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Committee

The Parades Commission and Public Processions (Northern Ireland) Act 1998

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Oral and written evidence

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The Northern Ireland Affairs Committee

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Mr Austen Morgan

Mr Richard Monteith

Northern Ireland Committee, Irish Congress of Trade Unions

Ulster Bands Association – Submission to the Quigley Review

Portadown District Loyal Orange Lodge No.1

Labour Relations Agency

Greater Shankill Community Council

Oral evidence

Taken before the Northern Ireland Affairs Committee

on Wednesday 14 January 2004

Members present:

Mr Michael Mates, in the Chair

Mr Adrian Bailey
Mr Harry Barnes
Mr Roy Beggs
Mr Tony Clarke
Mr Iain Luke

Mr Eddie McGrady
Mr Peter Robinson
The Reverend Martin Smyth
Mr Hugo Swire

Witness: Sir George Quigley, examined.

Q1 Chairman: Sir George, you are very welcome to the Committee. It is the first time since I have been Chairman, but I know you have made an appearance in front of us before, and thank you for sparing the time to come. We had a briefing last week, informal and off the record, from David Watkins, whom you will remember, and his team, about the background and the way your report came about, so the Committee has had an opportunity to read itself into what is going on. Can I ask you just a couple of questions, to start with, about the background. In your view, what are the main sources of tension surrounding parades?

Sir George Quigley: Thank you, Chairman, and may I say that I welcome the opportunity to give any assistance to the Committee that I can, here or hereafter. I think that really there are a number of elements in the answer to that question. First of all, some of the tension is derived from history. Over the last 200 years, one has had a position adopted by the Orange Order, which of course is an organisation of great longevity, in respect of virtually every public issue, and from the point of view of the Nationalist community they have always been on the wrong side of history and the wrong side of the argument. Over that period there have been tensions in regard to parades, mostly Orange parades but more rarely Nationalist parades, so that there is a legacy of overt or latent hostility. I think that is one point. The second one, much more immediate, is that in recent years one has seen a considerable amount of demographic change. We have consolidated into single-identity communities, something like 90% of Belfast public housing now is in segregated estates. As the Catholic population has emerged as the single identity in some of those estates and some of those areas, it has tended to say "This is our area," and they regard the claiming of that space really as the amelioration of a position over many years where they feel dominance has lain with another community. The general view has been, "Parades are not welcome here." That has tended to be interpreted in the other community as meaning parades are not welcome, period. That has widened out to a perception that the cultural identity of the Orange community is threatened, and they say,

"After all, we have been walking in these areas for generations. We have established a right. What's wrong with it now?" Of course, that is a very dangerous situation because there could be other areas where there is demographic change, and with a perception within the marching tradition that "If there is demographic change, we will lose our routes," the stakes become increasingly high. There are one or two instances, I think, where that would apply. The third point I would make is that within the Nationalist community, in respect of those parades, there is a feeling that they are particularly provocative, sectarian, arrogant, political coat-trailing, marking out territory as of yore, and, in fact, branding Nationalists as second-class citizens. Of course, those arguments are refuted vigorously by the other side. I think the point flowing on from that is that the Protestant community will tend to say, "Many of these marches last for 10 or 15 minutes, what's the problem?" The other side of the argument would be, "Well, if they're so insignificant, why have them at all?" So again you get a clash of perceptions there. Of course, the last 30 years has deepened and reinforced the divisions. There is a very strong perception within the Orange community and the Loyalist/Protestant/Unionist community that a great many of the difficulties about parades in the 1990s were orchestrated by the Republican movement, and Republicans would be regarded to a considerable extent as "our enemies" over the last 30 or 40 years. Of course, Republicans were represented then in the devolved administration. You get a feeling within the Unionist/Protestant community that "We have been outsmarted in some way, all along the line, we're losing out." Then with the zero-sum game, which tends to be Northern Ireland politics, there can be a feeling, "They have gained, we have lost." Of course, that means that people tend to hold on even more tenaciously to what they feel they have got, so you get tensions around all of that. I have been talking about parades from within the Orange Loyal Order tradition, but, in point of fact, when you look at Nationalist parades in predominantly Protestant areas, you get almost a mirror image of that situation, and always a feeling that parades, for

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example, going past Protestant churches where there are buried victims of Republican violence, are in effect, “offending our sacred places.” You get the arguments on both sides.

