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Parades Review Project Team
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C.C.R.U.

- cc PS/PUS - O
- PS/ Sir D Fell - O
- Mr Steele - O
- Mr Thomas - O
- Mr Gray OLC
- Mr Stephens - O
- Mr Watkins - O
- Mr Bell - O
- Mr Wood - O
- Mr Smyth - O
- Mr Perry - O
- Mr Maccabe - O
- Mr Buchanan
- Mr Beeton - O
- Mr Priestly - O
- Mr Collins - O
- Mr Strain - O
- Mr Keers
- Miss Kirk

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*Mr [Signature]
North Regent
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Mr Leach - O

REVISED GUIDELINES AND SCENARIO PAPERS

I attach a revised set of guidelines, strengthening the consideration to be given to traditional parades, as suggested by Mr Thomas. Otherwise there have been no comments.

2. I thought it would also be useful to sketch out in more detail what impact the guidelines might have in practice. I have done this by setting out two scenarios of implementation, a 'benign' and 'malign' scenario. Both are based around similar circumstances on the ground, but trace very different outcomes. The guidelines seek to follow events in the main flashpoint areas, and in a cross section of other

cond parades. I have set the scenarios in the future in order to assess the longer term impact and practicability of the North proposals, rather than focusing on the immediate political response.

3. I think the benign scenario is about as optimistic as we can get before drifting off entirely into Natural Law Party territory. The 'malign' scenario could however be painted much blacker.

4. Assuming recipients have no further comments, I think the guidelines are now ready for submission to Ministers. As for the scenarios, I would be interested for recipients' views. Ministers might find them useful, although we are in some danger of overwhelming them with paper.

Stephen Webb

The draft guidelines: underlying assumptions

1. The draft guidelines set out in the Report have something of a Cheshire cat quality. Insofar as we understand the Report's logic, however, the core principles are as follows

- There is a right to march, which is not however absolute.
- There is no absolute right for residents to withhold consent.
- Residents and others affected by parades do however have a right not to be offended by the behaviour, message or presence of marchers, as well as a right not to suffer unreasonable disruption
- The State needs to balance these conflicting rights, by coming to a judgement on the reasonableness or otherwise of the ways in which marchers and protestors wish to exercise their rights, including whether they are seeking to continue customary practice or extend it into new areas.
- The State is entitled to make the right to march conditional on its being exercised responsibly.
- The offence caused by parades is not merely a function of the intent or behaviour of those marching, however. The State may also conclude that residents in any given area can only reasonably be expected to face a certain number of parades, and enforce judgements to that effect.

Draft guidelines: text

2. The Parades Commission is obliged to take decisions on contested parades according to the four criteria set out in the [Public Order (Northern Ireland) Act]. Legislation permits conditions to be imposed on a proposed parade (or open air

public meeting) under any one of the four criteria. In coming to decisions, however, the Commission will look to balance the relevant considerations.

3. In assessing the threat of *serious public disorder or damage to property*, the Commission will be advised by the RUC, which also retains a power to make decisions in the light of exceptional circumstances on the ground. The Commission is however determined that decisions should not be seen to be dependent on the threat of violence. Past attempts to override decisions of the Commission will therefore be taken into account in reaching future decisions on contested marches. The strong presumption will be that the police will enforce the Commission's decisions, either to permit a march to go ahead, or to impose conditions on it. The Commission's decisions will be based in the first instance on the merits of the case, that is to say its judgement of the balance which needs to be struck between the right to march and the rights of those affected by a planned march.

4. In interpreting the criterion of *serious disruption to the life of the community*, the Commission is conscious that some degree of disruption is inevitably linked with the exercise of the right of free assembly. The power will enable conditions to be imposed to prevent such problems as unreasonable disruption to local residents, other users of the highway and adjoining shops and businesses, and major local facilities like hospitals .

5. The clearest example of clashing rights comes if a march is organised with the purpose of *intimidation* as defined in the legislation. Conditions will always be imposed or a march banned altogether if it falls within this definition.

6. The new statutory criterion of the '*wider impact of the parade on the relationships within the community*' will not be interpreted in such a way as to give the judgement automatically to the side which appears to feel strongest about an issue. This would be an arbitrary way of proceeding. Rather, the criterion reflects the need to balance conflicting rights, making a judgement as to the reasonableness or otherwise of both

side wish to assert their rights, with the aim of identifying proportionate measures capable of achieving the broadest assent.

