# Press Summary

**16 October 2024**

## In the matter of an application by Noeleen McAleenon for Judicial Review (Appellant)

## [2024] UKSC 31

*On appeal from [2023] NICA 15*

**Justices:** Lord Lloyd-Jones, Lord Briggs, Lord Sales, Lord Stephens, Lady Simler

### Background to the Appeal

This appeal concerns the exercise of discretion by a court which is asked to conduct a judicial review of decision-making by a public regulator, where the regulator alleges that the claimant has an adequate alternative remedy such that judicial review should be refused.

At the material time, Ms McAleenon resided in the area of Lisburn and Castlereagh City Council ("**LCCC**") and in the vicinity of Mullaghglass landfill site ("**the Site**"), which is operated by Alpha Resource Management Ltd ("**Alpha**"). Ms McAleenon claims that from early 2018, she and her family have suffered physical symptoms, such as headaches, nausea and stomach problems, caused by odours and noxious gases emanating from the Site. Ms McAleenon felt forced to remain inside, leading to mental health concerns.

There are two relevant regulatory regimes covering the operation of the Site. First, under the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 ("**the 2011 Act**"), local authorities have regulatory powers and duties in relation to nuisances occurring in their area. By section 70 of that Act (**"section 70"**), a citizen who complains that there is a nuisance emanating from land in the vicinity of their property may bring a private prosecution. Second, the Northern Ireland Environment Agency ("**the NIEA**") regulates the Site pursuant to the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 ("**the 2013 Regulations**"). Ms McAleenon contends that the Northern Ireland Department of Agriculture, Environment and Rural Affairs ("**the Department**") also has regulatory responsibilities under the 2013 Regulations.

Ms McAleenon complained to LCCC, the NIEA and the Department, and requested them to exercise their powers to take action to require Alpha to manage the Site more effectively and eliminate the emissions which affected her property. Unsatisfied with their responses, she commenced judicial review proceedings. She claimed that LCCC had breached its duties under the 2011 Act by failing to conduct proper investigations into the complaints, and that

the NIEA and the Department had not met their responsibilities under the 2013 Regulations in relation to the fixing of emission guidelines and standards for the permit under which the Site operated. Ms McAleenon additionally claimed that these failures had infringed her right to a family and private life secured by Article 8 of the European Convention on Human Rights (**"article 8"**). LCCC, the NIEA and the Department argued that judicial review should be refused because Ms McAleenon had adequate alternative remedies, in the form of a private prosecution under section 70 or a nuisance claim against Alpha.

The High Court held that there was no adequate alternative remedy, but dismissed Ms McAleenon's claim on the merits. The Court of Appeal, without hearing Ms McAleenon's appeal on the merits, dismissed the appeal, holding that there were suitable alternative remedies against Alpha. The Court of Appeal reasoned that these were capable of giving her the relief she required, namely permanent abatement of the nuisance. Furthermore, there were conflicts of evidence between the experts for each side; the Court of Appeal considered that a court ought not to reach a concluded view without the expert evidence being tested in court by cross-examination, which was not appropriate in a judicial review. Insofar as Ms McAleenon wished to complain about the conduct of the public regulators, the Court of Appeal pointed to her right to complain to the Northern Ireland Public Services Ombudsman ("**the Ombudsman**"). Ms McAleenon appealed to the Supreme Court.

## Judgment

The Supreme Court unanimously allows the appeal. It holds that a private prosecution or civil claim in nuisance against Alpha did not constitute suitable alternative remedies to judicial review. Lord Sales and Lord Stephens give the judgment, with which the other members of the Court agree.

## Reasons for the Judgment

Judicial review is concerned with examining whether a public authority has acted lawfully. The court has a supervisory role only. Its task is not typically to resolve disputes of fact but to determine the legal question of whether the public authority had proper grounds for acting as it did on the basis of the information available to it. As such, usually, judicial review claims can and should be determined without the need for procedures which are directed to resolving disputed questions of fact, such as cross-examination of witnesses **[40]-[42].**

The Court of Appeal erred in its assessment of the position in relation to Ms McAleenon's judicial review claim. It wrongly considered that it had to make findings of fact (for instance, whether the odours emanated from the Site) and, thus, that the judicial review claim would need to involve a civil trial with cross-examination of oral evidence from experts on each side. However, the reviewing court's role is to evaluate the quality of the information available to the defendants, in order to assess the lawfulness of their conduct. There was no factual dispute about the information available to the defendants which required resolution. Therefore, the question for the court was whether the defendant regulators had done enough to justify their decision (to not take regulatory action against Alpha), applying the usual public law rationality standard and, in relation to the article 8 claim, a proportionality analysis. The civil trial model is inappropriate in this context **[44]**. The addition of the article 8 claim does not change this. In human rights cases brought against public authorities, the court's role remains essentially one of review **[45]**.

These mistakes affected the Court of Appeal's assessment of the availability of an effective remedy. The Court of Appeal concluded that a civil claim for nuisance or a private prosecution under section 70 would better meet Ms McAleenon's objectives and be fairer, as

the court would be able to weigh up and resolve the disputes between the experts **[48]**. However, while Ms McAleenon's overall objective was that noxious gases be prevented from escaping from the Site, her immediate aim was to compel the defendant regulators to fulfil what she maintained were their public law duties **[49], [55]**. The judicial review procedure was appropriate for this, and the actions against Alpha would not address this issue nor give a remedy in relation to it **[49], [56]**. The fact that she could have brought other proceedings – of a different nature, directed against another party, in which different issues would arise – did not mean that she had a suitable alternative remedy in relation to the claim she wished to bring **[49]**. It is for a claimant to choose which form of claim to bring and against which party. A court has no role to say that a claimant should have sued someone else by a different claim **[55].** Where Parliament has enacted a statutory scheme for appeals in respect of a decision, an appeal will ordinarily be a suitable alternative remedy which ought to be pursued rather than judicial review. That does not apply in this case because there is no statutory right of appeal in relation to a failure by the defendant regulators to carry out their public law duties **[51]**.

Judicial review is likely to involve much less time and cost than a trial in a private prosecution or nuisance claim. There is no good reason to expect Ms McAleenon to take on the additional burden associated with bringing such proceedings **[59].** Furthermore, a private prosecution is not capable of giving Ms McAleenon a remedy as extensive as she was seeking in her judicial review claim. By her article 8 claim, she also sought compensation for past losses; a court proceeding under section 70 would have no power to make such an award **[60].** While a nuisance claim could lead to an order that Alpha pay Ms McAleenon damages for past losses, that is not the same as an order for compensation which she might obtain against the defendant regulators under article 8. The quantum would likely be different and the paying party would be different. It is not appropriate for a public authority to seek to avoid liability by pointing to the possibility that someone else may also be liable to pay damages **[61].**

The Court rejects the submission that judicial review should have been refused because Ms McAleenon could have complained to the Ombudsman. The role of an ombudsman is intended by Parliament to supplement, not replace, control of public authorities by the courts through judicial review. Judicial review has priority as against a complaint to the Ombudsman, so such a complaint does not constitute a suitable alternative remedy **[63]**.

The case is remitted to the Court of Appeal, for it to consider whether Ms McAleenon had good grounds of appeal on the merits of her claim **[66]**.

*References in square brackets are to paragraphs in the judgment.*