Neutral Citation No: [2026] NIKB 19	*Ref:*	**McLA13039**
	ICOS No:	**26/9225/01**
Judgment: approved by the court for handing down (subject to editorial corrections)*	*Delivered:*	**29/04/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION
(JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY JAMES MALCOMSON FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

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The applicant appeared as a Litigant in Person
Mr Allistair Fletcher (instructed by Carson McDowell LLP) for the Proposed Respondent

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McLAUGHLIN J

Introduction

[1] This is an application for leave to apply for judicial review of a decision of the Financial Ombudsman Service ("the Ombudsman") dated 15 October 2025. The decision arises out of a complaint by the applicant to the Ombudsman concerning a decision of the Dromara and Drumgooland Credit Union ("the Credit Union") on foot of an application for a home improvement loan.

[2] The impugned decision of the Ombudsman was the second decision made on foot of complaints against the Credit Union arising out of decisions on loan applications made by the applicant.

[3] In December 2024, the Ombudsman gave the first decision which arose out of two complaints about loan applications made by the applicant to the Credit Union in May and September 2023. Both applications were for a loan of £60,000 and were refused. The Ombudsman found that the decision to decline the loans was fair but that the Credit Union should assess a fresh loan application and remove from his file the credit search for the two earlier applications. It also found that the Credit Union should pay £200 by way of compensation for delay in responding to a Subject Access Request.

[4] Following the Ombudsman's decision, the applicant made a further loan application to the Credit Union on 26 January 2025. The amount requested was £44,000 and the purpose of the loan was for home improvements. At the time of the application, the applicant was aged 25 and had been in employment for three years' seven months. In support of the application, the applicant provided the Credit Union with a total of five quotations in relation to home improvement work to be carried out which are addressed in more detail below. The applicant also participated in two telephone interviews with Credit Union staff about the loan application, which took place on 4 February and 18 February 2025. These discussions were recorded by the applicant and transcripts were later made available to both the Ombudsman and the court.

[5] I do not propose to analyse the full detail of both conversations. Three issues were discussed to a greater or lesser degree on both occasions, and which are relevant to the grounds of challenge.

[6] The first issue was the purposes for which the loan funds would be used and the property to which they related. The five quotations which the applicant had supplied in support of the loan application are summarised below. Three were provided in advance of the 4 February conversation and two were provided in advance of the 18 February conversation. The first three quotations were:

(i) £25,125.30 (3 February 2025) Kitchen improvement/replacement.

(ii) £2,946.46 (3 February 2025) Bathroom improvement/replacement.

(iii) £11,775.31 (4 February 2025) NIE electrical works.

The final two quotations were:

(iv) £14,720.00 (18 February 2025) general quotation for labour, furnishings, painting, electrical works associated with the proposed improvements.

(v) £28,475.00 (18 February 2025) Solar quotation.

[7] The second issue discussed was the property to which the proposed works related. The purpose of the applicant's loan was for home improvement works to a property in Belfast. It was made clear during the discussion on 18 February that that items (iii) and (v) above (removal of a NIE pole and the solar quotation), both related to proposed improvement works to a second property which the applicant owned jointly with his father, and which formed part of a long term project which he did not propose to undertake at the present time, and which did not form the basis of the proposed loan. It is not, therefore, entirely clear why the applicant included these quotations in support of the loan application for the Belfast property.

[8] The third issue discussed was the possibility that the Credit Union may seek a guarantor for the loan. This possibility was also highlighted in the pre-printed text of the loan application form.