7. A number of factors will be taken into account once the commission has been informed of intent to organise a contested parade

Location

8. The right to march is an important one, and the Commission will not seek to raise obstacles unless there are compelling counter-arguments. As a general rule, the Commission will be inclined to support marches in 'neutral areas' like town centres or other areas where property is overwhelmingly non-residential. This presumption will be particularly strong when those seeking to march are themselves from the area. This will not be a hard and fast rule however, and factors like the size and purpose of a demonstration will also be taken into consideration.

Route

9. In assessing the route, the Commission will need first to come to a judgement as to how controversial the route applied for is, having regard to factors including the demographic balance along the way and the presence of locations like churches or halls of the other tradition, or sites of particular historical sensitivity.

10. The commission will then consider the purpose of the parade, and judge whether the route is necessary or proportional to that. An important judgement here is whether the purpose of the parade could equally be fulfilled on an uncontroversial alternative route, with no danger of infringing the rights of others. This means attention to the reasonableness of the route chosen. Thus a parade associated with a particular church or hall might be considered to have a stronger case than a march without such associations, and similarly the directness of a route chosen will be taken into account.

11. There will be no automatic presumption in favour of marches on arterial roads, but choice of these will be a factor, particularly if the alternative is either a long diversion or a route through a more residential area of the opposing tradition. Similarly, the fact that a route is traditional is not an automatic presumption in its favour, but this will be taken into account in its favour in judging the reasonableness and proportionality of the application.

Type of parade

12. In practice, the rights conflicting with the right to free assembly include the right not to be intimidated or offended in one's own neighbourhood. The nature of proposed parades will have a considerable bearing on how reasonable such apprehensions are. A church parade would generally be considered more acceptable than a band parade, for example. But other factors also come into play, for example the proposed numbers of demonstrators, particularly if they are not local.

13. Judgements as to the reasonableness of apprehensions may also take into account the past record of the applicant, and in particular evidence of past breaches of the code of conduct, inadequate stewarding or other cases of disorder. Particularly significant will also be a judgement by the Commission as to how constructive the march organisers or their opponents were in the search for a local accommodation.

Other factors

14. The Commission is not however obliged to take decisions solely on the basis of the circumstances of an individual parade. It is also able to take into account the wider interests of the integrity of the legislation, the rule of law, and the search for a settlement on a province-wide basis.

15. Past adherence or otherwise to the determinations of the Commission can therefore be taken into account in coming to decisions. This applies to past attempts

to overturn a ruling by force on the part of protestors or of marchers. Thus in exceptional circumstances, the Commission might decide to reroute or ban a march it would otherwise have permitted, or allow through a march it would otherwise have restricted to take into account the past behaviour of marchers or protestors respectively.

16. In its search for local agreement, the Commission will also look to a settlement which goes beyond individual locations to encompass more than one area, or indeed all of Northern Ireland. In these circumstances, it might weigh up the respective rights in a broader context, and come to a view as to how many parades are reasonable overall, and might then act on this judgement in considering individual applications. A similar judgement in respect of one area alone could also lead to judgements on individual marches different than might have occurred had they been considered in isolation.

Annex B: Scenarios for the putting the guidelines into practice**The benign scenario**

1. At the start of the marching season, the Commission announces its policy for marches in Pomeroy over the summer. It takes into consideration the incidents of bad behaviour seen as parades in the previous year, and the demographic balance of the town (95%RC). Intensive contacts with the district and county leadership of the Orange Order had not led to direct discussions between residents' groups and the marching orders, but the Commission was able to achieve some undertakings as to future behaviour.

2. The Commission persuades the marching orders to apply for only three parades, on the understanding that this sets no precedent for future years. The Commission also restricts a band parade to the Diamond area, and reduces the numbers of bands who can take part.

3. The Commission also sets out its intentions with regard to a group of Tyrone parades, in Castlederg, Strabane, Omagh, Dromore and Newtownbutler. The commission had discussed the calendar of events with both sides before the season, explaining in advance to the residents groups how many parades were being planned, which apart from the customary parades were to include two banner unfurling ceremonies in Dromore and Newtownbutler. A coalition of residents groups make a series of demands, including face to face meetings with the marching orders, rerouting and undertakings on behaviour. All are opposed by the marching orders. The Commission makes it clear it has taken the views of both sides into account. It imposes a partial reroute on the banner unfurling ceremonies, and imposes various conditions short of rerouting on the traditional parades. The residents group seek judicial review, which is rejected, and announce their intention to hold silent protests.

