

CONFIDENTIAL



FROM: S J LEACH
ASSOCIATE DIRECTOR POLICING AND SECURITY
7 AUGUST 1997

cc: PS/Mr Ingram (B&L) - e
PS/Mr Murphy (B&L) - e
PS/PUS (B&L) - e
PS/Sir David Fell - e
Mr Thomas - e
Mr Carvill (DENI)
Mr Watkins - e
Mr ~~Caravan~~ (CCRU) 15.8
Mr McCabe - e
Mr Webb - e
Mr Warner - e

1. **MR STEELE** [The difficulty with all this is that the expanded role for the Commission was not mentioned only in the context of Garvaghy Road. Lord Molyneaux and Mr John McCrea came to see Mr Ingram on 10 July specifically to confirm that all three points agreed by the Secretary of State prior to Garvaghy Road would still apply and could be used as arguments in relation to the Ormeau Road etc. They were given the necessary confirmation.

2. I can see the Commission's difficulty with the idea of an expanded role, although the Chairman was consulted at an early stage and did agree, albeit in the context of a settlement at Drumcree.

3. If Ministers now decide to resile from the expanded role (and the perhaps equally important changed title) it will take a lot of work with the Orange Order if we are to avoid significant controversy. On the whole I think I would prefer to convince the Commission that they, rather than the CRC should sponsor Mr Leach's research option. JMS 8/8]

2. **PS/SECRETARY OF STATE (B&L) - e**

PARADES COMMISSION: POSSIBLE EXPANDED ROLE

1. Together with Mr Webb and Mr Strain, I had a valuable meeting on 4 August with the Chairman and the four other members of the Parades

CONFIDENTIAL

HL/21378

23

C O N F I D E N T I A L

mission. We discussed in some detail the proposed legislation and Guidelines to implement the North Report, the timetable for the consultative and legislative processes, the future role of the RUC, and other issues related to the Commission's assumption of the decision-making powers. Submissions reflecting these discussions will come forward in due course.

2. This submission deals with the idea of a possible **expanded role** for the Parades Commission, to address the Orange Order concern that the new arrangements will unfairly concentrate only on the physical manifestations of **Protestant** cultural identity (ie marches), without addressing aspects of nationalist cultural expression which may be offensive to unionists. The Order suggested in the run-up to the Drumcree parade this year that, to redress the balance, the Commission should have its remit extended to cover not just parades but any aspect of cultural expression which might infringe the rights of others or be offensive or antagonistic to a significant section of the community. The example quoted at the time concerned traffic control arrangements around GAA matches, which (according to the Order) are often left in the hands of the GAA themselves, so that Protestants driving by feel intimidated when they are held up for considerable periods, by stewards whom they often regard as active republicans, while the last spectators are admitted to the ground. Other examples which have been mentioned include the flying of the tricolour in allegedly provocative locations, and the use of Irish rather than English in information signs in, eg, the QUB Student Union.

3. As the possibility of the Commission taking on some sort of role in this area has been mentioned in the last two editions of the **Sunday Times**, I agreed with Mr Warner that I should take the opportunity to sound them out on it. I accordingly said at the meeting that the Secretary of State had some sympathy with

C O N F I D E N T I A L

HL/21378

24

CONFIDENTIAL

the concerns expressed by the Orange Order, but had no decided view on the issue and would appreciate any views the Commission had. If there were an expanded role, one possible model would be for the Commission, in addition to its specific powers on parades, to consider aspects of cultural expression which might infringe the rights of or be offensive or antagonistic to either side of the community, on the basis of representations made to it. The Government would then consider and respond to any reports it produced on such subjects.

4. Primed by the press articles, the Commission were clearly eager to register their views. These were unanimously hostile. **Mr Graham** said that, if this development had triggered the withdrawal by the Orange Order from the Drumcree parade, then there might have been a pragmatic case for it. But that had not occurred. (He discounted the possibility that the idea might have been a significant factor in the Orange Order decision to withdraw from the controversial 12 July parades, on the basis of his own discussions at the time with Ballynafeigh Orangemen.) But in present circumstances the additional remit would create public expectations that could not be satisfied, and would also distract the Commission from the key challenges it had to meet on parades. The task of the Commission in taking over the decision-making powers was very substantial; it could have a very serious effect if at the same time it were deluged with representations (some of which might well be frivolous or vexatious) about miscellaneous facets of community behaviour.