[9] On 19 February 2025, the applicant was informed that the Credit Committee had considered his application and had offered "*a lower amount of £33,000 with a suitable guarantor*." He was also informed that it would be necessary for him to provide a 10% share of the loan sum, namely £3,300. The applicant queried the decision and asked why he had only been offered a reduced amount and why a guarantor was necessary. After a further exchange and a further request for clarification by emails of 27 and 28 February 2025, the Credit Union responded on 25 March stating:

> "Loan offer reduced as explained. Offer of £33,000 was made for home improvements to your Belfast address. Loan amount was reduced as NIE pole was for a different address and we were given no proof of ownership for this address. Offer made to incorporate costs of new kitchen and bathroom for Belfast address (£27,000) and (£6,000) towards payment for works to be carried out.
>
> Guarantors may be requested by the Credit Committee; a guarantor requested on this occasion due to size of first loan and lack of history with the credit union."

[10] The applicant responded to the proposal for a guarantor by suggesting that he could demonstrate a credit history by taking out and repaying a separate loan for £100. He also requested the Credit Union to advise him about available options without a guarantor and pointed out that the loan offer did not match the full quotation he had supplied for the costs of work etc., which amounted to £14,720, rather than the £6,000 which had been offered. On 25 March 2025, the Credit Union confirmed that it would "*consider again your loan application along with the additional quotes you supplied*" during the Credit Committee meeting of 31 March 2025. In an email dated 18 April 2025, the Credit Union confirmed that there had been no change to the decision of the Credit Committee and that it had no other available options regarding the request for a guarantor.

[11] Following this confirmation, the applicant made his complaint to the Ombudsman. He considered that the decision amounted to a rejection of his loan application and that it was unfair. He believed that the Credit Union had not followed its procedures and that he had met all the relevant criteria to be offered the full loan without the need for a guarantor. He wanted the Ombudsman to investigate what had occurred and the reasons for the decision.

[12] It is not necessary to set out the detail of all exchanges between the applicant and the Ombudsman's office on foot of the complaint. On 1 July 2025, one of the Ombudsman's investigators sent a reasoned provisional finding to the applicant which was based upon the information which had been received from each side. This included all of the email correspondence between the applicant and the Credit Union. In summary, the provisional findings were:

(i) The Credit Union had not rejected the application, but had simply offered to lend less than the amount requested.

(ii) The Credit Union had kept the applicant informed during the application process about the information which it would require and that it had explained in sufficient detail why it had decided to offer the lower amount.

(iii) The Credit Union had followed its own procedures and criteria which included provision for requesting a guarantor for a loan of this amount.

[13] The applicant responded the same day in strong terms to "*formally and forcefully object to the Financial Ombudsman Service's failure to properly scrutinise the conduct of the [Credit Union]*." He maintained that the lending decision amounted to a refusal and was contrary to the "*regulatory framework, the principles of corporate governance and the very purpose for which it is allowed to operate*." He contended that he had complied with every demand made by the Credit Union and that he was "still being denied the loan [he] applied for." He also maintained that no explanation had been given about why the Credit Union had exercised its discretion to require a guarantor for this loan. He considered that it had been sufficient for him to reduce the amount requested (when compared to his first loan application), to provide his proof of income and to have attended the customer interviews. He contended that there was an inconsistency in the reasoning provided by the Credit Union relating to the guarantor requirement insofar as an email of 27 March 2025 from the Credit Union stated that the reason for the requirement was because it was his first loan, whereas the final decision of 25 March 2025 stated that it was due to the "*size of the first loan and lack of history with the credit union*." The applicant considered he had addressed the absence of credit history by offering to apply for and repay a £100 loan. The applicant also raised with the Ombudsman a number of what he described as "*corporate governance*" issues about the conduct of the Credit Union.

[14] The Ombudsman gave its final reasoned decision on 15 October 2025. It concluded that the applicant had not been treated unfairly by the Credit Union. It noted the records of the two customer interviews, the supporting quotations supplied by the applicant and the fact that some of the quotations related to a second property but that the loan amount requested related only to the Belfast property. The decision contained the following paragraph, which was at the heart of the grounds of challenge:

> "… I can see that DDUCL explained to Mr M that the loan amount corresponded to the quotes he'd provided for the renovations he intended to make to the property he owned outright, plus an allowance for labour. They made clear that they weren't lending him money in relation to the property he co-owned with his father.
>
> Mr M provided quotes for the work he intended to carry out – these came to around £27,000 in relation to one property and around £12,000 plus VAT in relation to the other property. He provided proof of ownership of the first property but not for the second.
>
> … I don't consider it to be unreasonable or unfair for DDCUL to decide to offer Mr M only the amount that would be needed for the more immediate work on his own property."