4. Sinn Fein announces its intention for the first time to hold a hunger-strike commemoration march in Cookstown town centre on May 5. The police refer the case to the Commission. The Commission imposes restrictions on numbers, and applies strict conditions on the behaviour of marches, but permits the parade to go ahead. The march is able to proceed with a heavy police presence, and scattered disturbances in Loyalist estates.

5. In parallel, the Commission announces it will impose no conditions on a proposed Black banner furling ceremony in Newry, despite criticism from local residents that with the district meeting in the town, this implies a tripling in the number of parades compared with the previous year. The march goes off peacefully, with a large police presence.

6. In Dunloy, local orangemen continue to refuse to meet the local residents' group, whose offer of three church parades providing undertakings about behaviour are made. The lodge reject this offer. The Commission announces three marches will be permitted, and imposes conditions rather stricter than demanded by the residents, as a punishment for refusing to negotiate. The local lodge rejects the Commission's ruling, and announces it will march unhindered. Picketing and arson in the area continue, although loyalist leaders make clear they want nothing to do with what they describe as DUP political games.

7. In June, a loyalist shooting in Omagh puts the Commission's Tyrone deal under pressure. Local residents demand rerouting the proposed Black procession from the road, which they point out had seen several sectarian attacks in recent years. The RBP reject any link between themselves and loyalist paramilitaries. They point out sensitivities play both ways, and that a part time RIR member who was a member of the RBP had also been killed in the same area a few years previously. The

Commission turns down the request for rerouting, but requires the bands to be silent along the road in question.

8. On the Garvaghy Rd, mediation efforts fail to reach agreement at local level. The Commission calls a round table meeting of political leaders, including the local MP David Trimble and John Hume. Hume calls for orangemen to meet with the residents, expressing a belief that the residents would be prepared to see a march under those circumstances. The local lodge reject this. Hume issues a statement blaming the local lodge for the impasse, and calling on residents to win the high moral ground by allowing one march on a without prejudice basis. The residents reject this. Shortly after, the Commission agrees with the police a single march without band should be taken down the road at 7.00 in the morning. The march is able to pass with a heavy police presence. There is rioting in the estate.

9. Meanwhile in Belfast, the Commission reports in late May that talks between the Marching Orders and LOCC have failed to reach agreement on the Ormeau Road. Tensions have risen following the partial re-routing of the "Tour of the North" parade, which was followed by public disorder at sectarian interfaces in North Belfast. The Commission publishes detailed views on the Ormeau Road route. It concludes that the 12th July parade is traditional and not in the past associated with bad behaviour. On the other hand, the march does not need the Ormeau Road to get to its actual destination of the Field. It calls on the Ballynafeigh Orange Lodge to accept a compromise route via Agincourt Avenue. The Commission confirms, however, that the Ormeau Road is the only practicable route for Ballynafeigh Orange Lodge to reach the town centre. It recommends that the Somme Commemoration Parade on 30 June should be allowed to use the route, and calls for further talks on the 12th parade.

10. The Chief Constable is alarmed at the prospect of possible re-routing of the 12th at Ormeau Bridge, given the severe drain on police resources elsewhere in the

Provoche, and appeals to the commission not to order a rerouting. The commission eventually decides in late June to allow the 12th to go ahead. This is challenged in the courts by the residents, unsuccessfully. The Somme Commemoration parade then has to be rerouted on the day given a serious threat of violence. There are disturbances at the Ormeau Bridge, needing a large police presence. A major police operation does however allow the 12th Parade to go ahead peacefully, but amid accusations by residents of a curfew.

11. The last major contentious parade of the year in Londonderry passes off relatively peacefully following talks between the Apprentice Boys of Derry, the local MP John Hume and the Bogside Residents. Hume states his support for a march, given the Apprentice Boys' preparedness to stop music as the march passes the Bogside, and keep to the far side of the walls where the marchers cannot be seen. The Bogside residents are unhappy, but reluctant to be seen as intransigent, and content themselves with a silent protest.

12. In its annual report, the Commission expresses itself generally content with how the marching season has passed. It points to Londonderry and the Tyrone parades as examples of what can be achieved by negotiation, and appeals to the marching orders not to assume that talks meant an inevitable erosion of their rights. It criticises intransigence on the part of the residents of the Garvaghy Rd, and regrets the refusal of the Ballynafeigh lodge to consider any sort of compromise on the Ormeau Rd either. It announces these two parades and the 'festering' situation in Dunloy will be its main priority over the coming months.

