



**Informing Progress - Shaping the Future**

## **FOIL Update - 6th February 2025**



**The Supreme Court's decision in Re McAleenon UKSC 31 is a pivotal judgment that clarifies the principles surrounding judicial review and its relationship with alternative remedies.**

The case arose from Noeleen McAleenon's challenge against regulatory authorities for their alleged failure to address purportedly harmful emissions from the Mullaghglass landfill site in Northern Ireland.

No finding of fact was made in relation to the nature of the alleged emissions, nor were the merits of the case assessed, as the substantive case has yet to be decided upon. However, the judgment reinforced key principles of administrative law.

### **Case Background**

In May 2021, Ms. McAleenon initiated judicial review proceedings against Lisburn & Castlereagh City Council (LCCC), the Northern Ireland Environment Agency (NIEA), and the Department of Agriculture, Environment and Rural Affairs (DAERA). She alleged that these public bodies had failed to:

- Properly investigate complaints about odours and emissions from the landfill site.
- Review and revise the operating permit of Alpha Resource Management Ltd (the site operator) to ensure compliance with environmental standards.

The High Court dismissed her claim, finding that the regulators had taken reasonable steps to investigate the emissions. The Court of Appeal upheld this decision, suggesting that private prosecution or civil claims against Alpha were more suitable remedies. However, the Supreme Court disagreed, allowing her appeal.

## **Key Legal Issues**

### Judicial Review vs. Alternative Remedies

Judicial review is traditionally considered a “**remedy of last resort,**” meaning it is generally unavailable if an adequate alternative remedy exists. However, the Supreme Court clarified that this principle does not apply rigidly. In this case:

- Private prosecutions or civil claims against Alpha could not address the core issue: whether public regulators had fulfilled their statutory duties.
- Judicial review was deemed necessary to hold public authorities accountable for alleged regulatory failures, as alternative remedies focused on private law disputes rather than public law obligations.

### **Public Law Obligations**

The judgment emphasized that regulators have a duty to act within their statutory framework to protect public health and the environment. The Supreme Court questioned the Court of Appeal for failing to assess whether these duties had been lawfully discharged. It held that judicial review is essential for compelling regulators to act in accordance with their legal obligations.

### **Role of Judicial Review**

The Court reiterated that judicial review assesses the lawfulness of decisions made by public authorities rather than resolving factual disputes through cross-examination. It rejected the Court of Appeal’s approach of treating judicial review as unsuitable due to factual complexities.

### **Judgment Highlights**

1. **Appeal Allowed:** The Supreme Court unanimously held that judicial review was appropriate in this case since no statutory right of appeal existed, and alternative remedies could not address the public law issues raised and remitted the case back to the Court of Appeal to hear the merits of the substantive claim
2. **Regulatory Accountability:** The judgment reinforced that public bodies cannot evade scrutiny by pointing to private law alternatives when their regulatory actions are challenged.

3. Error by Lower Courts: The Court found that the Court of Appeal had erred by focusing on factual disputes rather than analysing whether regulators had lawfully discharged their duties through the lens of irrationality.

## **Broader Implications**

### **Impact on Administrative Law**

This decision reaffirms judicial review as a critical mechanism for holding public authorities accountable. It underscores that alternative remedies must be both suitable and adequate to preclude judicial review. The judgment also highlights the judiciary's role in ensuring regulatory compliance with statutory and human rights obligations.

### **Implications for Environmental Regulation**

The case provides clarity on the judicial mechanisms available and the role of the Court in its supervisory jurisdiction of environmental governance,

### **Impact on the U.K. Insurance Industry**

The ruling has significant ramifications for insurers:

- **Increased Exposure for Public Authorities:** Insurers covering public bodies may face higher liabilities if judicial reviews targeting regulatory failures become more common.
- **Environmental Liability Insurance:** Insurers may need to reassess policies covering landfill operators or environmental risks.
- **Claims Complexity:** Insurers may encounter more complex claims arising from regulatory failures, requiring nuanced assessments of liability and coverage terms.

## **Conclusion**

The Supreme Court's decision in *Re McAleenon* underscores the importance of judicial review in addressing systemic regulatory failures. By clarifying that alternative remedies must directly address public law issues to preclude judicial review, the judgment provides clarity on accountability mechanisms for public authorities. This ruling advances administrative law practices across the U.K., ensuring greater clarity for individuals affected by regulatory shortcomings.

This publication is intended to provide general guidance only. It is not intended to constitute a definitive or complete statement of the law on any subject and may not reflect recent legal developments. This publication does not constitute legal or professional advice (such as would be given by a solicitors' firm or barrister in private practice) and is not to be used in providing the same. Whilst efforts have been made to ensure that the information in this publication is accurate, all liability (including liability for negligence) for any loss and or damage howsoever arising from the use of this publication or the guidance contained therein, is excluded to the fullest extent permitted by law.