Governing legal framework

[15] There was no dispute as to the legal framework governing the role and functions of the Ombudsman.

[16] The jurisdiction of the Ombudsman to investigate and to determine complaints about the conduct of regulated financial services entities derives from Part 16 of the Financial Services and Markets Act 2000 ("the 2000 Act"). It provides for the establishment of a scheme by which certain types of disputes "*may be resolved quickly and with minimum formality by an independent person*" [section 225(1)]. Schedule 17 to the 2000 Act makes provision for the Ombudsman Scheme. For present purposes, the key provision is section 228(2), which governs the scope and nature of the Ombudsman's functions in relation to dispute resolution. It provides:

> "(2) A complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all of the circumstances of the case."

[17] The rules made under Schedule 17 to the 2000 Act include the following:

> "DISP 3.6.4 In considering what is fair and reasonable in all the circumstances of the case, the ombudsman <u>will take into account</u>: (1) relevant (a) law and regulations; (b) regulators' rules, guidance and standards; (c) codes of practice; and (2) where appropriate, what he considers to have been good industry practice at the relevant time." [emphasis added]

[18] The nature of the Ombudsman's jurisdiction has been the subject of a number of decisions of the courts in England & Wales. The most recent decision which summarises the relevant principles is *R(Shawbrook) v FOS Ltd & Ors* [2023] EWHC 1069:

> "11. The caselaw underlines that the 'fair and reasonable' test is a subjective one for an ombudsman (see *R (IFG Financial Services Ltd) v Financial Ombudsman Service* [2005] EWHC 1153 (Admin), at [13]). The combination of a subjective approach and a duty to 'take into account' the law raises an obvious question about how far an ombudsman is or is not constrained by the law. The question was considered by the Court of Appeal in *R (Heather Moor & Edgecomb) v Financial Ombudsman Service* [2008] EWCA Civ 642. From that case (see in particular [49], [80] and [89]) the following principles can be distilled.
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> 12. Ombudsmen are dealing with complaints, not legal causes of action. They are not (conclusively) determining legal rights and duties. They are not bound to apply the common law. As an efficient, cost-effective and relatively informal type of alternative dispute resolution, ombudsmen 'should not be stifled by the imposition of legal doctrine.' A determination reached by an ombudsman may properly differ from the conclusion that a court would reach. They have a statutorily protected discretion in the 'fair and reasonable' jurisdiction and are not susceptible to legal appeal.
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> 13. On the other hand, they are creatures of statute with jurisdiction circumscribed by law. They have a legal obligation to take relevant law into account. They must direct themselves correctly as to what the relevant law is. They are 'free to depart from the relevant law' but if they do they should say so in their decisions and explain why. And they are susceptible to judicial review on grounds of error of law in relation to their identification of what the relevant law is, as well as perversity and irrationality in relation to their substantive decisions.
> …
>
> 15. The FOS draws attention to the guidance of the caselaw on how a reviewing court should approach reading an ombudsman's final decision. '[I]t is axiomatic, therefore, that any Ombudsman's decision letter should

> be read as a whole and in a common sense, and certainly not in a legalistic, way' *(R (Garrison Investment Analysis) v Financial Ombudsman Service* [2006] EWHC 2466 (Admin) at [5]). Decision letters 'are reports, not pleadings. A party to a complaint must know why he has won, or perhaps more importantly why he has lost, in clear and comprehensible terms. That is the requirement, but that is the only requirement and it can be met in a reasonably flexible way' *(R (Williams) v FOS* at [51]). Again, 'Decision letters are not statutes. They are not legal documents. They set out decisions and explain them. They are to be read and interpreted in a common sense way' (*Westcott Financial Services v Financial Ombudsman Service* [2014] EWHC 3972 (Admin), at [33(x)])."