Malign scenario

13. At the start of the marching season, the Commission announces its policy for marches in Pomeroy over the summer. Taking account of incidents of bad behaviour by marchers in the past, the demographic balance of the town and the reluctance of East Tyrone Orangemen to talk to residents' groups, the Commission announces a slight reduction in the number of parades which will be allowed to go ahead. Parades are reduced from 4 to 3, and restrictions are imposed re-routing them away from residential areas where trouble had occurred in the past. The Commission announces severe restrictions on a proposed band parade in the Diamond area, following bad behaviour in past years. A number of bands from the surrounding area are refused permission to participate

14. East Tyrone Orangemen are outraged by these decisions, and loyalists protest particularly at the ban on bands playing in their own nearest town. The Commission also sets out its intentions with regard to a group of Tyrone parades, in Castlederg, Strabane, Omagh, Dromore and Newtownbutler. The commission had discussed the calendar of events with both sides before the season, explaining in advance to the residents groups how many parades were being planned, which apart from the customary parades were to include two banner unfurling ceremonies in Dromore and Newtownbutler. A coalition of residents groups make a series of demands, including face to face meetings with the marching orders, rerouting and undertakings on behaviour. All are opposed by the marching orders. The Commission makes it clear it has taken the views of both sides into account. It imposes a partial reroute on the banner unfurling ceremonies, and imposes various conditions short of rerouting on the traditional parades. The residents group seek judicial review, which is rejected.

15. Meanwhile, Sinn Fein announces its intention for the first time to hold a hunger-strike commemoration march in Cookstown town centre on May 5. The police refer the case to the Commission. The Commission imposes restrictions on numbers, and

apply strict conditions on the behaviour of marches, but permits the parade to go ahead. Loyalist outrage grows.

16. After the Chief Constable appeals to the Secretary of State on public order grounds to re-route the march away from the town centre, the Secretary of State re-considers the evidence on the basis of all the statutory criteria. While acknowledging the danger of public disorder, the Secretary of State concludes the statutory guidelines make it clear that town centres should be open to peaceful marches. Given the large Nationalist population in Cookstown, the Secretary of State decides there is an insufficient case at this stage to overturn the Commission's determination, particularly as overruling the Commission threatens to weaken its credibility.

17. On the day, severe and orchestrated violence with participation by loyalist extremist groups forces the police to order a re-route. This is followed by unrest in Nationalist estates in Cookstown and other nearby towns. The police's decision is challenged under judicial review, but this is rejected.

18. Meanwhile, a Black banner unfurling parade is able to go ahead in Newry with a considerable police presence protecting marchers from a large counter-demonstration. There are disturbances in the town following the parade, including attacks on protestant owned businesses.

19. Sinn Fein attack the differential treatment of Unionist and Nationalist marches in Cookstown and Newry. They put in applications for a series of "Nationalist right to march" parades, including two contentious ones in Lurgan and Ballymena town centres. These are referred to the Commission.

20. The police are alarmed at prospects of disorder in both cases. The Commission concludes that the Sinn Fein march in Lurgan should be permitted to go ahead. It does so, amid some disorder.

21. In the case of Ballymena, Commission decides, acting on advice from the police, not to permit the parade to go ahead. It cites public order grounds and also expresses scepticism about Sinn Fein's claim that the march was to be for local residents only. It concludes not even restrictions on the behaviour of marchers could disguise the provocative nature of this parade. Sinn Fein representatives attack the Commission, accusing them of partiality, and demanding to know by what criterion a Nationalist march in Ballymena is more provocative than a Loyalist march in Newry.

22. By early June, the Commission recognises that local agreement on marches in Dunloy is not going to be achieved. Taking into account the short route being applied for and the fact that the march is a church procession, the Commission announced that one orange march would be allowed into Dunloy subject to some re-routing and restrictions on numbers. Considerable anger among residents at the local Orange Order's attitude to the Ballymena parade, its refusal to talk to local residents and continuing resentment over perceived inequalities of treatment in Cookstown and Belfast (see below) lead to strong protests against the march. On the day, the police decide to prevent the march leaving the Orange Hall.

23. After emergency sittings, the Commission announces that continued defiance of its decisions call the entire legislative framework into question, and must therefore be tackled. It criticises the police and courts' failure to produce prosecutions under the new offences in the Public Order Act. The Commission announces that a Nationalist march will be permitted in Cookstown at a date to be determined, and confirms that two marches will now be permitted in Dunloy. Both these decisions are subjected to judicial review by local residents, and are greeted by further scattered unrest in Loyalist estates in Cookstown.

