



2006 -2007

Parading in a peaceful Northern Ireland

Forward View and Review of Procedures...



parades
commission









Committed to
encouraging
dialogue &
understanding
on the issue of
parading

Forward thinking on Northern Ireland parades

This past year has seen a marked reduction in the violence and disorder which has been associated with parading in Northern Ireland over the last number of years.



This reduction was welcome and was widely acknowledged. In fact, 2006 has already come to be regarded as the most peaceful parading season in a long time.

This did not happen by accident or by chance. Nor was it the result of a short-term turn around in people's perceptions of one another. Rather it happened because sufficient numbers of people in key areas, across their community and the political divide, worked tirelessly to make sure it happened. These people, working from the ground up, shared a determination that their own communities would not be subjected to the kinds of damaging and dangerous scenes witnessed in recent years. They were willing to become involved in a process initiated by the Parades Commission and we have all seen the results of their efforts.

This has been a year of cautious optimism on the parading issue and it has also been a year marked by an enormous amount of work undertaken by the Commission. This has culminated in the conclusion of the Review of Procedures, which is presented in this document, alongside our 'Forward View' of the way ahead for parade-related issues in Northern Ireland.

We announced in January 2006, following our very first meeting, that as a new Commission we wanted to review our procedures through a process of public consultation. This process has been

extremely valuable and I would like to thank all those who have contributed to this review. I, and my fellow Commissioners have welcomed the open and constructive dialogue and the detailed consideration that people have given this subject.

When we considered the presentation of the outcome of our considerations and the associated recommendations, the Commission felt that this would be an opportunity to reflect upon the experiences of the past number of months and set out the challenges facing all parties with an interest in the issue of parades. This 'Forward View' reflects the Commission's firm commitment to dialogue between local people as the only way to reach a lasting solution to the problems surrounding parades. I would ask those reading it to reflect carefully on the challenges facing all of us and to accept the responsibility we have to wider civic society in Northern Ireland to work to resolve these issues.

As we emerge from a largely peaceful marching season, there is no sense of complacency within the Commission. We know that there are many outstanding difficulties where contentious parades and protests have yet to be fully addressed. Our commitment is that we will continue our efforts to initiate genuine dialogue and engagement so that disputed parades become a matter of history.

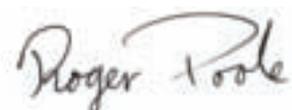
This post-parading season is an appropriate time to take stock, to review this past season and to plan our future work. I am pleased therefore, to present the recommendations following the Review of Procedures and the Parades Commission's Forward View document.

I believe the recommendations emanating from the Review, when taken together, will lead to an open and clearer understanding of how the Commission operates and will address the key issues that were raised during the review process.

I realise that not everyone will agree with all aspects of our recommendations but I hope that they will recognise that they represent a fair balance of the diverse range of views submitted to us during the review process.

The Commission cannot of course make the final decision on which recommendations will be adopted, as some will require the Secretary of State to make legislative amendment. The Commission however, will undertake to implement those recommendations which are currently within its statutory remit as soon as is practically possible.

ROGER POOLE





INTRODUCTION

Since its appointment, this Commission has worked hard to demonstrate a fresh approach. It has sought to bring new energy to its task and, in doing so, make clear to its audiences that it was going to do things differently.

As part of this effort to bring new momentum to solving parading issues, the Commission has adopted a new communications strategy. This Commission has sought to explain more fully its processes and to introduce a new level of transparency. The Commission plans to develop this policy of greater openness and transparency through its review of its statutory documents which has now come to a conclusion.

The Commission welcomes the fact that there has been relative calm and peace during the parading season to date. In particular, the absence of significant public disorder around specific high profile parades is due, in large part, to initiatives taken by local communities and those with direct involvement and influence in resolving parading disputes. The Commission is also appreciative of the sensitive and responsive policing of many of these parades and the efforts of those marshalling both parades and related protests.

This has strengthened the Commission's view that there is only one way to resolve these issues and that is to bring about a process between all concerned so that those who are faced with concerns, fears, frustrations and uncertainties can start to reach agreements, accommodations, and understandings with one another. The Commission is aware that the relative calm of this year does not mean that the tensions surrounding sensitive parades has gone away and, because of this, the Commission is firmly committed to mediation and dialogue at a local level as the best way to address these issues.

CHALLENGES FOR KEY STAKEHOLDERS

The Commission believes that the key issue for all those wishing to organise and participate in parades or related protests is to work together to bring about a situation where parading and protesting are normal activities which do not raise or exacerbate community tensions. The Commission believes that this is a challenge for us and all those with an interest in parading in the weeks and months that lie ahead.

PARADES COMMISSION

The Commission is aware that some people believe that the Commission is part of the parading problem rather than the solution. Indeed some may believe that the Commission is the only problem. This is either naïve or disingenuous. Any observer, let alone a person living in the areas where difficulties lie, can appreciate that there are conflicting perceptions between those involved in parading and protesting. Nevertheless, the Commission looks forward to a time when there is no need for a statutory body to place restrictions on the rights of others and where parades have ceased to be a focus of community tensions.