[19] The Ombudsman's jurisdiction is therefore different from that of other tribunals or statutory decision making bodies, which are obliged to comply fully with legal obligations and to follow governing legal principles. The Ombudsman also has a wide discretion to form an opinion on the fairness and reasonableness of the decision in dispute.

Grounds of challenge

[20] The applicant seeks leave to challenge the Ombudsman's decision of 15 October 2025 on four grounds:

(i) Error of material fact;

(ii) Failure to consider relevant evidence/considerations;

(iii) Procedural unfairness;

(iv) Error of law; and

(v) Apparent bias.

[21] In order to obtain leave to challenge the decision of a public authority, it is necessary to demonstrate that one or more of the proposed grounds are arguable, with reasonable prospects of success.

Grounds 1 & 2: Error of law

[22] Grounds 1 and 2 both overlap and it is convenient to consider them together. In summary, the applicant contends that the Ombudsman misunderstood the relevant facts, insofar as he contends that the Ombudsman believed that the quotation he had submitted for the costs of removing the NIE pole at the Dromore

property was one of the purposes for which the £44,000 loan had been made. This submission was founded upon the extract from the decision letter which is set out at para [15] above. He therefore argued that the Ombudsman misunderstood the facts when he formed the opinion that the Credit Union had acted fairly and reasonably when making the reduced loan offer. The same alleged error formed the basis of ground 2, insofar as the applicant claimed that the Ombudsman had considered irrelevant material.

[23] The first point that is important to emphasise is that the Ombudsman is assessing the fairness of a decision by the Credit Union. There is no dispute that the Credit Union was not under any misapprehension about the quotations which were relevant to the Belfast property, those which were relevant to the Dromore property and the fact that the loan was only requested for the improvements to the Belfast property. This was made crystal clear by the Credit Union in the emails which explained the decision to offer the reduced amount, particularly the email of 25 March 2025 – all of which were available to the Ombudsman. The applicant therefore contends that the Ombudsman made an error which the Credit Union did not itself make.

[24] Applying the principles of interpretation which govern decisions of the Ombudsman and bearing in mind the background to the impugned decision, I do not consider it is arguable that the decision letter reveals an error of fact on the part of the Ombudsman. As set out in para [15] above, the relevant portion of the Ombudsman's decision letter refers to the fact that the Credit Union had settled on the loan offer by separating out the two quotations which related to the work to the kitchen and bathroom at the Belfast property. They had allowed for the full amount requested and an additional sum for labour. The Ombudsman was therefore perfectly well aware that some of the other quotations related to the Dromore property and that they did not form part of the loan request. The portion of the decision letter which the applicant relies upon simply repeats this distinction. It states

> "… Mr M provided quotes for the work he intended to carry out – these came to around £27,000 in relation to one property and around £12,000 plus VAT in relation to the other property …"

[25] In my view, this is an entirely accurate statement. The applicant did submit quotes for around £27,000 in relation to the Belfast property and a quote of around £12,000 plus VAT for moving the NIE pole at the Dromore property. Read fairly and in context, this passage of the decision letter was simply a statement which explained the sum of £27,000 which the Credit Union had provided for and not a statement that the loan application had included an amount of £12,000 for the work at the Dromore property. I consider that interpretation to be overwhelmingly clear when read along with the paragraph which preceded it and the one which followed,

which also made clear that the Ombudsman's understanding that the loan request only related to the work to the Belfast property.

[26] Accordingly, I find that the applicant has not established an arguable ground of challenge on either grounds 1 or 2, as I do not consider that an error of fact can arguably be attributed to the Ombudsman from the portion of the decision letter relied upon, when it is read in full and in light of the acceptance that the Credit Union's decision was not vitiated by any such error.