Q2 Chairman: Although there is much less of the latter?

Sir George Quigley: There is much less of the latter, of course, so it occurs much less often. I think it is a whole complex of issues, but I hope that is a helpful indication, without of course my putting a kite-mark on any of the arguments which I have deployed. I think I have reflected quite fairly what was coming across to me.

Q3 Chairman: Thank you for that. You have noted also that over the last three or four years, from 1999 onwards, attitudes in both communities have changed more towards the concept of a shared future. That is a broad generalisation which does not seem to be reflected in the parades problem, but what is the nature of them and do you think those trends have continued? Could you tell us if you think there is going to be further change over, let us say, the next five years? Might this reduce the tensions surrounding the parades, or are they a separate and “offensive” issue, different from the communities learning to live in peace together?

Sir George Quigley: I think one has got to distinguish here between what has been happening at the macro level, which you could describe as enforced fraternity, through the institutions, and quite clearly that persisted for a few years but that situation has broken down now. That was never fully reflected at grass roots level. In other words, there was a huge task of reconciliation to be done to complement what was happening at that macro level. Clearly, I think, there was an acute sense of dissatisfaction within many aspects of the Protestant/Unionist community about what was happening, and the feeling that there were losses on the macro front and losses on the micro front, in relation to, for example, particular routes where marches had taken place over the years. These two played to each other, and therefore I think each was mutually reinforcing, so that I would find it very difficult to say that there were concepts of a shared future which were being reflected in the attitude, frankly, of either side to the parading dispute.

Q4 Chairman: It was reported very widely and I think it is generally accepted that this last marching season was the quietest, in terms of public disorder, for very many years. How much of that, do you think, is down to the work of the Parades Commission or the efforts of other bodies? How would you allot marks for achieving that?

Sir George Quigley: Again, there are a number of elements in it. I would not suggest that all the work of the Parades Commission has been an insignificant element within that, but I think that very, very important has been the work being done at local level by many people within the community, community workers, and so on. Also, I think one cannot overlook the fact that very often the agendas

of the parties concerned to these disputes, at a particular point in time, are conducive to ameliorating the situation rather than stirring it up. So I think, to some extent, there has been willingness over the last couple of seasons to cool it rather than make it hotter. It is interesting, for example, that in relation to at least one significant flashpoint the former paramilitaries on either side have been key players in cooling it down.

Q5 Chairman: To which one are you referring?

Sir George Quigley: I am referring to the West Belfast difficulties in relation to the Grosvenor Road and that kind of area. Also, and I may be immodest about this, I would not write off at all, really, the fact that my own Review took place as being an element in the situation. It is interesting that someone close to the Parades Commission itself, in fact, said to me, when I was doing the job, “We think that, whatever the outcome may be, the fact that there was a review will have been helpful.” It may be because it provided a safety valve. People could talk about the issues. It may be, hopefully, that it was a reasonably sane, rational Report. It may be that people felt they had an opportunity to talk about it. It may be that it emphasised mutual obligation, rights and matching responsibilities, all this kind of thing. That is one point. The second point is that, oddly enough, when change is in prospect, or even threatened, it focuses the mind wonderfully, and so far as those who might welcome change are concerned a key element in the Report, of course, is that the emphasis should be on peaceful assembly. Therefore, it may be that some people were disposed to position themselves for that kind of future. That would be a key element. On the other hand, where people were tending to support the status quo, some may well have felt, “Well, the best way of ensuring that the status quo remains is to show that the status quo is delivering results,” so there may have been a disposition to cool it, from that point of view alone. I think there is a whole amalgamation of elements. The one point I would make is, and if you want I can develop this further, that I think it is quite dangerous to read from a season, or a couple of seasons, of relative calm the prospect of indefinite calm. In other words, I think one cannot extrapolate easily. The history of the last 200 years demonstrates the pattern has been—

Q6 Chairman: Only 200?