However, until that situation arises, the Commission has a statutory obligation to decide whether restrictions need to be placed on a parade (and/or a protest) in the interest of other citizens and society as a whole. It must do this where these issues have not been resolved by local accommodation, that is in those situations where a decision has not been reached locally on the best outcome to parades or protests.

Despite the perception created at times, the reality is that thousands of parades take place annually without restrictions of any kind. They take place exactly as the organisers have notified. In a few cases (less than 7%) the Commission has to look more closely as these parades are seen as sensitive or problematic in some way. This may be because of their history or where they take place or simply because of timings or numbers involved - the same criteria that would be considered in any democratic society. Even in these cases, many, after consideration are not restricted because the Commission does not feel any restriction is warranted on the proper exercise of the rights of those involved.



However, the Commission making decisions is not going to make things better in the long term. The Commission maintains that the only way to achieve long-term solutions to these disputes is for all parties to work to make a genuine attempt to 'listen to' and 'address' the concerns of those with whom they differ. The Commission knows that this is not an easy step and will take leadership and courage to enter into what can be a long and frustrating, but ultimately worthwhile process.

The Commission will continue to pursue and extend outreach and education to help create an environment where there is a greater understanding of issues around parades and a greater willingness to enter into dialogue as the best means of addressing these issues. Over the past 10 months the Commission has been proactive in meeting a range of interests and is committed to continuing this outreach with a greater range of people across Northern Ireland. In addition, the Commission will seek to extend the availability of its education pack as a means of raising awareness among a wider audience.



LOYAL ORDERS AND ORGANISATIONS WHO PARADE

The tradition of parading is of huge significance to those who wish to demonstrate their cultural and religious beliefs through the medium of public parades and gatherings. This is particularly true for the group of organisations known as the Loyal Orders (a term used to describe collectively The Apprentice Boys of Derry, The Grand Orange Lodge of Ireland, The Royal Black Preceptory and the Independent Orange Order). However, there have been tensions over the issue of Loyal Order parades in sensitive areas for many years. This has led to situations where people have become fixed in their positions, so making the likelihood of local resolution to those issues more problematic.

The Commission is aware that there are those within the Loyal Orders who in recent years have taken steps to try to resolve parading disputes and who have worked hard at promoting the aims and objectives of their organisations. This should be encouraged as it is only through engaging with wider society that people can develop a greater understanding of how they are perceived and to inform others' perceptions.

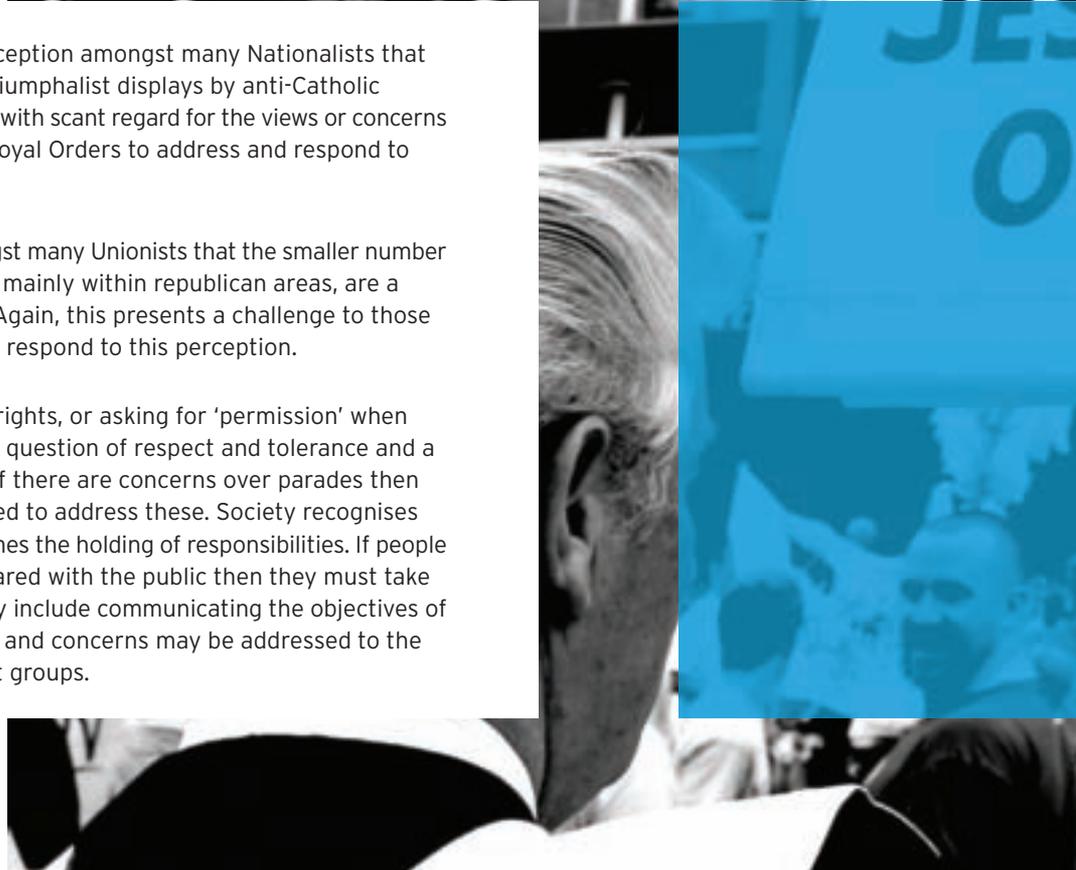
The Commission acknowledges that many in the Protestant community see parades as being intrinsically a demonstration of their religion, culture and sense of community. This is not taken lightly and the enjoyment of these rights is rigorously upheld by the Commission. However, these rights - freedom of assembly, freedom of expression, etc, are not absolute and should not be presented as such. In every democracy these rights are subject to proportionate limitation where it is necessary to do so. Sometimes the Commission has to limit the exercise of these rights, always legitimately, but often in situations where the organiser would be more likely to enjoy the rights unconstrained if efforts had been made to meet and discuss with others. It is no more than good neighbourliness to explain why one wants to do something; what it means to them and to express their interest in dealing with the genuine concerns of others.