Ground 3: Procedural Unfairness

[27] The applicant contends that the Ombudsman's decision-making process was unfair for two related reasons. First, he contended that the Ombudsman should have issued a provisional decision, prior to issuing a final decision. This was the procedure which was followed in relation to his earlier complaints. Second, relatedly, the applicant contended that the correspondence of 1 July 2025 did not amount to a provisional decision as it did not reveal that the Ombudsman was labouring under a misunderstanding of the facts and hence did not afford a fair opportunity to the applicant to make representations on that issue.

[28] In my view, there is no merit in this proposed ground of challenge. As I have already decided, the final decision letter of 15 October 2025 does not reveal any error of fact on the part of the Ombudsman. Accordingly, there was no basis for the contention that the applicant was deprived of an opportunity to make representations to correct the error in advance of the final decision. In any event, I consider that the Ombudsman followed a fair procedure by providing the applicant with a preliminary decision. The email exchange of 1 July 2025 contains a detailed outline of the preliminary views of the Ombudsman in a clear and transparent manner. The applicant therefore had a fair opportunity for comment, and he availed of it by means of his correspondence of the same day, by which he expanded his complaint to include "*corporate governance*" issues within the Credit Union.

[29] Accordingly, this is not an arguable ground of challenge with reasonable prospects of success and leave is refused.

Ground 4: Error of Law

[30] The applicant contends that the Ombudsman failed to apply the rules and regulations governing Credit Unions insofar as it found that the decision of the Credit Union to request a guarantor was in accordance with those rules. The applicant contends that the Credit Union indicated that it would explore alternative security arrangements in lieu of a guarantor (such as an increased share requirement), but that it ultimately decided not to do so. The applicant contends that the Ombudsman failed to find that the Credit Union had "*departed from that position and imposed a rigid guarantor requirement*."

[31] As set out above, the possibility that the Credit Union might request a guarantor was within its discretion and was published as part of its lending policies. It was also flagged to the applicant on the face of the pro-forma loan application form which he completed. A decision to request a guarantor is not therefore a departure from policy, but the application of the policy. Nor is the application of a published policy an error of law. The Ombudsman was clearly aware of this and understood the policy correctly. The decision letter sets out in clear terms that the Ombudsman considered the justification given by the Credit Union to be fair and reasonable, namely that the applicant had no credit history with the Credit Union and that this was a substantial personal loan. The mere fact that the Credit Union agreed to reconsider the guarantor requirement does not mean that it was obliged to do so. There is nothing in the conduct or statements of the Credit Union which would have amounted to an obligation to change its mind on security arrangements or even a representation that it was minded to change its mind. It was simply a commitment to reconsider the matter which it did. The result of the reconsideration was to maintain the earlier decision to require a guarantee. I consider that on these facts, the Ombudsman was perfectly entitled to form the opinion that the failure to change its mind was not unfair. There was arguable no error of law in the Ombudsman's opinion.

[32] I do not therefore consider that the decision letter reveals any error of law or failure to consider relevant guidelines or codes. This is not an arguable ground of challenge with reasonable prospects of success and leave is refused.

Ground 5: Apparent bias

[33] The applicant contends that the reasoned decision represents an "uncritical acceptance of the Credit Union's account, rather than an independent evaluation of the evidence." He contended that the Ombudsman failed to "*engage*" with the evidence.

[34] For essentially the same reasons as set out above, I do not consider that this proposed ground of challenge is arguable. I consider that the decision letter makes clear that the Ombudsman did consider all of the evidence which was presented and that the ultimate decision that the applicant had been treated fairly and reasonably was a perfectly lawful opinion which was based upon a correct understanding of the facts. There is nothing in the decision letter or in any of the associated correspondence which gives cause to suspect that the Ombudsman approached the complaint with anything other than an open mind or that it failed to consider fairly all of the evidence which was available. This proposed ground of challenge is also without merit and does not enjoy reasonable prospects of success.

[35] The application for leave to apply for judicial review is therefore dismissed.