



11 May 2016

## PRESS SUMMARY

**In the matter of an application by JR55 for Judicial Review (Northern Ireland) [2016] UKSC 22  
*On appeal from [2014] NICA 11***

**JUSTICES:** Lord Neuberger (President), Lord Clarke, Lord Sumption, Lord Carnwath, Lord Toulson

### BACKGROUND TO THE APPEAL

A patient, who was clinically asymptomatic at the time, requested that his GP refer him for a heart screen on 30 May 2008. The GP referred him for an electrocardiogram (ECG) test in July 2008. The test reported negative for ischaemic heart disease, and no further action was taken. The patient made further complaints of chest pain to a locum doctor on 10 December 2008, and so his GP referred him to a chest pain clinic 5 days later. The clinic declined to see him because of his earlier negative test, and sent a report to the practice on 20 December, which was not marked urgent or reviewed. The patient attended the practice again on 6 January 2009 enquiring as to why he had not received an appointment. The GP referred him for another ECG, but the patient died of a myocardial infarction later that day.

The patient's widow complained to the Northern Ireland Commissioner for Complaints ("the Complaints Commissioner"). Following an investigation, the Commissioner held that the practice had failed to provide a reasonable level of care and treatment and was guilty of maladministration. He recommended that the GP make a payment of £10,000 to the widow. The GP refused to make the payment, and so the Commissioner indicated that he would lay a special report about the matter before the Northern Ireland Assembly. The Commissioner's recommendation was upheld at first instance but quashed by a majority of the Court of Appeal. The Commissioner appealed to the Supreme Court.

### JUDGMENT

The Supreme Court unanimously dismisses the appeal by the Complaints Commissioner, holding that the Commissioner had (i) no power to recommend the payment of a money sum against an individual who was not a public authority in an investigation under article 8 of the Commissioner for Complaints (Northern Ireland) Order 1996 and (ii) no power to make a special report drawing the attention of the legislature to such a person's failure to comply with a recommendation. Lord Sumption gives the judgment, with which the other Justices agree.

### REASONS FOR THE JUDGMENT

The Complaints Commissioner's power to investigate the complaint were derived from article 8 of the Commissioner for Complaints (Northern Ireland) Order 1996, which deals with complaints against individuals, like the GP in this case, providing professional services under contracts or other consensual arrangements with the NHS [11].

The short answer to this appeal is that the Complaints Commissioner may not, under article 9 of the 1996 Order, carry out any investigations in respect of which the complainant has a remedy by way of proceedings in a court of law, unless it is not reasonable to expect the complainant to resort to law. The widow had such a remedy but the Commissioner proceeded with the investigation because she

said that she only wished to find out what had gone wrong (and not to obtain money). It was not open to the Commissioner, having proceeded on that basis, to recommend a payment to her [17].

More generally, the Complaints Commissioner does not have the power to recommend monetary redress against individuals in investigations under article 8. This is because his recommendations are not binding as a matter of private law, and a private individual such as a GP has no relevant duties in public law. Furthermore, a private individual has no means of effectively challenging the Commissioner's findings on the merits of the case before a court [20, 24].

Nor does the Complaints Commissioner have a power to make a special report in default of payment. Whilst the Parliamentary Commissioner and Assembly Ombudsman for Northern Ireland have such a power as against departments or public bodies that have been ordered to provide financial redress, the Complaints Commissioner does not. This is because the Commissioner's relationship with the legislature is different to that of other statutory ombudsmen in the United Kingdom. The Commissioner is not an officer of the legislature, unlike the Assembly Ombudsman for Northern Ireland, but receives complaints from and reports to the complainant and individuals or bodies whose conduct is at issue. He has no powers of compulsion, and limited powers to use information discovered during investigations for the purposes of enforcement [20-21, 26-28]. Article 19 of the 1996 Order is concerned with the presentation of annual reports before the Assembly, and not reports on individual cases such as this [29].

Lord Sumption further comments on the substance of the Commissioner's recommendation that the GP pay £10,000 to the widow. A monetary recommendation must be rational and capable of explanation. The figure in the Commissioner's report appears to have been "*plucked out of the air*": it does not offer a coherent explanation or calculation, or identify the precise failings in respect of which it was made [30].

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

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://supremecourt.uk/decided-cases/index.html>