of ER) v Local Government Ombudsman [2014] EWCA Civ 1407
PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION (PARLIAMENTARY OMBUDSMAN)	
20	R v Parliamentary Commissioner for Administration ex p. Dyer [1993] EWHC Admin 3
21	R v Parliamentary Commissioner For Administration, ex p Balchin (no.1) [1996] EWHC Admin 152
22	R v Parliamentary Commissioner for Administration, ex parte Balchin (No 2) [2000] JPL 267
23	R. (Balchin) v Parliamentary Commissioner for Administration (No.3) [2002] EWHC 1876
24	Rapp v PHSO [2015] EWHC 1344
25	Campbell v Parliamentary Ombudsman [2017] EWHC 3729 (Admin)
HEALTH SERVICE COMMISSIONER	
26	Hession v Health Service Commissioner for Wales [2001] EWHC Admin 619
27	Cavanagh & Ors v Health Service Commissioner [2005] EWCA Civ 1578
28	R (Kay) v Health Service Commissioner [2008] EWHC 2063
29	Atwood v The Health Service Commissioner [2008] EWHC 2315
30	R. (Mencap) v Parliamentary and Health Service Ombudsman [2011] EWHC 3351
31	Jeremiah v Parliamentary and Health Service Ombudsman [2013] EWHC 1085
32	Morris v Health Service Commissioner & Anor [2014] EWHC 4364
33	Newman v The Parliamentary and Health Service Commissioner [2017] EWHC 3336 (FCC)
34	Miller & Anor v The Health Service Commissioner for England [2018] EWCA Civ 144
35	Morris v Parliamentary and Health Service Ombudsman [2019] EWHC 1603 (Admin)
SCOTTISH PUBLIC SERVICES OMBUDSMAN	
36	Argyll & Bute Council, Re Judicial Review [2007] ScotCS CSOH_168
FINANCIAL OMBUDSMAN SERVICE	
37	Norwich and Peterborough Building Society v Financial Ombudsman Service Ltd. [2002] EWHC 2379
38	R (Green) v Financial Ombudsman Service Ltd [2003] EWHC 338 (Admin)
39	IFG Financial Services Ltd v Financial Ombudsman Services Ltd & Ors [2005] EWHC 1153
40	Garrison Investment Analysis v Financial Ombudsman Service [2006] EWHC 2466

41	Bruce v Financial Ombudsman Services Ltd & Ors [2007] EWHC 1646
42	R (Brinsons (A Firm)) v Financial Ombudsman Service [2007] EWHC 2534 (Admin)
43	R (Heather Moor & Edgecomb Ltd) v Financial Ombudsman Service [2008] EWCA Civ 642
44	Williams v Financial Ombudsman Service [2008] EWHC 2142
45	Cook & Anor v Financial Ombudsman Service [2009] EWHC 426
46	Green v Financial Ombudsman Service Ltd [2012] EWHC 1253
47	Bankole v Financial Ombudsman Service [2012] EWHC 3555
48	Walker, Re Judicial Review [2013] NIQB 12
49	Calland v Financial Ombudsman Service Ltd [2013] EWHC 1327
50	London Capital Group v The Financial Ombudsman Service Ltd [2013] EWHC 2425
51	Fisher v Financial Ombudsman Service (unreported - 15 October 2014)
52	Bluefin Insurance Services Ltd v Financial Ombudsman Service Ltd [2014] EWHC 3413
53	Westscott Financial Services Ltd CBHC Llp & Anor v Financial Ombudsman Service [2014] EWHC 3972
54	Chancery (UK) LLP v The Financial Ombudsman Service Ltd & Anor [2015] EWHC 407
55	R (Full Circle Asset Management Ltd) v Financial Ombudsman Service [2017] EWHC 323 (Admin)
56	R (Aviva Life & Pensions UK Ltd) v Financial Ombudsman Service [2017] EWHC 352 (Admin)
57	R (Marazona Properties Ltd) v Financial Ombudsman Service [2017] EWHC 1135 (Admin)
58	Kelly v Financial Ombudsman Service Ltd [2017] EWHC 3581 (Admin)
59	Tenetconnect Services Ltd v Financial Services Lts & Anor [2018] EWHC 459 (Admin)
60	Berkeley Burke SIPP Administration Limited v. Financial Ombudsman Service Limited [2018] EWHC 2878
61	Critchley v FOS [2019] EWHC 3036 (Admin)
62	R (Doling) v Financial Ombudsman Service CO/2274/2019
OFFICE OF INDEPENDENT ADJUDICATOR FOR HIGHER ADJUDICATION	
63	Siborema v Office of the Independent Adjudicator [2007] EWCA Civ 1365
64	Arratoon v Office of the Independent Adjudicator for Higher Education & Anor [2008] EWHC 3125
65	Budd v Office of the Independent Adjudicator for Higher Education [2010] EWHC 1056
66	Maxwell v The Office of the Independent Adjudicator for Higher Education [2011] EWCA Civ 1236
67	Sandhar v Office of the Independent Adjudicator for Higher Education & Anor [2011] EWCA Civ 1614
68	Cardao-Pito v Office of the Independent Adjudicator for Higher Education & Anor [2012] EWHC 203
69	Mustafa v The Office of the Independent Adjudicator for Higher Education [2013] EWHC 1379 (Admin)
70	Burger v Office of the Independent Adjudicator for Higher Education [2013] EWCA
71	Wilson v The Office of the Independent Adjudicator for Higher Education & Anor [2014] EWHC 558
72	Gopikrishna v The Office of the Independent Adjudicator for Higher Education & Ors [2015] EWHC 207
73	R (AC) v OIAHE (2017) (Claim Non.CO/5366/2016) – copy available on OIAHE website
74	R (Thilakawardhana) v OIA [2018] EWCA Civ 13
75	R (On the Application Of B) v The Office of the Independent Adjudicator [2018] EWHC 1971 (Admin)
LEGAL OMBUDSMAN	
76	Layard Horsfall Ltd v The Legal Ombudsman [2013] EWHC 4137
77	Crawford v The Legal Ombudsman & Anor [2014] EWHC 182
78	Hafiz & Haque Solicitors, R (On the Application Of) v Legal Ombudsman [2014] EWHC 1539
79	Rosemarine v The Office for Legal Complaints [2014] EWHC 601
80	Kerman & Co Llp v Legal Ombudsman [2014] EWHC 3726
81	Stenhouse v The Legal Ombudsman & Anor [2016] EWHC 612 (Admin)
82	Ejiofor (t/a Mitchell And Co Solicitors) v Legal Ombudsman [2016] EWHC 1933 (Admin)
83	R. (on the application of DotCom Solicitors Ltd) v Legal Ombudsman [2018] EWHC 2399 (Admin)
SCOTTISH LEGAL COMPLAINTS COMMISSIONER	
84	Kerr Stirling LLP v Scottish Legal Complaints Commission [2012] ScotCS CSIH_98
85	Saville-Smith v Scottish Legal Complaints Commission [2012] ScotCS CSIH_99
86	STEWART & MCISAAC v. SCOTTISH LEGAL COMPLAINTS COMMISSION [2014] ScotCS CSIH_3
87	Bartos v A Decision of The Scottish Legal Complaints Commission [2015] ScotCS CSIH_50
88	Sneddon & Anor v Scottish Legal Complaints Commission [2015] ScotCS CSIH_62
89	Anderson Strathern v SLCC [2016] CSIH 71
90	Council of The Law Society of Scotland v The Scottish Legal Complaints Commission (SLCC) [2017] ScotCS CSIH_36
91	Mazur v The Scottish Legal Complaints Commission (SLCC) [2018] ScotCS CSIH_45
92	Benson v SLCC [2019] CSIH 33
93	MacGregor v SLCC [2019] CSIH 58
INDEPENDENT POLICE COMPLAINTS COMMISSION	
94	Dennis v Independent Police Complaints Commission [2008] EWHC 1158
95	R(Crosby) v IPCC [2009] EWHC 2515
96	Morrison v The Independent Police Complaints Commission & Ors [2009] EWHC 2589 (Admin) (26 October 2009)
97	Herd v Independent Police Complaints Commission [2009] EWHC 3134
98	Muldoon v Independent Police Complaints Commission [2009] EWHC 3633
99	North Yorkshire Police Authority v The Independent Police Complaints Commission [2010] EWHC 1690
100	Rutherford v Independent Police Complaints Commission [2010] EWHC 2881 (Admin)
101	Driver v Independent Police Complaints Commission [2012] EWHC 1271
102	Cubells v Independent Police Complaints Commission [2012] EWCA Civ 1292
103	Durowoju v Independent Police Complaints Commission (IPCC) [2013] EWHC 837 (Admin) (11 April 2013)
104	Burke v Independent Police Complaints Commission & Anor [2013] EWHC 2291 (Admin) (26 July 2013) ; [2013] EWHC 4119 (Admin)
105	R. (M) v Independent Police Complaints Commission [2012] EWHC 2071 (Admin)
106	R. (Erenbilge) v Independent Police Complaints Commission [2013] EWHC 1397 (Admin)