Sir George Quigley: Only 200; well, probably it is a bit more than that, but really it has been a pattern of fever, remission, recrudescence, and so on, so a lot depends on how things turn out from here. I think it is too early yet to predict that we are into calm waters and that, in fact, orange and green have yet found a way of living together within a shared community.

Q7 Chairman: Has the fact that it has been the most peaceful year ever caused you to revise any of your conclusions?

Sir George Quigley: No, it has not, because when I was doing the Review, of course, the situation had been improving. I mention this in my Report. Partly for the reason that I have mentioned—that there has

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been this pattern of improvement and then slipping back into the bad old ways—I think that has to be taken account of. Even more, one has got to make a distinction here between what could be temporary fixes in relation to particular difficulties and whether one really is tackling the underlying, long-term issues. Those have all to do with how you build up relationships. Is the level of antagonism really reducing, not just in relation to the parties directly involved in disputes but in relation to the wider community? Are we moving beyond hostility, are we finding a way to live with difference? Those are not grand concepts, it is really important in Northern Ireland we get some kind of progress on all those issues—are we getting some kind of consensual order between orange and green?—and I am not sure to what extent that has happened. Also, a very important point, which I made in the Report, was in relation to the Orange Order. When many Nationalists see the Loyal Orders on the march, naturally enough, they see history on the march, because, as I say, it is an organisation of great longevity, and that means all the baggage which goes with history. One of the points I made strongly in my Report was that, if one is ever going to get parading as a civic endeavour, really one has got to find some way whereby Orangeism, without abandoning fundamental principles, draws on its core beliefs to fashion contemporary Orangeism. Of course, that has got to meet with a response from Nationalism. But I think then you are getting into the kind of dynamic within the society which offers a better future. The other reason why I feel that my recommendations are still relevant is in relation to what is a very important part of the current machinery, and that is when local settlement fails and one has to have the quasi-judicial process, and no doubt you will want to come on to this later.

Q8 Chairman: We shall come to that, yes.

Sir George Quigley: Exactly, but just to make the point. I think that is fundamentally flawed, highly vulnerable to challenge and, if one imagines a situation where 12, 18 months, two years on that is challenged successfully, the huge loss of confidence regarding the regulatory machinery, I think, would be quite catastrophic. That is another element in my thinking as well.

Q9 Mr Beggs: The Orange and Unionist community will always have difficulty understanding why so many Nationalists would travel out of their way to be offended by parades. Sir George, what influence do you think those images had, following Drumcree two years ago, which were totally unexpected by the majority of those who participate in parades, and the fact that those who had protested in excess in an unacceptable manner had to wait right through the Drumcree season last year before their cases came to court, on the overall expression of opposition to the rulings which had been made and the bans which had been imposed on those organisations which parade?

Sir George Quigley: I think that one of the major elements in making what probably would have been difficult situations even more difficult has been the allegations which have been made over the years about conduct, in relation to parades, or in relation to protest about parades. You can always have deviant behaviour, and I think we all know, in any organisation, it is going to be a miracle if you do not get deviant behaviour. I think how the organisation deals with that says much more about the organisation than the fact that there was deviance. Therefore, what is terribly important is that a way should be found, so far as all the Marching Orders are concerned, on whatever side of the fence they may be, of making sure that, whatever the ideological differences may be, whatever the perceptions each may have of the other, issues of conduct are wiped off the table altogether. I think that is an achievable objective. Some of the other things may be very difficult to achieve, the lion lying down with the lamb, and all the rest of it, but I think it ought to be possible to write off the conduct issues without detriment to anybody's cultural position. I think that anything, whether it is the way in which members of an Order behave, or their hangers-on behave—and there is a difficulty there in relation to hangers-on—how the organisation takes a view of that, the action it takes, all of that really is creating an image in the other community, “What is this all about?” Just a footnote to that. We tend to focus on the contentious parades, and I suppose there is a feeling, and this applies to Nationalism and Unionism and the Loyalists as well, “Well, if we're in our own areas, maybe it doesn't matter so much what's happening.” In fact, I think it matters a great deal, because the image going out is of the organisation as it is showing itself, even in those situations. I think really the whole conduct issue, the relationship between an organisation and its deviants, its hangers-on, conveys a huge message.

