

OUT-LAW NEWS

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# Supreme Court clarifies suitable alternative remedies to judicial review

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The UK Supreme Court has made it clear that **judicial review** is generally available to hold regulators to account and ensure they fulfil their functions.

The Supreme Court recently unanimously allowed an appeal, holding that a private prosecution or civil claim in nuisance against the operator of a landfill site did not constitute suitable alternative remedies which excluded the possibility of a judicial review against the Northern Ireland Environment Agency (NIEA) and other public authorities.

David Thorneloe, public policy law expert at Pinsent Masons, said: "This judgment helpfully reaffirms the conventional approach of UK courts permitting the judicial review of regulators, after the Northern Ireland Court of Appeal had suggested that claimants should generally be expected to sue regulated industries instead."

The case concerned an alleged nuisance odour from Mullaghglass landfill site in Northern Ireland. The case, brought forward by Noeleen McAleenon, has raised critical questions about the responsibilities of regulators and the rights of individuals affected by environmental issues.

McAleenon lived near the landfill site which is operated by Alpha Resource Management Ltd. She reported suffering from various physical symptoms and a deterioration in her mental health due to a persistent nuisance odour coming from the landfill. Despite not taking direct legal action against Alpha, she lodged complaints with the Lisburn and Castlereagh City Council (LCCC), the NIEA, and the Department of Agriculture, Environment and Rural Affairs (DAERA).

McAleenon argued that these public authorities failed in their statutory duties to investigate and address the nuisance odour, claiming that this inaction violated her right to a family and private life under Article



Source: Darren Filkins

## Judicial review ‘speedy and simple’, Supreme Court rules in Northern Ireland case

By **Charlie Moloney** | 17 October 2024

**A** judicial review claim against the regulators of a waste disposal site would be more ‘speedy and simple’ than a private prosecution or a civil claim in nuisance, five Supreme Court justices have ruled.

In ***Application by Noeleen McAleenon for Judicial Review*** the UK’s highest court said the Court of Appeal ‘erred in its understanding of what is involved’ in a public law claim when it concluded a woman from Lisburn, Northern Ireland - who wanted to stop toxic emissions from a local landfill site - had a better alternate remedy in the magistrates’ court or the county court.

Noeleen McAleenon claimed that from early 2018, she and her family have been affected by unpleasant odours coming from the site, operated by Alpha Resource Management Ltd. McAleenon commenced judicial review proceedings in 2021 against various public bodies who she argued had failed to act in compliance with her human rights to a private and family life by omitting to take ‘appropriate’ regulatory enforcement action over

The Court of Appeal dismissed her action, ruling it had been 'used as the excuse to commence more complex judicial review proceedings against the regulators rather than proceeding directly against the alleged tortfeasor(s)'.  
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X But the Supreme Court, in a unanimous ruling, remitted the case back to the Court of Appeal so it could be considered on its merits. X

Lord Sales and Lord Stephens said: 'With respect, the Court of Appeal fell into error in its assessment of the position in relation to the judicial review claim. Judicial review is a comparatively speedy and simple process, involving significantly less time and cost than would be likely to be required for a trial in a private prosecution or in a civil claim in nuisance.'

'There is no good reason why Ms McAleenon should be expected to take on the additional burden associated with bringing such proceedings, in place of the comparatively less expensive course of bringing the judicial review claim she chose to bring against the defendant regulators.'