5. **Mr Hewitt** expressed himself in similar terms. This would be a can of worms, and would significantly increase a workload which was already likely to be scarcely manageable. If the unionists feared a lack of balance in the Commission, there must be better ways of allaying that fear. The **Rev Roy Magee** agreed. If unionists and the loyal orders feared that the Commission would be unbalanced,

CONFIDENTIAL

HL/21378

25

CONFIDENTIAL

Challenge for them was to demonstrate balance in the way they discharged their central responsibilities on parades, not by taking on some ill-defined additional role. **Mr Guckian** (with **Mrs McIvor** assenting) reiterated that the Commission would have enough on its plate without opening up a second front. **Mr Graham** said that, with the best will in the world, he believed that by taking on such issues as the arrangements for GAA matches the Commission could use up a great deal of its energy while achieving minimal practical results which would not in the end cut any ice with unionists. This did not seem sensible. I wound up this section of the meeting by saying that I would report the Commission's views, but believed that there was a genuine (if perhaps ill-defined) concern among unionists on these issues which Ministers could well feel they needed to address. We might therefore need to return to the question.

Discussion

6. The Commission clearly feels strongly on this issue. And there is a good deal of force in the points they make. Taking over and making a success of the decision-making powers on parades will (in my view) pose a far greater challenge to them than that faced by any other comparable public body in Northern Ireland. It will require considerable effort, courage and concentration on the part of members and staff alike. Even if they could be persuaded to take on these extra responsibilities, there would be considerable risk in diluting their focus on the parades issue in their first year of operation, when they have to establish their presence and authority on the parades issue in the public eye. (Indeed, it is not impossible that part of the agenda of the Orange Order is to undermine the Commission by enmeshing it in a wide range of intractable issues which will distract it from parades.)

CONFIDENTIAL

HL/21378

26

CONFIDENTIAL

The difficulty of asking the Commission to take on this role is compounded by the fact that the scale and nature of the alleged problem is highly unclear. There may well be many features of nationalist culture which annoy unionists, and **vice versa**, but the constructive way forward is more probably to work to increase the reciprocal acceptance of cultural diversity (which is in broad terms the Government's policy in this area) rather than to facilitate complaints by one side against the other. In practical terms, there could scarcely be anything more calculated to arouse nationalist hackles than the perception that the Government was helping unionists to criticise the GAA or the use of the Irish language. And any such arrangement could of course be exploited the other way too, eg by Sinn Fein complaining about examples of alleged unionist sectarianism. It must all in all be likely that to establish this sort of machinery could have a serious adverse effect not only on the Parades Commission but on community relations more widely.

8. The difficulties inherent in giving the Parades Commission such an expanded remit, and even in taking any steps to facilitate complaints about aspects of cultural expression - given the Government's overall policy of developing a more mature society in which diversity of cultural expression is respected by unionist and nationalist alike - point to letting the whole idea drop. But as against this, unionists do have clear (if unspecific) concerns, believe that they received a sympathetic response from Government - although my recollection is that any such response was in the context of a withdrawal from the Garvaghy Road march, which did not in the event materialise - and appear to expect some action to be taken. Thus, for example, the checklist of "measures to build confidence within the pro-union community" which Mr Trimble handed over on 31 July included as item 9 the "implementation of assurances on parades legislation to Loyal Orders".