107	R (Conaghan) v Independent Police Complaints Commission [2013] EWHC 3994 (Admin)
108	Ramsden v Independent Police Complaints Commission & Anor [2013] EWHC 3969 (Admin)
109	McNeany v IPCC [2014] EWHC 1873 (Admin)
110	Campbell v IPCC [2015] EWHC 3424;
111	Miah v IPCC [2017] EWCA Civ 2108
JUDICIAL APPOINTMENTS AND CONDUCT COMMISSION	
112	R. (on the application of Dickie) v Judicial Appointments and Conduct Ombudsman [2013] EWHC 2448 (Admin)

**A4. Judicial Review and Appeal cases heard by way of hearing at the permission stage in which the determination of a UK based ombudsman scheme has been considered, but where the case did not proceed to full hearing:
1970-December 2019**

NB. List obtained from publically accessible legal databases and legal digests.

Due to the absence of a formal commitment to publish all High Court cases over the period, and a lack of clear policy as to which permission hearings are published, it is likely that there will be a large body of permission hearing cases involving ombuds that have not been identified in this list, plus there will be a considerable number of written permission cases that are not included. This sample, therefore, cannot be considered fully representative of the work conducted by the court and we have not made excessive claims as to its comprehensiveness in the articles and papers that have followed from this study. However, it is indicative of the nature of the work performed by the court in permission hearings and could found the basis for future research.

See *Methodology* for a full description of the choice of schemes (and nature of cases) to include in the sample and for a discussion of the search methods.

	Name
1	Lakovlev (R on the application of) v Independent Police Complaints Commission [2009] EWHC 3544 (Admin)
2	Bennett v Independent Police Complaints Commission & Anor [2008] EWHC 2550 (QB) (24 October 2008)
3	Ijebuode (R on the application of) v Independent Police Complaints Commission [2009] EWCA Civ 657
4	Fox (R on the application of) Independent Police Complaints Commission [2009] EWHC 1654 (Admin)
5	Lowery (R on the application of) v Independent Police Complaints Commission [2009] EWCA Civ 436
6	Jebb (R on the application of) v IPCC (2009) [2009] EWHC 3660 (Admin)
7	Bain, R (on the application of) v IPCC [2009] EWCA Civ 961
8	Evans (R on the application of) v IPCC (2010)
9	Williams (R on the application of) v IPCC [2010] EWHC 2963 (Admin)
10	Leveratt (R on the application of) v Independent Police Complaints Commission [2010] EWCA Civ 243
11	Bates v IPCC [2010] EWHC 3823 (Admin)
12	Olden (Ronald) (R on the application of) v Independent Police Complaints Commission
13	McDonald (R on the application of) v Independent Police Complaints Commission [2010] EWHC 3647 (Admin)
14	R (on the application of Molyneaux-Herbert) v Independent Police Complaints Commission & another [2011] EWCA Civ 1055
15	R (on the application of Karia) v Independent Police Complaints Commission [2011] EWHC 3051 (Admin)
16	R (on the application of Karasaka) v Independent Police Complaints Commission (2011) [2011] EWHC 2638
17	R (on the application of Turner) v Independent Police Complaints Commission & Ors [2011] EWHC 3939 (Admin)
18	R (on the application of Cook) v Independent Police Complaints Commission [2011] EWHC 3802 (Admin)
19	Friday v Independent Police Complaints Commission [2011] EWHC 4007 (Admin)
20	R (on the application of Moo) v Independent Police Complaints Commissioner & Anr [2012] EWHC 819 (Admin)
21	Bauer-Czarnmoski v IPCC [2012] EWHC 1938 (Admin)
22	Busby v IPCC [2012] EWHC 4268 (Admin)
23	Gayle v IPCC [2012] EWHC 4121 (Admin)
24	Bartosik v IPCC [2012] EWHC 4003 (Admin)
25	R (on the application of Cartwright) v IPCC [2013] EWHC 3339 (Admin)
26	R (on the application of Caine) v Independent Police Complaints Commission [2013] EWHC 3652 (Admin)
27	R (on the application of Hart) v IPCC [2013] EWHC 4451 (Admin)
28	Lannas v IPCC [2014] EWHC 4921 (Admin)
29	Markos v IPCC [2014] EWHC 360 (Admin); [2014] EWCA Civ 1706
30	R (on the application of Price) v Independent Police Complaints Commission [2016] EWHC 3744 (Admin)
31	R (on the application of Onwuzuruoha) v Independent Police Complaints Commission [2017] EWHC 3808 (Admin)
32	R (on the application of Ocathail) v Independent Police Complaints Commission [2018] EWHC 3362 (Admin)
33	Saunders v IPCC [2018] EWHC 803 (Admin)
34	Ades v Commissioner of Police for Metropolis, Independent Office for Police Conduct [2019] EWHC 1824 (Admin)
35	Williams v A Decision of the Scottish Legal Complaints Commission [2010] ScotCS CSIH_73
36	Semple v Scottish Legal Complaints Commission [2011] ScotCS CSIH_74
37	Oliphant, Re Leave To Appeal against a decision of The Scottish Legal Complaints Commission [2014] ScotCS CSIH_94
38	Matthews v A Decision of the Scottish Legal Complaints Commission [2015] ScotCS CSIH_68