The reality is that there is still a perception amongst many Nationalists that some Loyal Order parades are simply triumphalist displays by anti-Catholic organisations who conduct their parades with scant regard for the views or concerns of others. There is a challenge for the Loyal Orders to address and respond to this perception.

Similarly, there is a perception amongst many Unionists that the smaller number of republican parades, which take place mainly within republican areas, are a glorification of terrorist organisations. Again, this presents a challenge to those organising such parades to address and respond to this perception.

There is no question of negotiating rights, or asking for 'permission' when discussing parades. There is, however, a question of respect and tolerance and a willingness to promote understanding. If there are concerns over parades then there is a responsibility on those involved to address these. Society recognises that along with the practice of rights comes the holding of responsibilities. If people want to parade or protest in a space shared with the public then they must take these responsibilities seriously. This may include communicating the objectives of parades, and ways in which perceptions and concerns may be addressed to the whole community, residents and protest groups.





The Commission is conscious that residents and protest groups also need to address perceptions as to their motivations. Many in the Unionist community and in the Loyal Orders see some protests as part of an orchestrated political agenda aimed at suppressing aspects of Protestant/Unionist culture which denies freedom to walk main arterial routes and aims to create 'no go' areas as opposed to working towards creating 'shared space'. These are perceptions which groups need to address.

It is clear to the Commission, through numerous open and genuine engagements which the Commission has had with Protestant/Unionist representatives, that there is a perception that a threat of violence, whether overt or implicit, emanates from some groups and individuals who stand in opposition to parades which that community holds dear. There is an onus on those who protest, just as there is on those who parade, to demonstrate their adherence to the law and commitment to peaceful assembly and expression and, furthermore, to give voice to those openly and in public. This can serve not only to allay fears but also to reinforce a fundamental respect for human rights which is so integral to the resolution of this conflict.

Residents and protest groups should seek to articulate their concerns about the impact of parades on the local community to organisers and the wider public. They must also show tolerance and respect for other views and cultures in a desire to promote a shared society and accept that there is no right of veto on a parade.

POLITICAL PARTIES

Parading is a key issue for all political parties in Northern Ireland. Tensions surrounding parades have the potential to undermine political progress and equally progress on parading issues can be impacted by developments in the wider political situation. The Commission is often involved in discussions with politicians but too frequently this tends to be to focus on a specific parade or protest. There is a need for more strategic and long term positions to be taken on parading and protesting in Northern Ireland - and there is a need to ensure that such positions uphold human rights and promote a shared future in which we can all take part.

Parties need to recognize that the Commission is the lawfully constituted body, established by Parliament, to deal with parading and the issues that surround it. As such, there is a responsibility on political parties to demonstrate leadership and to encourage all interests to resolve parading disputes in ways which promote tolerance and understanding.

BANDS

The Commission recognizes that bands and music, both Loyalist and Republican, are an inextricable part of many parades and that a great number of people derive pleasure from the entertainment they provide. Members of bands show a huge commitment to their interest in terms of time given to band practice and fund raising for uniforms, instruments and charities as well as the effort of organizing and taking part in parades. Band parades and competitions are a social phenomenon in which many people, particularly young people, take part during the year.

However, it has been clear to the Commission that many band parades are viewed entirely differently by the nationalist and indeed the wider community, and on many occasions the disruption which accompanies and follows band parades is a major issue for the bands and their umbrella organisations.



Whilst all bands are not members of established band associations, the Commission is aware of organizations which represent the interests of their member bands and which seek to raise standards in band parades. The Commission welcomes any effort to improve the organization of, and behaviour during, band parades but the Commission believes that both band organizations and individual bands could take steps to reduce the negative perceptions of bands and band parades.

Above all, the Commission wants to see a situation where bands seek to conduct themselves on the basis of good behaviour and that all bands adhere to the principles of best practice.

CONCLUSION

If Northern Ireland is to achieve its vision of a Shared Future where all cultures are respected and tolerated, then we must all play our role in assisting parade organisers and participants, residents groups and local communities and other interests, to achieve a lasting solution to parading disputes.