Q10 Mr Swire: Sir George, in your previous submission to this Committee, you outline your approach about the common ground and the concern about how the marching should be handled, recognising the rights of all, particularly you go on about that. Under the European Convention on Human Rights, which rights do you consider to be the most significant ones in relation to the parades?

Sir George Quigley: I think, probably, and I listed these in an Annex to the Report, there are about eight rights in the context of the European Convention on Human Rights. They are important. The ones I would mention particularly are peaceful enjoyment of possessions, privacy, freedom of thought and expression, freedom of peaceful assembly, no discrimination in the enjoyment of rights, a prohibition on any restriction on those rights which goes beyond the European Convention, and the restriction to be applied for the intended purpose. I think those are the main ones and they are listed in the Appendix. Beyond that, my feeling would be that the relevant rights are those which are involved in any international instrument to which the UK is a party (for example, you have got

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minority rights set out in certain Conventions) and also any rights which are contained in the general law of the country. This is why in my Report I deliberately went very wide, because I think those on either side of the issue ought to be able to rely on the full panoply of rights available to them.

Q11 Mr Swire: Obviously, these are all competing rights, but under the Convention does any one right take priority?

Sir George Quigley: No, it does not. The basic point about the European Convention on Human Rights, and this is why I thought it so important to anchor the report in the Convention—and could I just interpose and say there is no option but to do that, because since October 2000 that has been incorporated in UK domestic law—the reason why it is so important to focus on the European Convention is that it makes it absolutely clear that rights are not absolute rights, they are all qualified rights. There is a temptation for all of us, certainly in Northern Ireland, I suspect elsewhere as well, to tend to make a claim which we clothe in the language of rights, then we put the right on the table as a trump card, which closes the discussion. It is not really like that. Yes, there is a right, for example, to freedom of peaceful assembly, but that right is qualified. First of all, it has to be peaceful exercise of the right; very, very important, that is a hurdle condition. Then the right must be exercised in a way which does not impact adversely on the rights and freedoms of others; critically important. I think that is the focal point. Also, they must be capable of being exercised without incurring a threat to public order, public safety and health and morals, and all the rest of it. There is a very clear process whereby rights which are claimed, or qualifications which it is thought should apply to those rights, should be tested. I think this is where the architecture of rights in the Convention is superb architecture. One of the benefits of it is that it is not something we have to craft ourselves. I think there is a risk sometimes, with us in Northern Ireland, of saying, “We have got to develop it all from new.” We have not. If 800 million-odd people now are within the purview of the Convention, it has been ratified by something like 45 countries and it has been around for 60 years, or so, I think we can draw a lot of strength from anchorage within that Convention.

Q12 Reverend Smyth: I understand the point you are making about anchoring within our tradition, but there is a sense in which there are individual rights and personal rights as well. Is there not something we can learn from the United States, where they do defend certain rights, even freedom of speech, which more and more is being encroached on here?

Sir George Quigley: I think that it is a fair point to say that there is a distinction between the approach to rights in the United States and in other parts of the world, and certainly in the European Convention. For example, I think there is a much more open, tolerant attitude to parading than there would be within the bounds of the Convention on Human Rights in Europe. We are where we are, and

I think that, given our placing within that context in Europe, it is very difficult to suggest that one opens the window as wide as it would be in the United States. That is a different culture, it is a different set of traditions, it is a different approach, but it is not where we are.

Q13 Reverend Smyth: You did begin at an earlier stage with the perception that this developed just because of people’s antipathy, whereas Gerry Adams himself said it took him three years to plan and arrange this. Are you saying that, even with the rights that you should not have any trouble, immediately a person starts a riot then everybody else should lose their right? I do that deliberately since I represent South Belfast and where that began in the Ormeau Road, where actually, because she was prepared to defend the rights of the Number 10 District to walk down that stretch of the road, the markets area where the folk were protesting that the parade was not going that way, they were going up Donegal Pass, Rosaleen Hughes was burned out of her home. She was not a Protestant. She is currently an SDLP Councillor in Castlereagh.