CONFIDENTIAL

HL/21378

27

C O N F I D E N T I A L

Ideally, we therefore need a way forward which has the potential to satisfy unionists, avoids the danger of diluting and confusing the role of the Parades Commission, and is not inconsistent with the machinery which is already in existence to deal with issues of cultural tradition and expression. A possible strategy might be as follows. **First**, the "implementation of assurances on parades legislation" could be regarded as being satisfied by the giving of legal status to the right to freedom of peaceful assembly - from which the right to march can be inferred - through the planned legislation to incorporate the provisions of the European Convention on Human Rights; and by the inclusion in the Parades Bill - as **one factor** among others which the Commission would be required to take into account - of the desirability of traditional parades proceeding along their customary routes. (The Parades Commission incidentally indicated at our meeting that they would support this development).

10. **Second**, a strong case can be made to the Unionists that the Parades Commission must be allowed to concentrate on the major responsibilities it will have in respect of parades. The Commission is determined to demonstrate that it will fulfil its role even-handedly and with no inbuilt bias against parades. But it must be in everyone's interest (including the Loyal Orders) that it should not be distracted from that very important task by the duty of investigating representations about disparate issues which fall a long way outside its core responsibilities (eg the use of the Irish language and the arrangements for GAA matches).

11. **Third**, the Government has decided to address the concerns about inequities in dealing with potentially offensive examples of cultural expression by launching a specific **investigation** of this issue. (This does not seem to me inconsistent with the text of the remarks prepared for the Secretary of State's use at Brownlow House on 4 July, which say that she would be "looking at ways to correct

C O N F I D E N T I A L

C O N F I D E N T I A L

[redacted] imbalance" in the Commission, but do not specify that any corrective action would be made to the Commission itself.) There are a number of options here. One would be to set up an **independent enquiry** (which might even be called a **Task Force**), consisting of a Chairman (who would need to have the broad confidence of the community, including in particular unionists) and two assessors, to examine representations about aspects of cultural expression which could infringe the rights of others or reasonably be seen as offensive or antagonistic by either part of the community, and to advise Government on whether it believes a substantive problem exists and (if so) what measures (eg new machinery) should be taken to address it. The Enquiry could request information and assistance from Departments and bodies with key direct responsibilities in the relevant areas. The Government would respond rapidly and constructively to the findings of the Enquiry - which would aim to report within six months (say) of its establishment. In recognition of the existing machinery, the Enquiry might be set up under the auspices of the Community Relations Council - although that would need to be carefully considered, since there is some antagonism between the UUP and that body.

12. One serious difficulty with this option, however, could lie in identifying an appropriate Chairman and members for the Enquiry team. This was difficult for the North Enquiry (which this would resemble), and could be more so on this occasion. There could therefore be significant delay in establishing such an Enquiry. An easier option in practical terms would be to commission **independent research** from respected academic or consultancy sources on the extent to which cultural expression by one side of the community alienates the other. In practice this exercise might cover much the same ground as a full-dress Enquiry, but could be launched more **rapidly** and might well yield a more **objective and serviceable outcome**.

C O N F I D E N T I A L

HL/21378

CONFIDENTIAL

13. The choice of either of these options would seem to get the issues the right way round - first a proactive examination to identify the scope and reality of the problems to be addressed, and in the light of that a decision on what institutional or other measures are necessary. With careful presentation, the unionists/Loyal Orders might well accept that it is better for them to have the undivided attention of a tailor-made Enquiry or research exercise instead of the uncertain involvement of a Commission which will need to focus most if not all of its attention on parades. If the idea is to be pursued, officials believe that one of these options (and preferably, in my view, the **research exercise**) is the way to do it.

Recommendation

14. Assuming that the Secretary of State wishes to pursue the concern raised by the Orange Order, this submission recommends that she agree that:

- (i) the remit of the Parades Commission should **not** be expanded to take on this extra responsibility;
- (ii) targeted **independent research** should be commissioned with a view to producing a rapid and authoritative assessment of the scale and nature of the problem, as the basis for possible future action; and
- (iii) **handling advice** should be prepared on the presentation of this outcome in the way best designed to persuade unionists and the Loyal Orders that it meets their concerns.

CONFIDENTIAL

CONFIDENTIAL

15. I am grateful to Mr Carvill and Mr Canavan for their assistance in the preparation of this advice.

[S J Leach]

S J LEACH

☎ 27012

CONFIDENTIAL

HL/21378

31