As was said by the first Commission, several years ago, the unanimous judicial opinion in UK and European law, is '**...that there is a right to parade, as there is a right to protest, but these rights are not absolute**'. Like that Commission, we also strongly believe that it will be the acceptance of that position in law which will allow both sides to understand our core principle – that only dialogue will lead to the resolution of contentious parades.

We continue to hold to this principle and will not be moved from it. This is why we are putting greater effort than ever before in promoting and facilitating dialogue. Nevertheless, we again recognise, as did the first Parades Commission many years ago, that:

'Until that position is reached, both sides will have to accept that under the Act, the Parades Commission will have to continue to rule on parades (and protests) where there is no local accommodation. Our role at that point – working not on a whim or a notion – is to apply the law; to apply the guidelines laid down; and to balance the competing rights of the parties in reaching a decision.'

If anyone thinks we are wrong then they can ask us to review our decision and then if still dissatisfied, they can have recourse to the courts. But this is not the way to bring about lasting resolution to conflicts around parades. It is not the way to promote understanding, tolerance and respect for different cultures, religions and political aspirations. It is not the way to heal a society still divided by misunderstanding and mistrust.

The challenge to us all is to talk – to talk through our concerns, our hopes, our fears, our passions, our beliefs, our frustrations – to talk through those things which keep us apart with the very people from whom they keep us apart.

We are not suggesting that all should become the same but rather that our very diversity is embraced and cherished as adding to a richer more vibrant palette; a palette that makes space for yet more cultures, rather than attempting to exclude or segregate those who have lived here for generations. It is a challenge we are willing to take.



Northern Ireland Parades Commission Review of Procedures

The newly appointed Parades Commission, at its first meeting held on 4 January 2006, decided to review the procedures under which it operates. The Commission said at that time that this review was part of a 'new approach' aimed at making the work of the Commission more open to all of the community in Northern Ireland.

The Commission did not want to limit the scope of the review and decided that it should cover all of the Commission's statutory documents (Guidelines, Procedural Rules and Code of Conduct) as this would enable respondents to comment on any aspect of its current procedures.

The Commission was mindful of the need to be as inclusive as possible in carrying out their review and to be as open as practicable to facilitate the expression of those views. The Commission sought views through a variety of sources:

- Writing to a wide range of key organisations, councils and political parties inviting their views and views of their associates through written submissions or through meetings with the Commission
- Holding eight public meetings at venues throughout Northern Ireland where people could give verbal evidence or submit written comments
- Advertising the review process through local media sources, newspapers advertisements, press releases, radio and television interviews.
- Posting details of the review on the Commission's website www.paradescommission.org

The Commission allowed a period of 15 weeks, 31 January - 19 May 2006, for submissions to the review. The Commission also sought to accommodate responses which were submitted after the 19 May 2006 deadline.

1. OPINIONS ON THE PERIOD OF NOTIFICATION REQUIRED UNDER THE ACT

VIEWS HEARD

1.1 The Commission received contradictory views regarding desired changes to the notification period. Some respondents took the view that the current 28 days notice was insufficient and should be increased to facilitate greater sharing and questioning of the information, evidence and advice submitted to the Commission. In addition, some argued that a longer period would allow additional time for parties involved in parading disputes to reach an accommodation. There was a contrary argument for a shorter notification period as the current system was seen by some as placing an unnecessary burden on organisers of processions, particularly those whose processions were not considered contentious.

THE COMMISSION'S POSITION

1.2 The Commission is aware that the current 28 day notification period is set out in the 1998 Act and, as such, would need an amendment to the primary legislation. Also the operation of the 28 day period, allied to the Commission's procedures on late notification, does not cause undue problems for the vast majority of parade organisers.

Most participants to parading disputes already know the likely timing of the event in which they have an interest. The extension of the notification period may not, in practice, lengthen the time available for accommodation.

1.3 The Commission does, however, wish to address the issue of presenting greater opportunity to those parties involved in parading disputes to share and contest information, evidence and advice which it receives. The Commission maintains that the best way to do this is to facilitate face-to-face communications between the interested parties. The present public embargo on members of the Loyal Orders from communicating with the Parades Commission creates an obvious difficulty. However, the Commission welcomes the increasing interaction with members of the Loyal Orders.

1.4 The Commission will therefore seek to engage directly with those parade organisers whose parades have been considered

contentious. The Commission, in promoting greater openness and transparency, will give each an outline of the specific concerns expressed to the Commission as they relate to the parade in question. The Commission will facilitate the organiser in supplementing, amending or challenging this through discussions with it or its Authorised Officers or, more importantly, parties to the conflict.

1.5 The current system does not preclude the notification of intention to organise a parade before the 28 day period. The Commission believes that there may be merit in encouraging organisers of parades likely to be contentious to submit the notification considerably in advance of 28 days to facilitate greater discussion and transparency in consideration of the parade. This would not require any amendment to the current legislation.