Sir George Quigley: No doubt we will explore aspects of this later, but just to make the point in relation to Mr Smyth. I think that the statement by Republicans is on the record and it is the one to which you refer. There is a danger perhaps in thinking that all the troubles in the 1990s stem from that statement. I think there was quite an element of hostility, overt, latent, between the two communities which enabled that kind of statement to fall on fertile soil, so I think that the issue goes deeper and wider and longer than simply Republican action during the 1990s.

Q14 Reverend Smyth: There was an actual debate, because you will remember how it was interface negotiations which came to the conclusion that the heavy mob, as was testified by two reporters who came from the Nationalist tradition, thwarted it. Can we move on.

Sir George Quigley: Sorry, Chairman, can I answer the second part of Mr Smyth’s point. I accept that one can have a different view of what I have just been saying but I think, in regard to the pressures brought in relation to parading issues, the existing arrangements, which tend to be a hodgepodge of criteria by which parades will be assessed, rights will be assessed, create confusion. Law and order issues, rights issues, other issues are all mixed up together, and therefore I think people have found it extremely difficult to say, “Why, in fact, is this particular right being curtailed?” I think that goes to the heart of your question.

Q15 Reverend Smyth: We will come on to the proposed changes which you offer to the regulatory framework. As I understand it, your key recommendation is that the Parades Commission should be wound up and two new agencies established. Did you reach this conclusion because

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the Parades Commission had failed to achieve the task that it was set up to do, or because it is unable to do that task?

Sir George Quigley: First of all, I started out by having no view at all as to whether the Parades Commission should continue to exist or should not, and I started deliberately from the standpoint of what are people telling me in the evidence? I had over 100 organisations and individuals giving me evidence, which was amazing, given that there had been two inquiries quite close to mine. If it had been put end to end, I spent probably four or five weeks in solid discussion with 60 individuals and organisations and I felt, in conscience, I had to pay careful attention to what they were saying, and many of them, the vast majority, were exposing difficulties in relation to the present arrangements. Interestingly, very, very few were saying there should not be regulatory machinery, but many of them were saying “We have difficulties with the way the existing regulatory machinery operates.” I had to take all that into account. I looked at the functions then of the existing Parades Commission. Having looked at those functions and having put beside those functions the critical comments I was getting on all sides—and I was quite amazed by the extent to which there was coincidence between the critical comments coming from the parading tradition and those who would be unsympathetic to the parading tradition, Unionists, Protestants, Nationalists, Catholic—I said then, “What kind of clothing do I need to put round arrangements that will accommodate these difficulties?” Of course, when people are putting points to you, it is quite easy to say, “Well, take out a brick here, remove this beam here,” and so on, and it does not quite work like that because once you do that the whole edifice collapses. You have got to put together a new structure, a new architecture, which is soundly based. Really it was at the end of that process, probably about four-fifths of the way through the task, that I said to myself, “Logic inexorably drives me to the point where the Parades Commission, as at present constituted, with its present functions, is not able to deliver in relation to the comments that have been made to me.” That was the process of reasoning by which I came to the conclusion.

Q16 Reverend Smyth: It was unable to do the task and that was why you came up with your proposal?

Sir George Quigley: I felt that with its present remit and its present functions and the way it was deployed then, in fact, it was unreasonable to expect it to deliver what people wanted it to deliver.

Q17 Reverend Smyth: Could you explain to us, briefly, the structure and role of the two new bodies you propose and the importance of establishing them as separate entities?