39	B v The Scottish Legal Complaints Commission [2016] ScotCS CSIH_48
40	Price v Scottish Legal Complaints Commission [2016] ScotCS CSIH_53
41	SY v SLCC [2016] CSIH 9
42	X LPP v SLCC [2017] CSIH 73
43	Innes v SLCC [2019] CSIH 27
44	R (on the application of Kotecha) v Parliamentary And Health Service Ombudsman [2019] EWHC 733 (Admin)
45	R (Goldsmith IBS Ltd) v Parliamentary and Health Service Ombudsman [2016] EWHC 1905 (Admin)
46	R (Hicks) v Parliamentary and Health Service Ombudsman [2017] EWHC 1569 (Admin)
47	Mcdonald v Judicial Appointments & Conduct Ombudsman & Ors [2013] EWHC 1755 (Admin)
48	Walker v Parliamentary and Health Service Ombudsman [2012] EWHC 535 (Admin)
49	R (Sharma) v Parliamentary an Health Service Ombudsman [2011] EWHC 2609 (Admin)
50	Winsor v Parliamentary Ombudsman [2010] EWHC 3410 (Admin)
51	R (Senior Milne) v Parliamentary and Health Services Ombudsman [2010] EWCA Civ 585
52	R (Williams) v Parliamentary Ombudsman [2010] EWHC 1432 (Admin)
53	R (Carne) v Parliamentary Ombudsman [2009] EWHC 3641 (Admin)
54	R (Murray) v Parliamentary Commissioner for Administration [2002] EWCA Civ 1472
55	R (Jackson) v Parliamentary Ombudsman [2002] EWCA Civ 120
56	R v Parliamentary Commissioner for Administration ex parte Lithgow & Anor [1990] Lexis Citation 2824
57	Re Fletcher's Application [1970] 2 All ER 572
58	Sherrie, Re Judicial Review [2013] NICA 18
59	Walji (R on the application of) v Judicial Appointments & Conduct Ombudsman [2010] EWHC 468 (Admin)
60	Simon John Griffin v The Judicial Conduct Investigations Office (formerly the Office for Judicial Complaints), Judicial Appointments and Conduct Ombudsman [2014] EWCA Civ 66
61	R (on the application of McBride) v Judicial Appointments & Conduct Ombudsman [2014] EWHC 4368 (Admin)
62	Vlad v Judicial Appointments And Conduct Ombudsman [2016] EWCA Civ 951
63	Lonsdale v Judicial Appointments and Conduct Ombudsman [2019] EWHC 2404 (Admin)
64	R (Nair) v OIA [2008] EWHC 1989 (Admin)
65	R (Ahilathirunayagam) v OIA [2012] EWCA Civ 205
66	R (Duddle) v OIAHE [2013] EWHC 4918 (Admin)
67	R (Emery) v OIAHE [2014] EWCA Civ 109
68	R (Alexander) v OIAHE [2014] EWCA Civ 1566
69	Raev v OIA [2015] EWCA Civ 1274
70	Peat v OIAHE [2015] EWHC 4169 (Admin)
71	R (Ogunkoya) v OIA [2018] EWCA Civ 419
72	Kaur v OIA [2016] EWHC 2922 (Admin)
73	Sindhu v OIA [2018] EWHC 575 (Admin)
74	Thapa v OIA [2019] EWHC 2372 (Admin)
75	R v LGO, ex parte Thompson-Holland [1998] EWHC Admin 302
76	R v Commissioner for Local Administration in England, ex parte Jones and another
77	R v Commissioner for Local Administration, ex parte H - [1998] All ER (D) 783; [1999] E.L.R. 314
78	R. v. CLA ex parte Colin Field [2000] COD 58.
79	R v LGO ex parte Mortimer [1999] EWHC Admin 601
80	R. LGO, ex parte Bowen-Griffith [1999] EWHC Admin 206
81	R v Local Government Ombudsman ex parte Apps - CO/2884/99
82	Starr v LGO [2001] EWCA Civ 2024
83	Abernethy v LGO [2002] EWCA Civ 1520
84	Abrams - R. (on the application of Abrams) v Local Government Ombudsman[2005] EWHC 3358 (Admin)
85	Mahajan v LGO [2007] EWHC 1135 (Admin)
86	Tian, R (on the application of) v Commission for Local Administration in England & Anor [2009] EWHC 920
87	Lewis (R on the application of) v Local Government Ombudsman [2009] EWHC 1543 (Admin)
88	Ruddock (R on the application of) v Local Government Ombudsman [2009] EWHC 3295 (Admin)
89	R (on the application of Francois) v Local Government Ombudsman [2009] EWHC 3355 (Admin)
90	Hargreaves (R on the application of) v Local Government Ombudsman [2010] EWHC 2472 (Admin)
91	Boland (R on the application of) v Local Government Ombudsman [2010] EWHC 2937 (Admin)
92	Blue Flash Music Trust (R on the application of) v Local Government Ombudsman [2010] EWHC 3140 (Admin)
93	Evison v LGO [2011] EWHC 3698 (Admin)
94	R (on the application of Tesfamiae) v Local Government Ombudsman and Another [2013] EWCA Civ 1183
95	R (on the application of Feliciello) v Local Government Ombudsman [2014] EWHC 4628 (Admin)
96	R (on the application of Akanho) v Local Government Ombudsman [2018] EWHC 2439 (Admin)
97	NO v LGSCO [2019] EWHC 2654 (Admin)
98	R (on the application of Fadiga & Co Solicitors T/a Harding Mitchell) v Legal Ombudsman [2013] EWHC 2814
99	Universal Solicitors (a firm) v Legal Ombudsman [2013] EWCA Civ 1848
100	R (on the application of Harold) v Legal Ombudsman [2013] EWHC 4761 (Admin)
101	R. (on the application of Williams) v Legal Ombudsman [2013] EWHC 4780 (Admin)
102	R (on the application of AFP Sam and Co Solicitors) v Legal Ombudsman [2016] EWHC 3172 (Admin)
103	R (on the application of Abbott Solicitors Llp) v Legal Ombudsman [2018] EWHC 2223 (Admin)
104	R. (on the application of Phung) v Legal Ombudsman [2018] EWHC 2788 (Admin)
105	Conculium UK Limited v Legal Ombudsman [2019] EWHC 901 (Admin)
106	Phall v Legal Ombudsman [2019] EWHC 3419 (Admin)
107	R v Health Service Ombudsman ex parte Megarry [2001] EWCA Civ 730
108	R (Blackmore) v Parliamentary and Health Service Ombudsman [2008] EWHC 3469 (Admin)
109	R (Mencap) v Parliamentary Health Service Ombudsman [2010] EWCA Civ 875
110	R (Gill) v PHSO [2009] EHWc 2877 (Admin)

111	Jayawardhana v PHSO [2010] EWHC 3262 (Admin)
112	R (Marshall) v Parliamentary and Health Service Ombudsman [2011] EWHC 2124 (Admin)
113	R (Brooks) v Parliamentary and Health Service Ombudsman [2012] EWHC 1167 (Admin)
114	R (Sobolewska) v Parliamentary and Health Service Ombudsman [2014] EWHC 3784 (Admin)
115	R (Andews) v Parliamentary and Health Service Commissioner [2016] EWHC 2150 (Admin)
116	R (Young Ridgway & Associates) v Financial Ombudsman Service Ltd [2004] EWHC 3371 (Admin)
117	R (Towry Law Financial Services Ltd) v FOS & Anor [2004] EWCA Civ 1701
118	R (Ropaigalach) v Financial Ombudsman Service [2005] EWCA Civ 269
119	R (Duff) v Financial Ombudsman Service [2006] EWHC 1704 (Admin)
120	R (Bamber and BP Financial) v Financial Ombudsman Service [2009] EWCA Civ 593
121	R (Heather Moor & Edgecomb Ltd) v Financial Ombudsman Service [2009] EWHC 2701 (Admin)
122	R (Williams) v Financial Ombudsman Service [2010] EWHC 3920 (Admin)
123	R (Goff) v Financial Ombudsman Service [2011] EWHC 1112 (Admin)
124	R (Richard Bamber & Co) v Financial Ombudsman Service [2011] EWHC 3161 (Admin)
125	R (Nichols) v Financial Ombudsman Service [2012] EWHC 2129 (Admin)
126	R (On the Application Of Bluefin Insurance Services Ltd.) v Financial Ombudsman Service Ltd [2014] EWHC 1427 (Admin)
127	R (Evans) v Financial Ombudsman Service [2012] EWCA Civ 1061
128	R (Shaw) v Financial Ombudsman Service [2015] EWHC 1657 (Admin)
129	R (Clifford) v Financial Ombudsman Service [2016] EWHC 2724 (Admin)
130	R (on the application of Thakerar) v Ombudsman Service Energy [2013] EWHC 2283 (Admin)
131	Forbes v Prison and Probation Ombudsman [2011] EWHC 3573 (Admin)
132	Craig, Re: Judicial Review [2019] NIQB 11