RECOMMENDATION

1.6 The Commission believes that direct engagement with the Commission will allow a better opportunity to discuss issues arising from a contentious parade within the current period. However, the Commission also considers that there is merit in encouraging a longer, voluntary, period of notification which may allow an opportunity for accommodation and better consideration of such parades

2. OPINIONS ON EXEMPTIONS TO THE REQUIREMENT TO NOTIFY AN INTENTION TO ORGANISE A PUBLIC PROCESSION

VIEWS HEARD

2.1 The Commission heard extensive arguments regarding the requirement for all organisers of public processions to be subject to what they see as an onerous task of notifying their intention to hold a procession. They questioned if it was appropriate to ask organisers of wholly non-contentious events, such as vintage car rallies, to be required to submit the same amount of notice and detail as those parades and protests which raise issues of public order. They expressed a strongly held view that the Secretary of State should increase the number of organisations which are exempt from notification. The Commission also heard that the present exemptions should not be extended and that the present system, whilst it places an onus on a parade organiser, is necessary.

THE COMMISSION'S POSITION

2.2 The Commission understands the frustrations expressed to them during the course of this review and takes note in particular of the considerable and impressive lobbying campaign conducted with professionalism by members of vintage vehicle associations. The Commission equally understands the difficulties that may be created in terms of traffic control and other policing matters if certain non contentious events do not have to provide any form of notification. Current legislation does allow for further exemptions to be made and some would argue that a precedent has already been set by the exemption granted to the Salvation Army.

2.3 In the interests of helping to normalise Northern Ireland society, however, the Commission would not object to consideration being given to further exemptions for those events which are demonstrably beyond the intention of the governing Act.

RECOMMENDATION

2.4 The Commission recommends that the Secretary of State should give consideration to allowing certain vintage vehicle associations exemption from the main provisions of the 1998 Act.

2.5 The Commission recommends that, where exemptions are considered, that consultation with the PSNI takes place to ensure that key issues such as the nature of events to be exempt, the implications for traffic arrangements and public safety, etc are properly addressed in considering any other form of notification which may be necessary.

3. OPINIONS ON THE FORM 11/1

VIEWS HEARD

3.1 Respondents indicated that the current form was not user friendly. Organisers are required to fill in an 8-page form to notify a procession or 4 pages to notify a protest. Commonly held views were that much of the information sought was irrelevant to the event being organised. There was an argument that the form should be greatly simplified and that organisers should fill in only a 'basic' form in the majority of cases. Only those notifications which required further consideration by the Commission should be required to provide much

of the information now contained in the Form 11/1 and then as supplementary information.

3.2 Respondents also expressed concerns at having to submit completed forms to a local police station and to a police officer of the rank of sergeant or above. It was felt that this was often very inconvenient. If an officer of sergeant or above rank was not available at the time of presentation, then the organiser would have to return at a later date. Some indicated that having to visit a PSNI station could also be a very tense or intimidating experience.

THE COMMISSION'S POSITION

3.3 The Commission recognises that information contained on the Form 11/1 (and Form 11/3) is not wholly for its own use but also serves to meet the requirements of the Public Processions (Northern Ireland) Act 1998. The Commission is however, of the opinion that some of the information now sought in the form is of little or no value and little or no use is made of much of the information - e.g. names of marshals.

3.4 In addition, the Commission has considered the question of enabling the electronic submission of such forms. There is much merit in considering this facility but the Commission accepts that this will need to be considered further with the PSNI and the NIO.

3.5 The Commission believes that if the relevant forms are simplified, this may obviate the need to go to a dual system, as some have suggested, of basic and supplementary forms. Such a system would not be easy to work administratively and could cause animosity amongst some who are revisited for extra detail and who feel that the increased burden they are 'suffering' is as result of the actions of others.

RECOMMENDATION

3.6 The Commission recommends that it, together with the PSNI and NIO, reviews Forms 11/1 and 11/3 to ensure that their burden on the public is minimal and only information which is required is actually sought. This review could also explore the legal position of allowing completed forms to be submitted electronically to the PSNI.

3.7 The Commission suggests further that when the format of the forms has been agreed

that they should be submitted to the Plain English Campaign for Crystal Mark accreditation to ensure that they are more user friendly.

4. OPINIONS ON THE TAKING OF EVIDENCE

VIEWS HEARD

4.1 The key issues raised were that evidence submitted to the Commission should be available to all parties concerned in the conflict. There was the core 'fair trial' argument that there should be an opportunity to exercise challenge in an adversarial setting and to rebut allegations prior to and during the deliberation process. Whilst some respondents felt that all evidence should be heard in public, others urged that the current confidential system should be retained to prevent intimidation or feelings of intimidation through being engaged in open discourse. Others suggested that the evidence gathering and associated process of dialogue and information sharing should take place over much longer periods of deliberation rather than in the more frantic 'hot house' setting of the few weeks prior to a parade taking place.

4.2 Respondents also stressed the importance of all Commissioners understanding the key issues of individual disputes and being familiar with all parading/protest localities on which they are adjudicating. It was also suggested that the PSNI should not include a community impact assessment as part of their evidence to the Commission but that this should be provided by a third party suitably competent to do so, such as the Community Relations Council.