Sir George Quigley: I make the key point that the primary means of resolving difficulties should be through facilitation, facilitated negotiation of difficulties. In fact, again, that is not something which is peculiar to Northern Ireland. In all kinds of areas throughout the world, people are saying now,

“The best way to resolve differences, whether it is legal disputes, whatever it may be, is not through the formal process which produces a judgment, it is through a process of alternative disputes resolution which, in fact, produces settlement without judgment.” Therefore, I put that up front. Let us try to get to a situation where the number of cases which will ever come for formal judgment, by whatever process, is a very, very small minority indeed, because when people arrive at a solution which they have worked out for themselves it is likely to be much more durable. Nobody is likely to feel, “I’ve lost out,” and therefore the stability for the future is likely to be much more assured. I felt that had to be up front, and I would like to see it, as it is, for example, in New Zealand employment legislation, on the face of the statute. I think that also it has got to be a very professionally resourced function, and it has not got to be something which people take or leave, because I think the vast majority of the community in Northern Ireland find it difficult to accept, if there is a problem in relation to a parade, on either side, that people sit on their hands, contemplating the difficulty, not doing anything actively to solve it, whilst perhaps detriment is occurring all round them because of that difficulty, and we have all seen examples of that over the last eight or nine years. The point is, what I am suggesting is that one needs this professional resource which grips every difficulty and takes it forward, and this takes time. We want to get away from crisis management, where on 1 June each year everybody starts suggesting how A, B, C, D dispute can be solved, and really extend the problem-solving period right back to when the previous season ends, so that one has got more leisure, less pressure, to look at it. For that, I think you need a statutory Facilitation Agency which is dedicated to that function alone. The situation at the moment is rather odd because, as you know, initially Parliament was presented with a Bill which gave a mediation function to the Commission. That was removed during the proceedings in Parliament, I think very properly, because I cannot think of anybody who would say that mediation and adjudication should be done by the same body. At the moment, one of the difficulties I see is that the sort of semi-detached mediation function which the Commission has got, promoting and facilitating mediation, elides into the judgmental process, and I think, in governance terms, everybody would say that simply was not acceptable. Nothing to do with parades, nothing to do with Northern Ireland, that is just not the way things should be done. An Agency dedicated to that, I think, could make a tremendous impact, because—it may be a fairly short process, it may be a longer process, it may need consultancy advice, whatever it needs—in a variety of ways one is beginning to develop the relationships which are terribly important, and over time, therefore, you are getting the reduction in this hostility, and so on. That is a key recommendation in the Report. The interesting thing is that it goes with the tide of the improvement which has been occurring over the last two or three seasons. In other words, what I am suggesting really

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is that one should regularise, institutionalise the current ad hoc initiatives which are going on, and I think that would give tremendous added momentum. Also, it would mean that, if new issues arose, and I think we should not assume, and I am quite sure nobody around this room would assume, that there will not be other, potentially contentious parades happening over the years, one would not be sitting wondering "How on earth do we get this process started, who's going to make the first move?" etc, etc. There would be an existing set of arrangements, which could be deployed rapidly, drawing on the experience in many other situations. I think that could be wholly beneficial.

Q18 Reverend Smyth: While I understand the concept of separating facilitation, it would be unfair to the Parades Commission, would it not, to suggest that they were sitting on their hands? As I understand it, they have people working out in the field already. Sometimes they made mistakes but, nonetheless, they did not wait until the last minute to try to get things going. Would you accept that it would be unfair?

Sir George Quigley: It would be extremely unfair, and what I was thinking about really was the parties to the dispute sitting on their hands for quite a while. I am not even being critical of the parties in that respect, because, goodness knows, achieving reconciliation in relation to any aspect of Northern Ireland issues is difficult. Here we are expecting the most sensitive, difficult issues, or certainly among the most sensitive, difficult issues of all, to be addressed by people. I think it has been a tremendous challenge to people and we should not be at all critical of people because on occasion they have not risen to the challenge. What I am suggesting is helping them by getting an organisation which will be able to grip that. I think the difficulty that the Parades Commissioners have is that its Authorised Officers are out in the field. I think they are doing a very, very good job. One of the points I might make later on is that they are doing too many jobs and they are not all mutually consistent in terms of governance, but that is another issue, no criticism of them. Really they are not in a position to say to the parties, "We want to see you at nine o'clock next Monday morning for a discussion," not necessarily in the same room. "We want to see you and we want to see you." or whatever it may be, but taking it forward in a structured, sustained fashion. For example, if one turns to Drumcree, and I am not particularly anxious to discuss particular cases because I do not want to take a view of cases, I think everybody would agree, not least the Parades Commission, that one of the difficulties there has been that there has been no focal point. There must have been a dozen-plus organisations, individuals, all highly committed, many of them very expert, all trying to resolve the problem, but very often, if you get many people trying to solve a problem, the resolution becomes more difficult. There, I think if you had had

one focal point six years ago taking a grip of that issue then, in fact, one could have got much more rapid progress.