A5 Legal grounds argued in ombudsman judicial review by category of legal reasoning

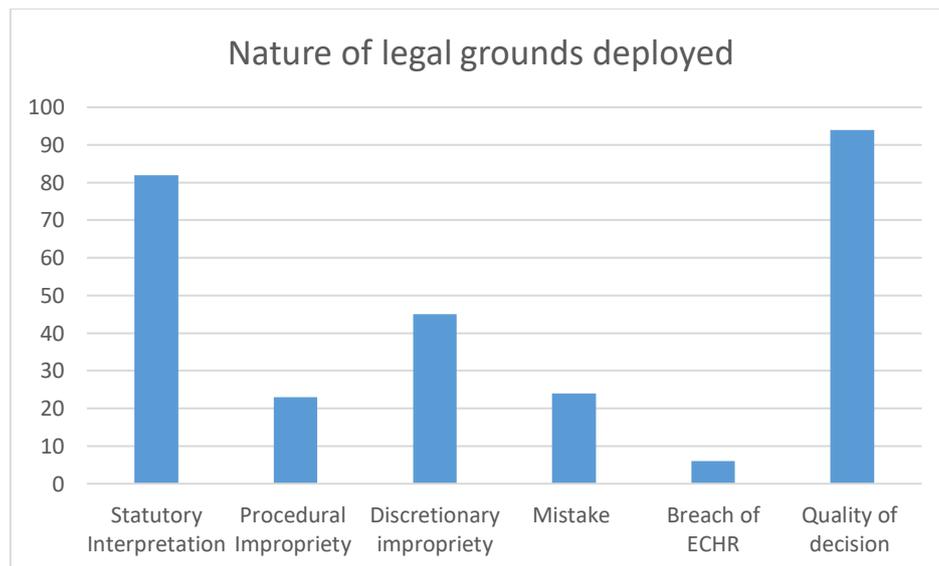
We borrowed, with some small adaptations, a typology from the work of Sarah Nason²⁴ in categorising the legal grounds used to resolve cases against an ombudsman according to six forms. See A1 above for further detail.

Within this approach, although we tested for specific grounds of administrative law, we also collated those tests within six broad umbrella categories which indicate the nature of the work being undertaken by the courts. These categories were:

1. Ordinary common law statutory interpretation²⁵
2. Procedural impropriety
3. Discretionary impropriety
4. Mistake²⁶
5. Breach of ECHR
6. Quality of decision

We also tested for a seventh category, ‘Significant claims based on common law constitutional values, rights, or allocation of powers’ which was identified by Sarah Nason in her work as a developing area of judicial activity, but in our work found no cases that obviously fell into this category as opposed to the other categories adopted.

Applying these categories, for all cases we identified the following distribution of grounds being used to challenge an ombudsman decision.



²⁴ Sarah Nason, *Reconstructing Judicial Review* (Hart 2016) 25, 146.

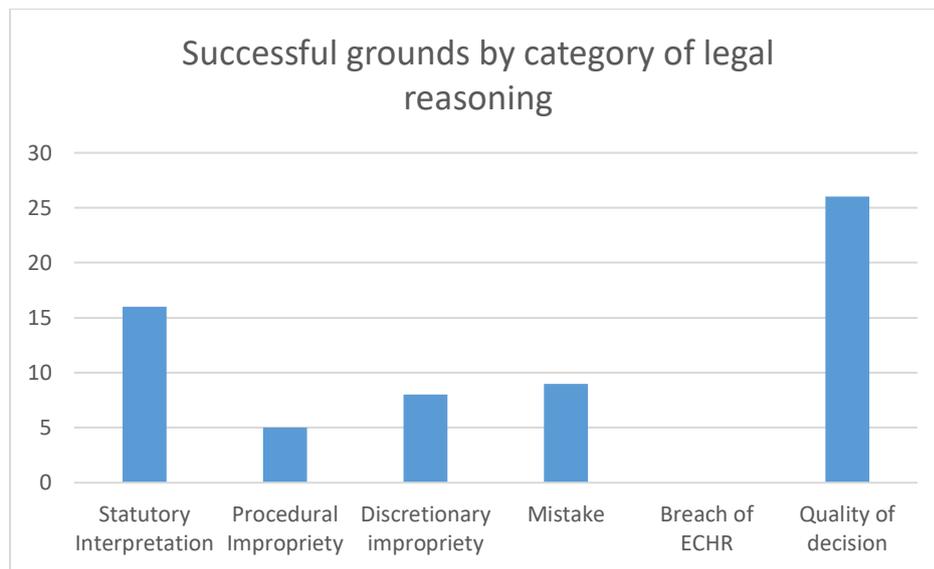
²⁵ Nason justifies this as an entire category on the basis that challenges to decision-makers’ interpretation of statute were the largest proportion of claims in her sample (p. 157).

²⁶ Nason is inspired by Rebecca Williams, who argues that a decision ‘can only be an error if it falls short of an objective truth’: ‘When is an Error not an Error? Reform of Jurisdictional Review of Error of Law and Fact’ [2007] PL 793. Therefore, it seems Nason’s ‘mistake’ category is more concerned with error of fact, and objective mistakes.

This result suggests that litigators adopt a strong focus on arguing that either (a) the ombudsman has misinterpreted the law or that (b) the decision itself is flawed in some respect. Noticeably, the ECHR is barely relevant in ombudsman case law.

A6 Successful grounds in ombudsman judicial review by category of legal reasoning

Focusing on only the grounds that have proved successful against an ombudsman scheme in those 37 cases in which the court found at least in part against the ombudsman the following distribution is evident. Nb in these 37 cases, on occasion multiple grounds were found against the decision hence the number of grounds is greater than 37.



A7. Examples of recent UK-based empirical studies on judicial decision-making

The following represents a list of the leading systematic empirical studies into judicial decision-making that has been published in the UK in recent years.

Arvind, T T and Stirton, Lindsay, 'Legal ideology, legal doctrine and the UK's top judges'. *Public Law* [2016] pp. 418-436;

Bell, J. 'Reason-Giving in Administrative Law: Where We Are and Why Have the Courts Not Embraced the "General Common Law Duty to Give Reasons"?' (2019) *Modern Law Review* (Forthcoming);

Chan, C. 'A Preliminary Framework for Measuring Deference in Rights Reasoning' (2016) 14(4) *International Journal of Constitutional Law* 851-882.

Chan, C. "Proportionality and Invariable Baseline Intensity of Review" (2013) 33(1) *Legal Studies* 1-21

Favale, Marcella, Martin Kretschmer and Paul C. Torremans, 'Is there an EU Copyright Jurisprudence? An Empirical Analysis of the Workings of the European Court of Justice' (2016) 79(1) *MLR* 31, 52;

Goudkamp, James and Donal Nolan, 'Contributory negligence in the Court of Appeal: an empirical study' *Legal Studies*, Vol. 37 No. 3, 2017, pp. 437–467;

Hanretty, Chris 'The Decisions and Ideal Points of British Law Lords' (2012) 43(03) *British Journal of Political Science* 703;

Ip, E. 'Taking a 'Hard Look' at 'Irrationality': Substantive Review of Administrative Discretion in the US and UK Supreme Courts' *Oxford Journal of Legal Studies*, Vol. 34, No. 3 (2014), pp. 481–510;

Ip, Eric C. "The Judicial Review of Legislation in the United Kingdom: A Public Choice Analysis," 37 *European Journal of Law and Economics* 221 (2014).

Nason, S. *Reconstructing Judicial Review* Hart Publishing: Oxford, 2016;

Poole, Thomas and Sangeeta Shah, 'The Law Lords and Human Rights' (2011) 74(1) *The Modern Law Review* 79;

Robertson, D. 'Judicial Ideology in the House of Lords: A jurimetric Analysis' (1982) 12 *British Journal of Political Science* 1, 6;

Thomas C. and H. Genn, *Understanding Tribunal Decision-Making: A foundational empirical study*. Nuffield Foundation 2013.