THE COMMISSION'S POSITION

4.3 Whilst the Commission wishes to operate in a more transparent and open manner and has earlier in this report suggested ways in which it could seek to share information with those parties involved in parading disputes it does not feel that it would be appropriate to take evidence in public. There are real and genuine concerns that some people may be open to threat or violence if they were identified as having shared particular views or information with the Commission. Any system which would prevent these individuals coming forward would severely limit the information before the Commission and affect its decision making process.

4.4 A key factor in addressing the issue of transparency is the unwillingness of some parties to engage with the Commission. While this issue is sometimes seen to impact specifically on the Loyal Orders it can also include others within the community who do not agree with the existence or approach of the Commission, or those who are simply uncomfortable with the process of engaging with the Commission.

4.5 The Commission already operates a system whereby anyone who wishes to submit evidence, information or advice to the Commission can do so in writing or by telephone or through face-to-face meetings with the Commission, its staff or its Authorised Officers. When the Commission is hearing evidence prior to adjudicating on a parade/protest, it articulates and will continue to articulate 'the gist' of the evidence laid before it but without breaching confidentiality. The Commission will continue to facilitate this process.

4.6 The Commission agrees that ideally people should be involved in a year-round process of sharing information in order to resolve or prevent parading disputes but the reality is that many people, due to time constraints etc, only begin to address the issues in the weeks leading up to the parade. The Commission recognises that it has a role to play in ensuring that the momentum which builds up prior to the main parading season is not allowed to dissipate after the parades have taken place.

4.7 The Commission will continue its series of meetings with parade disputants and will continue to visit parade/protest locations. It will encourage people to look at ways to resolve conflicts and increase understanding by funding projects in line with its education programme/strategy.

RECOMMENDATION

4.8 The Commission recommends that disputants who wish to hear and challenge evidence directly enter into a process of dialogue.

4.9 The Commission recommends that it makes further strenuous effort to facilitate the establishment of dialogue processes as a means of increasing the transparency of evidence gathering and promoting the resolution of disputes

4.10 The Commission recommends that where dialogue does not take place, that it continues to take steps, as it does at present, to ensure parties to any dispute have the gist of the evidence laid before the Commission. To enable the Commission to deliver fully on this, parties should give notification of their intentions at the earliest possible dates as we have indicated at point 1.6.

5. OPINIONS ON THE DECISION MAKING PROCESS AND DETERMINATIONS

VIEWS HEARD

5.1 There was a widely held view that the decision-making process should be based on an open, accessible and transparent process. Many felt that the threat of public disorder should not sway any decision-making inordinately and have a greater importance than other criteria which the Commission is bound to consider. The Commission heard the view that the threat of public disorder could be used as a trump card which could persuade the Commission to impose restrictions on parades and is effectively a veto on parades.

The decision-making process should comply with international human rights. In the present system, the Commission operates with a bias towards those who wish to stop parades.

5.2 Respondents felt that there was a need for the Commission to take steps to make its determinations easier for people to understand. They found the language used to be cumbersome and legalistic while they sought simplicity and clarity. There should be greater emphasis in the written Determination to spell out clearly the reasons for the decision arrived at, with reference to the basis for that decision, by reference to evidence, information and advice received.

5.3 Some felt that Determinations should be issued earlier than the current system (approximately 5 working days before the parade) to allow time for the Commission to explain their decision and to allow aggrieved parties more time to prepare an appeal where appropriate.

5.4 The Commission should ensure that all conditions or restrictions that its wishes to impose are included in the 'bold text' section of its determination to ensure that the PSNI are legally compelled to uphold all aspects of

a determination and not just the public order offences.

5.5 There was a concern that breaches of a determination too often appear to occur without consequences for the offenders. The Commission needs to clearly define their role and perhaps expand its powers to ensure that its determinations are upheld or those who breach them are sanctioned in some way. The Commission, when making its considerations, should consider imposing a sterile zone between parade participants and protesters to prevent face-to-face confrontations and reduce the likelihood of public disorder. The Commission could in its determinations outline the size, location and duration of the zone.

THE COMMISSION'S POSITION

5.6 The Commission's decision making is taken against a legislative background which includes its own governing act and the Human Rights Act. It is mindful of its obligation to exercise its powers legitimately and proportionately in a way which seeks to balance rights in conflict.

5.7 The Commission believes that the current system allows sufficient time between the publication of a Determination and the date of a parade for a proper review mechanism to take place, as well as allowing the PSNI to make appropriate plans for the management of the parade.

5.8 The Commission holds that it must rightly consider the public order implications of any parade or protest but states that these do not wholly determine the outcome of its deliberations. Referencing the Commission's past deliberations clearly indicates that the Commission has on many occasions recognised the potential for public disorder but did not feel, in all the circumstances, that a restriction of rights was justified. The Commission has noted the request that it considers the creation of sterile zones to minimise the likelihood of public order and will undertake to seek advice on the individual merits of this suggestion.

5.9 The Commission recognises that legal terminology is used in its determination. This is inevitable when one is producing a legally binding document but the Commission is mindful that the document itself can therefore go beyond the easy reach of general understanding. The balance and clarity of

Commission determinations has been the subject of approval from the judiciary in the course of consideration of legal proceedings.