Reverend Smyth: Can we move beyond facilitation and look at the arguments for bringing parades and protests within the same regulatory framework.

Chairman: Just before you move on, I think Mr McGrady wanted a question on the previous subject.

Q19 Mr McGrady: It was a supplementary, very early on in the previous question, which now may not be germane but I will try it anyway. You may not recall saying this, this is some time ago. I was somewhat surprised that you thought resolution and solution "would not be through formal processes." You may not have meant to say that but that is what I wrote down. Could I suggest to you that the formality of the Parades Facilitation Agency and the Independent Rights Panel for Parades and Protests is formalising the process in an extraordinary manner, almost to make it legalistic and confrontational?

Sir George Quigley: Chairman, when I mentioned formal process I was thinking of the quasi-judicial process. In other words, when attempts at settlement fail, then one has got to get to the determining body wearing its formal hat and saying, "We're now into a situation where we must take a decision in relation to this," but in respect of the Facilitation Agency I do not think an agency like that need be formal. It has got very clear terms of reference. It would have a Chief Facilitation Officer. In one of my previous incarnations, I was presiding over the Government's industrial relations function and its conciliation function, and I remember well sitting at the head of the table and trying to reconcile the interests of some very, very contentious parties indeed. The name of the game there certainly was not acute formality, as you had a bunch of very, very alert shop stewards sitting round the table from totally different backgrounds. It would be a question of an agency, yes, highly expert, knowing exactly what it was doing, a tremendous amount of knowledge and information and experience, but finding the right way to get to the heart of the issue, finding the right way to get the confidence of the various participants. I have experience of this happening; it can work. I recall from the past, again in my time heading up that function, an absolutely superb Chief Conciliation Officer who could have charmed the birds off the trees, or whatever you do with birds on trees, but it was extremely effective, at a period of extreme difficulty in relation to incomes policy and the other things which happened about 30 years ago.

Q20 Reverend Smyth: Then can I rephrase the question. What are the arguments really for bringing parades and protests within the same regulatory framework?

Sir George Quigley: I think that the North Committee would have liked to bring protests within the ambit of the Parades Commission so that they would be subject to the same regime as parades. In fact, the Committee did not feel able to do it because

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they could not find a way of defining what protests in that context would be, how you would separate them out from the whole range of other kinds of open air meetings. In fact, I think, ultimately Government found a way of doing that. I think it is quite anomalous that, on the one hand, at the moment, you have got the Parades Commission responsible for all aspects of regulation of parades, and you have got a situation where the police are responsible for only the regulation of protest meetings. There is no overt human rights dimension at all in relation to protests. Oddly enough, it is governed still by the old 1987 Order in Council. Not only that but you have the anomaly that a protest march, for example, in opposition to a Loyal Order march, is regulated by the Parades Commission but a protest meeting would not be. It seems to me sensible that the one regulatory body should be able to say, "Here is a parade, there is objection to the parade; people after the whole process has been gone through want to mount a protest and therefore really we have got to say "How will that protest be handled?" I think there should be a clear right of protest, incidentally, written into the legislation—just as a right to parade, a right to protest—and in fact, it should be handled in exactly the same way as parades; the same thing would apply: does the right of freedom of peaceful assembly for protest need to be qualified in some way so that it does not impact adversely on the right of people to exercise their marching right?

Q21 Reverend Smyth: At the end of the day, who will be enforcing that, will it not be the police? Whether it is a parade which decides to go ahead or a protest which decides to go ahead, I do not imagine that the body you are speaking of will be on the streets trying to deal with that protest?