Thomas, C. A. (2013), *Judicial decision-making by the UK Supreme Court and JCPC: 2009-13*, UK: UCL Judicial Institute.

Tyrrell H. *Human Rights in the UK and the Influence of Foreign Jurisprudence*. Hart Publishing, 2018.

B. FINDINGS I: STATUTORY INTERPRETATION

Employs Non-Literal Approaches to Legislative Interpretation

B1 Interpretative strategy applied to legislation

We coded for four forms of interpretation. Where there was more than one interpretive technique applied we coded for that which suggested the ‘thicker’ interpretation and analysed subsequently its implication. For a full defence of our method, see our *A1 above*.

The results of the study were:

No interpretation approach applied	24
Literal	70
Textual	12
Contextual	5
Total	111

Ordinarily, but not exclusively, the relevant statute being interpreted was the founding statute of the ombud being challenged. Inevitably, the interpretative strategy allows for an element of disagreement (including between the authors of the study). As well as being transparent about the choices being made, our defence of this technique lies in the nuanced nature of the analysis that follows the finding. In other words, although there will occasionally be some level of unresolvable disagreement in the coding applied, not only will these examples be rare as occurring on the boundary lines of the categories, the implications were tested when the results were analysed.

For instance, the case of *R v Parliamentary Commissioner for Administration Ex parte Dyer* [1994] WLR 621 could plausibly be recorded as one in which ‘No interpretation approach was applied’ because although the relevant statute was considered, the court largely found it unhelpful for resolving the matter before them. However, we chose to consider it an example of ‘literal interpretation’ because the statute was considered and the literal meaning given to the provisions in the Act did inform how the decision was made. They found, in part, that judicial review in the case could not be assumed not to apply to an ombudsman because statute did not bar it expressly.

The important point for our purposes here, however, is that whether recorded as ‘no interpretation’ or ‘literal interpretation’, in terms of statutory interpretation this case is recorded as an example of ‘Thin’ rule of law decision-making. By contrast, separately under another test, we have recorded (under judicial strategy) the rule of law expanding nature of this case, in that through expanding the common law to allow for judicial review of the Parliamentary ombudsman the ruling in this case facilitated a ‘thick’ rule of law approach – so the different dimensions of this case are captured under different tests.

The distinction between literal and contextual interpretation is also contentious, but we address this in the paper through a deeper analysis of those cases which we coded as ‘textual’ but found to

be instances of ‘thin’ rule of law interpretation given the nature of the interpretative work being performed by the judge.

Finally, because we treat both textual and contextual interpretation techniques as evidence of a potentially thick rule of law strategy, for the purposes of this study the difference between the two interpretative methods is inconsequential (ie it is sometimes difficult to tell from the written word alone whether the driver behind establishing ‘Parliamentary intention’ is driven only by the words of the statute or by recourse to an analysis of the practice of the law or other sources of information).

B2. Proportion in use of interpretative techniques

The following table details what interpretative approach the court took when a case fell to be resolved on a specific legislative provision, either through direct application or interpretation.

Literal	71	80%
Textual	12	14%
Contextual	5	6%

The purpose of this test was in part to establish the degree to which potentially ‘thick’ rule of law strategies were being applied in ombudsman judicial review. The assumption with literal interpretations is that judges might be imposing interpretations on a case, but they are doing it within a tight framework that requires justification in the reasoning. With textual and contextual techniques, the room for expanding the law becomes wider.

However, a further aim was to highlight potentially thick interpretation cases and interrogate them in more depth to understand why the judge had taken this approach. The following cases were those in our sample where we found the judge to have moved beyond a straightforward literal approach.

1. *R (Mencap) v PHSO & EHRC* [2011] EWHC 3351 (Admin);
2. *R (Heather Moor & Edgecomb Ltd) v Financial Ombudsman Service* [2008] EWCA Civ 642;
3. *R (Kerman & Co Llp) v Legal Ombudsman* [2014] EWHC 3726 (Admin);
4. *Anderson Strathern Llp & Anor v A Decision of The Scottish Legal Complaints Commission* [2016] ScotCS CSIH_71.
5. *Armagh City Council, Re Judicial Review* [2014] NICA 44
6. *R (AC) v OLAHE (2017)* (Claim Non.CO/5366/2016) available on the website of the Office of the Independent Adjudicator for Higher Education;
7. *R (Brinsons (A Firm)) v Financial Ombudsman Service* [2007] EWHC 2534 (Admin);
8. *R (Siborurema) v OLAHE* [2007] EWCA Civ 1365;
9. *R (Hession) v Health Service Commissioner for Wales* [2001] EWHC 619 (Admin)
10. *R (IFG Financial Services Ltd) v Financial Ombudsman Services Ltd* [2005] EWHC 1153 (Admin)
11. *R v Local Commissioner for Administration ex parte Bradford MBC*;
12. *R v PCA, ex parte Balchin* [1996] EWHC Admin 152;
13. *R v PCA, ex parte Balchin (No 2)* (2000) 79 P. & C.R. 157;
14. *JR55, Re Application for Judicial Review (Northern Ireland)* [2016] UKSC 22;
15. *R (Cavanagh) v Health Service Commissioner* [2005] EWCA Civ 1578.
16. *Council of The Law Society of Scotland v The Scottish Legal Complaints Commission (SLCC)* [2017] ScotCS CSIH_36
17. *Tenetconnect Services Ltd v Financial Services Lts & Anor* [2018] EWHC 459 (Admin)

B3. Explanations for ‘thick’ interpretative techniques

Our challenge was to find the *best* viable explanation for why on occasion the judiciary adopted ‘thick’ interpretative techniques in the sample we were looking at.

We identified the following viable explanations:

3.1 *To add rigour to a literal interpretation*

Often the best meaning of a legal provision is indeterminate and it makes good sense to read around the Act to compile a best understanding of the legislative intention. Consistencies and inconsistencies can be identified this way. With such cases, it may even be moot whether the interpretation is ‘literal’ or ‘textual’. We found the following cases where the work of the judge was best described as an enterprise in trying to identify a literal interpretation through a broader reading of the legislation.

NB The cases in bold indicate those cases found against the ombudsman.

1. *R (Mencap) v PHSO & EHRC* [2011] EWHC 3351 (Admin);
2. *R (Heather Moor & Edgcomb Ltd) v Financial Ombudsman Service* [2008] EWCA Civ 642;
3. *R (Kerman & Co Llp) v Legal Ombudsman* [2014] EWHC 3726 (Admin);
4. ***Anderson Strathern Llp & Anor v A Decision of The Scottish Legal Complaints Commission* [2016] ScotCS CSIH_71.**
5. *Tenetconnect Services Ltd v Financial Services Lts & Anor* [2018] EWHC 459 (Admin)

3.2 *To resolve conflicting positions*

We found a series of cases in which the court had to come to a decision as to which ‘conflicting’ provision of law to give priority – or at least where the best reading of one legislative provision could be rejected primarily because another legislative provision logically alluded to a different interpretation. Consistency in law, therefore, was provided for through reference to more than one legislative provision.