24. Meanwhile, the Commission's deal on the Tyrone processions is in danger of unravelling. Tensions have heightened in the area, with a number of attacks on Orange Halls. Shortly before a RBP parade in Omagh, there is a loyalist shooting on a road on the march route. Local residents demand rerouting the proposed Black procession from the road, which they point out had seen several sectarian attacks in recent years. The RBP reject any link between themselves and loyalist paramilitaries. They point out sensitivities play both ways, and that a part time RIR member who was a member of the RBP had also been killed in the same area a few years previously. The Commission turns down the request for rerouting, but requires the bands to be silent along the road in question.

25. Serious violence on the day forces the police to reroute the parade for its own safety. The Commission appeals for calm, restates its commitment to the Tyrone deal and assures the marching orders that events will be taken into account in its determinations for the following year. The marching orders claim the deal is off, and put pressure on to restore a second parade in Castlederg, and to reverse the decision to impose partial rerouting on the parade in Newtownbutler. Loyalist attacks on catholic churches in East Tyrone intensify. The proposed march in Strabane has to be banned by the Secretary of State in the face of a worsening public order situation.

26. Loyalist fury at the loss of marches in Dunloy and Strabane leads to refusal to contemplate talks on the Garvaghy Rd. The Commission and the police decide jointly that a stand off needs to be avoided at all costs. The commission also announces that a single parade with one band in the early morning would be justifiable in its own right. On the day, however, PIRA detonate a car bomb near the route. The police attempt to reroute the parade, and a stand off situation develops. The police argue the route is sealed for forensic reasons, at which the marchers demand the restoration of the Obins St route.

27. The police and commission promise a march will be taken down the route at a time of their choosing, and the gathering on Drumcree hill disperses.

28. Meanwhile in Belfast, in late May, the Commission announces that talks between the Marching Orders and LOCC have failed to reach agreement on the Ormeau Road. Tensions have risen following the partial re-routing of the "Tour of the North" parade, which was followed by public disorder at sectarian interfaces in North Belfast. The Commission publishes detailed views on the Ormeau Road route. It concludes that the 12th July parade is traditional and not in the past associated with bad behaviour. On the other hand, the march does not need the Ormeau Road to get to its actual destination of the Field. It calls on the Ballynafeigh Orange Lodge to accept a compromise route via Agincourt Avenue. The Commission confirms, however, that the Ormeau Road is the only practicable route for Ballynafeigh Orange Lodge to reach the town centre. It recommends that the Somme Commemoration Parade on 30 June should be allowed to use the route, and calls for further talks on the 12th parade.

29. The Chief Constable is alarmed at the prospect of possible re-routing of the 12th at Ormeau Bridge, given the severe drain on police resources elsewhere in the Province, and appeals to the commission not to order a rerouting. The commission eventually decides in late June to allow the 12th to go ahead. This is challenged in the courts by the residents, unsuccessfully. The Somme Commemoration parade then has to be rerouted on the day given a serious threat of violence. There are disturbances at the Ormeau Bridge, needing a large police presence. A major police operation does however allow the 12th Parade to go ahead. This is followed however by sustained rioting in the area, and throughout Belfast, in the course of which two men are run over and killed by army vehicles.

30. Two weeks later, the police in a major operation secure the Garvaghy Rd and take the parade down. Residents were taken by surprise, and there is little protest at the time, but serious rioting follows in the evening in Nationalist towns and areas, particularly in Londonderry, where a 16 year old youth is killed by a PBR.

31. With tensions inflamed by this, talks on the Apprentice Boys route break down, despite the continued preparedness of the leadership to talk to the Bogside Residents. John Hume appeals to the residents to permit a march and not let the city's reputation for tolerance suffer. Feelings are running high following the recent unrest, however, and the residents group feels able to reject this call. After a Sinn Fein march near loyalist areas of the Waterside is attacked, Sinn Fein call on residents of the city to allow no orange marches over the Foyle bridge. The Commission announces force majeure means there can be no march on the city walls this year. There is rioting in Belfast and on the Waterside, and the moderate leadership of the Apprentice Boys is deposed.

32. In its annual report, the Commission declares the year has put its credibility on the line. It points out the dangers of anarchy, and calls for round table talks. This is rejected by all unionists. The commission also demands new sentences of conspiracy and incitement to provide a real deterrent against those seeking to manipulate the situation. The government announces a review of public order legislation....