5.10 The Commission has found that most recipients of its Determinations want to know what has been considered and what the outcome of that consideration is. The Commission has taken steps to address this by providing a clear outline of the main points in the background section of its Determinations, while restrictions are now clearly set out in bold type and bullet points at the back of the Determination.

5.11 The Commission is aware of the continuing perception that many hold that breaches of its Determinations go 'unpunished'. Whilst the Commission seeks to improve compliance through its own endeavours and engagements with parade and protest organisers and participants, it recognises that more substantial action is at times required to prevent further breaches.

5.12 Whilst the Commission does not have a role or seek to have a role in the prosecution decisions or policies of these organisations, it is keen to confirm that none of its current practises or procedures inhibits the work of the PSNI and the Public Prosecution Service Northern Ireland (PPSNI) in seeking to bring offenders before the courts or take diversionary measures, where these are appropriate.

5.13 Regardless of whether or not prosecutions follow from breaches of its Code of Conduct, the Commission pays particular attention to any such negative behaviours or incidents and considers them in the context of future parading and the necessity for the imposition of restrictions.

RECOMMENDATION

5.14 The Commission recommends that it seeks to add greater clarity and accessibility to its determinations by reviewing its use of language and by the inclusion of more explanatory material.

5.15 The Commission recommends that it takes steps to communicate more stridently the fact that public order issues or a PSNI viewpoint does not always outweigh or overshadow all other considerations .

5.16 The Commission recommends that it

initiates an engagement with the PSNI and the PPSNI to determine whether there are specific issues emanating from the Commission which have the potential to impact on the course of a prosecution, following a breach of a determination.

6. OPINIONS ON THE REVIEW PROCESS

VIEWS HEARD

6.1 Respondents indicated that the Commission needed to clarify the procedures for requesting a review and how a review is conducted. What is meant by 'fresh information?' How do people assess what constitutes fresh evidence if they do not know what evidence has been considered by the Commission. Why is the PSNI the only organisation given the right of appeal by an independent party i.e. the Secretary of State and others can only obtain an independent view of a Commission decision by restoring to the expense of a judicial appeal?

6.2 The current system does not allow sufficient time for a review to be heard by the Commission and then by a High Court Judge and the limited time allowed could mean that the proposed date of a parade could have passed before an appeal is heard. Only those who are eligible for legal aid have access to the Court system.

THE COMMISSION'S POSITION

6.3 The Commission accepts the point that it should provide greater clarity on the procedure for requesting a review of a decision or determination and the steps that ensue when a request for a review is received.

6.4 The Commission's view is that the current time frame for issuing Determinations strikes a balance of facilitating the Commission's receipt of the necessary evidence and information which enables it to make an informed view on any notified parade while also allowing sufficient time for a review of any subsequent deliberation and time for this decision to be challenged before judicial authority, where deemed appropriate.

6.5 Whilst respondents have highlighted the incongruity of the Commission being its own review body the system of judicial review provides for an independent and appropriate remedy which has been utilised on a number of occasions.

RECOMMENDATION

6.6 The Commission recommends that the Procedural Rules are amended to clarify the formal process for requesting a review of a Commission decision.

7. OPINIONS ON THE PARADES COMMISSION'S GUIDELINES

VIEWS HEARD

7.1 Respondents expressed the view that the Guidelines document required amendment to clarify both the role of the Commission and the legislation under which it operates. It was suggested that the section of the document referring to the European Convention on Human Rights does not adequately identify either the key human rights engaged or the specific groups whose rights may be the subject of interference. The Commission should include in this document the definition of a 'public procession' and 'protest meeting' as they are defined in the public procession legislation. There should also be an acknowledgement within the Guidelines of the requirement for all public authorities to act compatibly with the European Convention.

THE COMMISSION'S POSITION

7.2 The Commission considers that there is merit in the views expressed in relation to amendment of its Guidelines document.

RECOMMENDATION

7.3 The Commission recommends that it now amends its Guidelines to clarify its role and the legislation under which it operates.

8. OPINIONS ON THE PARADES COMMISSION'S PROCEDURAL RULES

VIEWS HEARD

8.1 The main issues raised were in relation to the need for greater transparency relating to the evidence submitted to the Commission and facilitating opportunities for protagonists to challenge the validity of that evidence. Respondents again raised the issue of a 'right of rebuttal' to any allegations prior to, during and subsequent to any Commission proceedings. Concern was expressed that the Commission had been negligent or gullible in accepting representations and allegations presented to it without substantively

investigating or corroborating the validity of that evidence.

8.2 A view was expressed that the Commission's first duty was to form an opinion as to whether a notified parade was likely to be peaceful or not and, consequent upon this opinion, then consider whether or not there was sufficient justification for restriction.

8.3 Respondents also felt that the Public Processions (Amendment) (Northern Ireland) Order 2005 was flawed in its conception. They expressed the view that the order was littered with generalities and that the definitions given in section 17 (2) (a) of the Act were too 'woolly' to be meaningful. The argument was put that the legislation failed to define the nature of a person taking part in, or supporting a protest meeting and, as such, was not equivalent to the legislation which applied to parade organisers, supporters and parade participants. In addition respondents indicated that article 11 of the European Convention states that the 'right to participate, or refrain from participation, in an assembly is a right that is held and exercised by individuals'. They felt that it was therefore, improper to hold organisers liable for the genuinely unforeseen action of others.