1. *Armagh City Council, Re Judicial Review* [2014] NICA 44
2. ***R (AC) v OIAHE (2017) (Claim Non.CO/5366/2016)* available on the website of the Office of the Independent Adjudicator for Higher Education;**
3. *R (Brinsons (A Firm)) v Financial Ombudsman Service* [2007] EWHC 2534 (Admin);
4. *R (Siborurema) v OIAHE* [2007] EWCA Civ 1365;
5. ***Council of The Law Society of Scotland v The Scottish Legal Complaints Commission (SLCC)* [2017] ScotCS CSIH_36**
6. *R (Hession) v Health Service Commissioner for Wales* [2001] EWHC 619 (Admin)
7. *R (IFG Financial Services Ltd) v Financial Ombudsman Services Ltd* [2005] EWHC 1153 (Admin)

3.3 *To read extra meaning into the legislation*

There were five cases in which the judge took the opportunity to read extra meaning into the legislation where there was no clear interpretative need to do so given the clarity of the legislation. In other words, whereas for the previous two categories a literal interpretation would have been weakly justified or led to potential inconsistency in the law, with these five categories there was a

logical option available which would have not led to inconsistency and would have been clear: namely, the statute could have been interpreted to confer wide discretion on the ombudsman to make the decision being challenged without offending any other part of the Act. In such cases, the use of discretionary power could have been left to the ombudsman to decide, subject to common law grounds of administrative law.

For three of these cases we found that the interpretative endeavour had no impact on the decision in the case. These were:

1. *R v Local Commissioner for Administration ex parte Bradford MBC*;
2. ***R v PCA, ex parte Balchin* [1996] EWHC Admin 152;**
3. ***R v PCA, ex parte Balchin (No 2)* (2000) 79 P. & C.R. 157;**

For the other two, the interpretation adopted went to the heart of the decision.

4. ***JR55, Re Application for Judicial Review (Northern Ireland)* [2016] UKSC 22;**
5. ***R (Cavanagh) v Health Service Commissioner* [2005] EWCA Civ 1578.**

3.4 Judicial statements as to the wide discretionary remit of the ombudsman

We recorded instances where the ruling of the court placed emphasis on recognising the wide discretion of the ombudsman office – and either explicitly or implicitly suggested that the court would show deference to that wide discretion. These cases were:

- Crosby v IPCC [2009] EWHC 2515 (Admin);
- Muldoon v Independent Police Complaints Commission (Administrative Court) [2009] EWHC 3633 (Admin);
- North Yorkshire Police Authority v The Independent Police Complaints Commission [2010] EWHC 1690 (Admin);
- Ramsden v IPCC [2013] EWHC 3969 (Admin);
- Rapp v Parliamentary and Health Service Ombudsman [2015] EWHC 1344 (Admin);
- Sneddon & Anor v Scottish Legal Complaints Commission [2015] ScotCS CSIH_62;
- R v PCA, ex parte Balchin [1996] EWHC Admin 152
- Siborurema v OIAHE [2007] EWCA Civ 1365;
- Maxwell v OIAHE [2011] EWCA Civ 1236;
- R v Local Commissioner for Administration ex parte Bradford MBC [1979] 1 QB 287;
- R v Commissioner for Local Administration ex p Eastleigh BC [1988] QB 855;
- R (Norwich and Peterborough Building Society) v Financial Ombudsman Service Ltd [2002] EWHC 2379 (Admin);
- Atwood v The Health Service Commissioner [2008] EWHC 2315
- R (Thilakawardhana) v OIA [2018] EWCA Civ 13
- Miller & Anor v The Health Service Commissioner for England [2018] EWCA Civ 144.
- Newman v The Parliamentary and Health Service Commissioner [2017] EWHC 3336 (TCC)

B.3.5 Cases detailing the limited public law role of the courts in reviewing an ombudsman

Muldoon v Independent Police Complaints Commission [2009] EWHC 3633

R (Cubells) v Independent Police Complaints Commission [2012] EWCA Civ 1292;

R (Erenbilge) v Independent Police Complaints Commission [2013] EWHC 1397 (Admin);

R (Burke) v Independent Police Complaints Commission and Anor [2013] EWHC 2291 (Admin);

R (Conaghan) v Independent Police Complaints Commission [2013] EWHC 3994 (Admin);

Campbell v IPCC [2015] EWHC 3424;

R v Parliamentary Commissioner for Administration, ex parte Balchin (No 2) [2000] JPL 267

Siborurema v Office of the Independent Adjudicator [2007] EWCA Civ 1365

R (Mustafa) v Office of the Independent Adjudicator for Higher Education [2013] EWHC 1379 (Admin);

R. v Commissioner for Local Administration Ex p. S [1998] EWHC Admin 1062

R (Doy) v Commissioner for Local Administration [2001] EWHC 361 (Admin);

R v Local Commissioner For Local Government Ex p Turpin [2002] JPL 326

R. (Hughes) v Local Government Ombudsman [2001] EWHC Admin 349;

R (M) v Commissioner for Local Administration in England [2007] ELR 42;

Crawford v The Legal Ombudsman & Anor [2014] EWHC 182

R (Morris) v Parliamentary and Health Service Ombudsman [2014] EWHC 4364 (Admin).

Jeremiah v Parliamentary and Health Service Ombudsman [2013] EWHC 1085

B.4 Allocating Powers

B4.1 Cases on whether a complaint can be investigated notwithstanding a judicial remedy

Miller & Anor v The Health Service Commissioner for England [2018] EWCA Civ 144.

R v Local Commissioner For Local Government Ex p Liverpool [2000] EWCA Civ 54

R v Local Commissioner For Local Government Ex p Scholarstica Umo [2003] EWHC 3202

R v Commissioner for Local Administration ex parte Croydon LBC [1989] 1 All ER 1033

B4.2 Cases on jurisdictional overlap and the OIA

<p><i>Maxwell v The Office of the Independent Adjudicator for Higher Education</i> [2011] EWCA Civ 1236</p>

Cardao-Pito v Office of the Independent Adjudicator for Higher Education & Anor [2012] EWHC 203
Mustafa v The Office of the Independent Adjudicator for Higher Education [2013] EWHC 1379 (Admin)
Gopikrishna v The Office of the Independent Adjudicator for Higher Education & Ors [2015] EWHC 207

In several cases involving the Office of the Independent Adjudicator for Higher Education (OIA), for instance, the courts have attempted to clarify the grey line between the competences of universities and the OIA on the matter of academic judgement.²⁷ In other OIA cases, the court has clarified that it is not the office's role to enforce disability discrimination law²⁸ or investigate criminal conduct.²⁹

B4.3 Cases on jurisdictional overlap and the SLCC

Bartos v A Decision of The Scottish Legal Complaints Commission [2015] ScotCS CSIH_50
Anderson Strathern v SLCC [2016] CSIH 71
Council of The Law Society of Scotland v The Scottish Legal Complaints Commission (SLCC) [2017] ScotCS CSIH_36

²⁷ *Cardao-Pitt*, n.x above; *Mustafa* (n 123) [52]-[54]; *Gopikrishna* (n 108) [88]-[92].

²⁸ *Maxwell* (n 122). See also *Mencap* (n 75).

²⁹ *Cardao-Pito* (n 101).

C. FINDINGS II: GROUNDS

C1 Cases decided by category of law.

Statutory interpretation cases

We tested for all grounds argued against an ombudsman in court, with in some cases the same legal ground being applied more than once in a case. For instance, in *JR55*³⁰ there were three separate interpretations of the statute found against the Ombudsman. Likewise, in *Anderson Strathern*,³¹ two separate interpretations can be discerned. Removing this potential double counting, we found that out of the 37 cases found against the Ombudsman, in 13 the source had been a finding of statutory interpretation upon which the relevant ombudsman had erred. These included:

Anderson Strathern Llp & Anor v A Decision of The Scottish Legal Complaints Commission [2016] ScotCS CSIH_71

JR55, Re Application for Judicial Review (Northern Ireland) [2016] UKSC 22

R (AC) v OIAHE (2017) (Claim Non.CO/5366/2016)

Stenhouse v The Legal Ombudsman & Anor [2016] EWHC 612 (Admin)

Cavanagh & Ors v Health Service Commissioner [2005] EWCA Civ 1578

Miller & Anor v The Health Service Commissioner for England [2018] EWCA Civ 144

Kerr Stirling LLP v Scottish Legal Complaints Commission [2012] ScotCS CSIH_98

Miah v IPCC [2017] EWCA Civ 2108

Argyll & Bute Council, Re Judicial Review [2007] ScotCS CSOH_168

Akanho v Local Government Ombudsman [2014] EWHC 766 (Admin)

Atwood v The Health Service Commissioner [2008] EWHC 2315

Bluefin Insurance Services Ltd v Financial Ombudsman Service Ltd [2014] EWHC 3413

Procedural Impropriety cases

The following three cases identified five grounds of law found against ombuds.

Miller & Anor v The Health Service Commissioner for England [2018] EWCA Civ 144 (x3)

Stenhouse v The Legal Ombudsman & Anor [2016] EWHC 612 (Admin)

R (Siborurema) v OIAHE [2007] EWCA Civ 1365

Discretionary impropriety cases

There are seven cases in which a discretionary impropriety ground succeeded.

Miller & Anor v The Health Service Commissioner for England [2018] EWCA Civ 144

³⁰ *JR55, Re Application for Judicial Review (Northern Ireland)* [2016] UKSC 22

³¹ *Anderson Strathern Llp & Anor v A Decision of The Scottish Legal Complaints Commission* [2016] ScotCS CSIH_71

Newman v The Parliamentary and Health Service Commissioner [2017] EWHC 3336 (TCC)
R v PCA, ex parte Balchin [1996] EWHC Admin 152
R (Herd) v Independent Police Complaints Commission [2009] EWHC 3134 (Admin)
R (Gopikrishna) v OIAHE [2015] EWHC 207 (Admin)
R v Commissioner for Local Administration ex parte Croydon LBC [1989] 1 All ER 1033
R (Hafiz & Haque Solicitors) v Legal Ombudsman [2014] EWHC 1539 (Admin)

In an additional case, R (Norwich and Peterborough Building Society) v Financial Ombudsman Service Ltd [2002] EWHC 2379 (Admin), the court found that the FOS had failed to have regard to a relevant consideration, but the decision was upheld nevertheless because it was defensible on other grounds.

Mistake cases

We identified eleven cases in which a form of mistake argument was successful.

Miah v IPCC [2017] EWCA Civ 2108
Gopikrishna v The Office of the Independent Adjudicator for Higher Education & Ors [2015] EWHC 207
R. v Commissioner for Local Administration Ex p. S [1998] EWHC Admin 1062
Kelly v Financial Ombudsman Service Ltd [2017] EWHC 3581 (Admin)
Campbell v IPCC [2015] EWHC 3424
Kerr Stirling LLP v Scottish Legal Complaints Commission [2012] ScotCS CSIH_98
Bartos v A Decision of The Scottish Legal Complaints Commission [2015] ScotCS CSIH_50
Rosemarine v The Office for Legal Complaints [2014] EWHC 601 (Admin)
R (Balchin) v Parliamentary Commissioner for Administration (No 3) [2002] EWHC 1876 (Admin)

Quality of decision

Deficiency in reasons provided

We identified twelve cases in which the reasoning of an ombudsman was found to be flawed (with in two cases a double finding along these lines made).

Adams v The Commission for Local Administration In England & Ors [2011] EWHC 2972 (Admin)
Bartos v A Decision of The Scottish Legal Complaints Commission [2015] ScotCS CSIH_50
R (Balchin) v Parliamentary Commissioner for Administration (No 3) [2002] EWHC 1876 (Admin);
R v PCA, ex parte Balchin (No 2) (2000) 79 P. & C.R. 157 (x2)
R (Cardao-Pito) v OIAHE [2012] EWHC 203 (Admin) (x2)
R (Turpin) v Commissioner for Local Administration [2002] JPL 326
R. (Hughes) v Local Government Ombudsman [2001] EWHC Admin 349
R (Aviva Life & Pensions UK Ltd) v Financial Ombudsman Service [2017] EWHC 352 (Admin)
R v Commissioner for Local Administration ex p Eastleigh BC [1988] QB 855
R (Crawford) v The Legal Ombudsman & Anor [2014] EWHC 182 (Admin)

R (Hafiz & Haque Solicitors) v Legal Ombudsman [2014] EWHC 1539 (Admin)
JR55, Re Application for Judicial Review (Northern Ireland) [2016] UKSC 22

Irrational

We identified twelve cases in which the reasoning of an ombudsman was found to be irrational.

JR55, Re Application for Judicial Review (Northern Ireland) [2016] UKSC 22
R. (Hughes) v Local Government Ombudsman [2001] EWHC Admin 349
R (Crawford) v The Legal Ombudsman & Anor [2014] EWHC 182 (Admin)
R (Dennis) v Independent Police Complaints Commission [2008] EWHC 1158 (Admin)
R (Hafiz & Haque Solicitors) v Legal Ombudsman [2014] EWHC 1539 (Admin)
Stenhouse v The Legal Ombudsman & Anor [2016] EWHC 612 (Admin)
R (Garrison Investment Analysis) v Financial Ombudsman Service [2006] EWHC 2466 (Admin)
Miller & Anor v The Health Service Commissioner for England [2018] EWCA Civ 144.
Kelly v Financial Ombudsman Service Ltd [2017] EWHC 3581 (Admin)
Newman v The Parliamentary and Health Service Commissioner [2017] EWHC 3336 (TCC)
Benson v SLCC [2019] CSIH 33
MacGregor v SLCC [2019] CSIH 58

C2 Analysis of mistake and discretionary impropriety cases

This section provides the full references to support the text in the article:

Mistake cases

Campbell v Independent Police Complaints Commission [2015] EWHC 3424 (Admin).
Kerr Stirling LLP v Scottish Legal Complaints Commission [2012] ScotCS CSIH 98.
R v Commissioner for Local Administration ex p S (1999) 1 LGLR 633;
R (Rosemarine) v The Office for Legal Complaints [2014] EWHC 601 (Admin).
R. (Balchin) v Parliamentary Commissioner for Administration (No.3) [2002] EWHC 1876
Bartos v A Decision of The Scottish Legal Complaints Commission [2015] ScotCS CSIH_50
R (Miah) v Independent Police Complaints Commission [2017] EWCA Civ 2108;
Kelly v Financial Ombudsman Service Ltd [2017] EWHC 3581 (Admin)

Discretionary Impropriety

R (Herd) v Independent Police Complaints Commission [2009] EWHC 3134 (Admin);
R v Commissioner for Local Administration ex parte Croydon LBC [1989] 1 All ER 1033
Hafiz & Haque Solicitors, R (On the Application Of) v Legal Ombudsman [2014] EWHC 1539
R v Parliamentary Commissioner For Administration, ex p Balchin (no.1) [1996] EWHC Admin 152

Gopikrishna v The Office of the Independent Adjudicator for Higher Education & Ors [2015] EWHC 207
Newman v The Parliamentary and Health Service Commissioner [2017] EWHC 3336 (TCC)

C3 The law on reasons and the ombudsman

Detailed guidance on reasons is provided in the following cases

R v The Commission for Local Administration In England & Ors Ex p Adams [2011] EWHC 2972, [34]
Stenhouse v The Legal Ombudsman & Anor [2016] EWHC 612 (Admin) [10], [36]-37];
Atwood v The Health Service Commissioner [2008] EWHC 2315 [48];
Cardao-Pito v Office of the Independent Adjudicator for Higher Education & Anor [2012] EWHC 203 [25]-[29];
Rapp v PHSO [2015] EWHC 1344 [38];
Dennis v Independent Police Complaints Commission [2008] EWHC 1158 [20];
Herd v Independent Police Complaints Commission [2009] EWHC 3134, [37];
Muldoon v Independent Police Complaints Commission [2009] EWHC 3633, [20];
R v Parliamentary Commissioner for Administration, ex parte Balchin (No 2) [2000] JPL 267, 167-8
Crawford v The Legal Ombudsman & Anor [2014] EWHC 182
JR55 [2016] UKSC 22 [30];
Garrison Investment Analysis v Financial Ombudsman Service [2006] EWHC 2466 [5]
Kelly v Financial Ombudsman Service Ltd [2017] EWHC 3581 (Admin) [15];
R (Thilakawardhana) v OIA [2018] EWCA Civ 13 [82];
Miller & Anor v The Health Service Commissioner for England [2018] EWCA Civ 144. [67-82];
Newman v The Parliamentary and Health Service Commissioner [2017] EWHC 3336 (TCC) [59].