8.4 Respondents also indicated that there was still a degree of uncertainty as to who makes the critical assessment as to whether a parade or protest is considered contentious. They felt that this could be clarified by amending the current document.

THE COMMISSION'S POSITION

8.5 The Commission has already stated its position to the issue of transparency and validity of evidence under the Taking of Evidence section of this report. The Commission, however, does accept that clarity needs to be given to the process of classification of 'contentiousness'.

RECOMMENDATION

8.6 The Commission recommends that its Procedural Rules are amended to clarify the process of determining whether a parade is considered contentious.

8.7 The Commission recommends that it takes the necessary steps, through its education programme, to ensure that key interests are fully informed of the process by which parades

appear to become contentious and the implications of that classification.

9. OPINIONS ON THE PARADES COMMISSION'S CODE OF CONDUCT

VIEWS HEARD

9.1 The two main concerns raised were the perceived lack of consequences for breaches of the Code of Conduct and how best to deal with the issue of provocative/illegal flags, uniforms and emblems.

9.2 The view was expressed that the Commission has not enforced compliance with the Code as rigorously as it might have done. People recognised that the Commission's authority was limited to imposing tighter restrictions on a parade or protest in the light of previous behaviour but felt that the Commission had been reluctant to exercise this power sufficiently. Respondents felt that there was a general lack of will by the statutory agencies to tackle these issues and to pursue offenders through the courts. There was a suggestion that the Commission should set out explicitly various offences under the Public Processions legislation and the possible penalties and relevant defences.

9.3 Concern was expressed over how some groups, particularly those from a paramilitary background, choose to commemorate the recent conflict. This concern was tied up with the unresolved question of how one could distinguish between legitimate and non-legitimate flags.

9.4 It was suggested that requiring parade and protest organisers to conduct risk assessments could improve the conduct at public events. It was also pointed out that the Commission's Code of Conduct refers to a 'band leader' when the correct term for the person in authority was the 'band secretary'.

THE COMMISSION'S POSITION

9.5 The Commission has continued to emphasise the need for individuals to accept responsibility for their behaviour and the need to be sensitive to the views of others when conducting parades and protests. The Commission has stated on many occasions that flags, uniforms and emblems of a proscribed organisation may be considered a criminal offence under the Terrorism Act. The

Commission is aware that under Shared Future, the PSNI has taken a lead role in compiling a protocol for flags and that a number of councils have developed, or are now developing, policies in relation to this issue. The Commission feels that the best way to tackle these issues is through a collaborative approach involving the Commission, PSNI, Community Relations Council, District Councils and other key interests.

9.6 The Commission recognises the significance of flags and emblems to many in Northern Ireland. It is aware that difficulties can arise for individuals and groups emerging from a sustained period of conflict in giving expression to their history and culture in ways that do not offend or intimidate others.

9.7 The Commission at this time sees no merit in explicitly setting out a comprehensive list of offences under the Public Processions legislation along with the possible penalties and relevant defences. The Commission, as stated earlier, accepts that there is an issue of non-compliance and that this can be exacerbated by a perceived lack of successful prosecutions.

RECOMMENDATION

9.8 The Commission recommends that it works with appropriate partners, including community groups, to tackle the issues raised in this section and to develop a revised Code of Conduct, more specifically detailing acceptable and non-acceptable behaviours.

9.9 The Commission recommends that it consults with various interests and groups to establish and provide greater clarity around the issues of illegal flags and emblems.

9.10 The Commission believes that its statutory documents should be amended to remove the term 'band leader' and replace it with an appropriate term.

10. OPINIONS ON THE ESTABLISHMENT OF A BAND REGISTRATION SCHEME

VIEWS HEARD

10.1 The Commission heard the view that in many cases it was the behaviour of bands at parades which caused the most difficulties and that the police were often restricted in the action that they could take at the time for fear of exacerbating the situation. There was a view

that if a band registration scheme was established that this would help to identify offenders and enable sanctions to be applied. The proper operation of such a system would lead to better behaviour.

THE COMMISSION'S POSITION

10.2 The Commission, based on the information now before it, is not wholly convinced of the value or merit that a registration scheme would bring. The Commission is aware that the construction, maintenance and operation of such a register could be fraught with problems. Consideration would have to be given to ensuring that any resources committed to such an exercise would prove value for money.

10.3 The Commission is concerned that the behaviour of a minority of bands is staining the reputation, not only of other bands, but at times, of those organisations who seek to engage them as part of their parades. It is the Commission's view that those interested in promoting public confidence in, and respect for, the display of this important aspect of culture, take every practicable step to ensure that this is not allowed to continue.

RECOMMENDATION

10.4 The Commission recommends that organisers of all forms of parades who engage bands take account of the behaviour of those bands and recognise that the bands failure to comply with the Commission's Code of Conduct may result in the imposition of restrictions on the parades themselves.



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