This is potentially a controversial approach, as it implies that judges are better placed to develop the integrity of an administrative decision-making process than the administrative body itself or the legislature. This might explain why the courts have only rarely found directly against an ombudsman on fairness grounds, and have tended to develop the common law in other ways, such as through obiter statements in cases held in favour of the ombudsman. A deeper analysis of ombudsman case law though reveals that the pursuit of fair decision-making processes is the most likely driver of ‘thick’ rule of law decisions. For instance, both the ‘thick’ statutory interpretation cases identified in this study (*Cavanagh* and *JR55*) can be viewed as procedural fairness cases, with both being concerned with the due process owed to individual medical practitioners where their reputation was at stake. Further, as already noted, the focus on the quality of reasoning is a powerful theme in ombudsman case law precisely because it connects directly to the ombudsman claim to deliver ‘fair justice’. An ombudsman is under a legal duty to provide written reasons at various stages of its decision-making process, and according to case law the supporting reasoning

supplied can be expected to be sufficiently extensive³² to deliver ‘adequate and comprehensible reasons’.³³ A pattern of high judicial expectations on reasons can be identified in at least sixteen cases which provide added judicial instruction on the standards that can be expected of ombudsman decisions.³⁴ This is significant, in that legislation on the ombudsman provides no such detail other than to require reasons for determinations made. Further, in only seven of these cases³⁵ was specific reference made to general case law on reasons, lending the impression that a bespoke legal standard is being developed for the ombudsman sector within which the operational and non-judicial context of the ombudsman institution has been regularly noted.³⁶ Thus, even though standards of reasoning akin to judicial standards are not required,³⁷ from the case law quality criteria can be discerned,³⁸ as well as the importance of accessibility to all relevant parties.³⁹ And this duty to provide reasons extends beyond final reports to include other stages of the decision-making process.⁴⁰ This approach shows the weight that courts give to the particular policy framework in question when interrogating the standard of reasons given by the decision-maker, with in the ombudsman context the weight given particularly high.

C4 The law on procedural fairness and the ombudsman

Nevertheless, much ombudsman case law has fine-tuned specific procedural standards beyond legislative requirements for an ombudsman’s operation, and thereby implicitly increased the judiciary’s control over the ombudsman sector. For instance, the courts have emphasised the importance of schemes developing internal guidance to describe in more detail their processes, and once in place the courts have expected that guidance to be followed.⁴¹ The courts have also stated that an ombudsman should normally disclose the material or documentary evidence on which their decisions are going to rely so as to allow each of the parties the opportunity to make comments or rebut.⁴² In disclosing such material, the courts have confirmed that an ombudsman is entitled to request undertakings that any such material will be kept confidential.⁴³ The courts have also considered the extent to which an ombudsman can lawfully extend a complaint mid-investigation once more information has been obtained.⁴⁴ An ombudsman is now required to follow a consultation process with the affected parties, including the provision of explanatory information, before making such an extension to the complaint.⁴⁵ Most recently the courts have

³² *Adams*

³³ *Bartos* [1].

³⁴ See list at B22

³⁵ *Balchin (No 2)*; *Cardao-Pito*; *Adams*; *Stenhouse*; *Atwood*; *Crawford*; *Newman*.

³⁶ *Herd* [37].

³⁷ *Rapp* [38]; *Atwood* [48]; *Garrison Investment Analysis* [5].

³⁸ *Stenhouse* [36]; *Cardao-Pito* [29].

³⁹ *Dennis* [20].

⁴⁰ *Adams* [34]. See also *Maxhuni* (n 89).

⁴¹ *Miah v IPCC* [2017] EWCA Civ 2108

⁴² *R v Local Commissioner For Local Government Ex p Turpin* [2002] JPL 326; *Miller & Anor v The Health Service Commissioner for England* [2018] EWCA Civ 144.

⁴³ *R (Kay) v Health Service Commissioner* [2008] EWHC 2063 (Admin).

⁴⁴ *Hession* (n 79); *Cavanagh* (n 81); *Miller & Anor v The Health Service Commissioner for England* [2018] EWCA Civ 144. *JR55* (n 81).

⁴⁵ *Miller & Anor v The Health Service Commissioner for England* [2018] EWCA Civ 144. [42]-[47].

provided guidance on the importance of not being seen to predetermine a decision when issuing a preliminary finding of fact.⁴⁶

C5 Use of precedent

Mostly we found that the courts placed a lot of emphasis on precedent.

However, there were cases where a point was made of distinguishing certain cases put before the court.

1. *R (Chancery UK LLP) v Financial Ombudsman Service* [2015] EWHC 407 (Admin);
2. *Scholarastica Umo v LGO* [2003] EWHC 3202 (Admin);
3. *R (Liverpool City Council,) v Local Commissioner For Local Government For North And North East England* [2000] EWCA Civ 54;
4. ***R (AC) v OIAHE (2017) (Claim Non.CO/5366/2016) available on the website of the Office of the Independent Adjudicator for Higher Education***
5. *R (Budd) v OIAHE* [2010] EWHC 1056 (Admin);
6. ***R v PCA, ex parte Balchin (No 2) (2000) 79 P. & C.R. 157***
7. *Tenetconnect Services Ltd v Financial Services Lts & Anor* [2018] EWHC 459 (Admin)

In three cases the court made a point of rejecting or disregarding an earlier ruling, albeit not expressly overruling the case.

1. *Maxbhuni v LGO* [2002] EWCA Civ 973
2. *R (Walker) v Financial Ombudsman Service* [2013] NIQB 12;
3. *R (Jeremiah) v Parliamentary and Health Service Ombudsman* [2013] EWHC 1085 (Admin)

⁴⁶ *ibid* [57]-[66].

D. APPROACHES TO JUDICIAL REVIEW

D1. Reasons for oral permissions being refused

We coded the permission hearings for the stated reason why permission was refused. On most occasions this reason was provided expressly.

The following table charts the results. (NB for some cases more than one reason was provided)

Ground applied	Number of occasions cited	% of cases offered as a reason
1. Totally without merit	20	14
2. Lack of arguable case	87	60
3. Time limit	29	20
4. Alternative remedy	2	14
5. No Difference Principle	1	1
6. Standing	3	2
7. Abuse of Process	4	3

D2. Remedies made available in cases where the claim of the claimant was upheld in part or full

For each of the 37 cases where the claimant was successful in full or in part, the remedy awarded by the court was coded. It was not always easy to discern the nature of the judicial ruling made, but the following decisions could be discerned.

The key finding here is that in 30 cases the original decision was quashed in whole or in part, and in a further case the relevant ombudsman agreed to reopen the complaint.

Remedies	
1. Quashing order	28
2. Prohibiting order	0
3. Mandatory order	0
4. Declaration	1
5. Damages (ECHR violation)	0
6. Quashed and not remitted	2
7. Award decided subsequently	1
8. No award made	4
9. Ombud agreed to reopen decision	1
	37