Sir George Quigley: Again, this is a point we may come on to in a bit more detail later, but on my proposals the Rights Panel would have the responsibility in both the parade case and the protest case to say whether what is proposed would be adverse to the rights and freedoms of others. If it decided that the parade would be affecting adversely the rights and freedoms of others then it would restrict it, in whatever way it thought appropriate. Ditto with a protest. If it were proposed to have a protest within three feet, possibly, of a parade, they might well decide that was not a terribly sensible thing to do. Once their decision was taken then, in the ordinary way, that decision would fall to be protected, implemented by the police, in the ordinary way.

Q22 Reverend Smyth: You referred to your previous incarnation. You have had several incarnations and reincarnations. Can I ask if actually you have costed your proposal, what it might cost initially, never mind what it may grow to?

Sir George Quigley: I have not costed it but I would be very surprised if it were beyond the cost of the present operation, which is around, the last figure I saw was, about £1.3 million per annum. I think, to the extent that you get arrangements which settle

more difficulties without formal adjudication, that takes them off the table, hopefully for all time, but I think there is more likelihood of that happening. Of course, if you get the number for formal adjudication reduced to very small numbers then the cost of that is relatively small. I would be very surprised if, deploying £1.3 million in a different way, one could not have, in fact, a very cost-effective solution, as well as, I think, a much more equitable and permanent solution.

Q23 Chairman: Sir George, part of your thinking in wanting to restructure this system was the question of having judge, jury and referee all in one body. Wherever you transfer the responsibility for decision-making, you will transfer also the odium that goes with it. When it was the Chief Constable alone who decided, allegedly he took into account only the law and order side of it, the Chief Constable of the day, I am not speaking about anybody personally. Those of us who know a bit about Northern Ireland know there is much more than just the law and order side to these things. There is the emotion, the political tension, the violent aspect of tension, hopefully nearly gone. Have you ever thought that, if you were going to provide a basis on which both the negotiations would take place and the various rights, either side of that coin, could be judged, then the responsibility for the overall recommendation, having received the advice of the Parades Commission, the Rights Panel, whatever you like, and the Chief Constable, that is a much wider decision, it is a decision taken in the context of everything that is happening at the time? Is not that a job for the political leader of Northern Ireland?

Sir George Quigley: Could I step back in order to answer the question, Chairman, and be as helpful as I can. What was being said to me on all sides, and, in fact, there was a case taken by a Nationalist parading organisation for judicial review on this very point, what was being said to me on all sides was that the process is not a fair process—I am talking now not about outcomes but about process—because there is lack of clarity in the criteria. There is lack of clarity with regard to the facts and the information which the Parades Commission use in order to arrive at their decision, there is no clarity as to the way in which the criteria have been applied to those facts and that information. Those involved, on either side, have no opportunity to know what anybody else has been inputting, and there is no opportunity for the parties to challenge any statement which may be made by the other side. People see it as a system which denies natural justice, and, as I say, that is not just a perception on one side of the community, that is a shared perception.

Q24 Chairman: If I may just interrupt you, that was not actually the point of my question. The recommendations you have made, that there should be much greater access, transparency and everything else, I do not think anybody around this table is arguing about. What I was putting to you was that, in the end, the decision as to whether or not to allow a march to take place has to take account of all the

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circumstances prevailing in Northern Ireland at the time. I can remember, if the Committee will forgive me for a moment, 12 years ago, the huge frustration Sir Patrick Mayhew and I felt when we had absolutely no input into whether a particular march should take place, at a particularly sensitive time, in the politics of trying to bring about peace and the Downing Street Statement, and all of that, because the whole thing was in the hands of the Chief Constable of the day, who looked at it, quite rightly, from only a professional policing point of view. As it goes so much wider, if you could get a body, whatever you called it, to do all that you are recommending, do you not think then that that body should be responsible for the final decision?

Sir George Quigley: I think it is essential to have a body responsible for a certain element of the decision-making, in order, if I may say so, to relieve politicians of some of the responsibilities and resultant difficulties. What I have in mind is that, if you have a Rights Panel which is taking care of the conflict of rights issue within the European Convention framework and is either saying or not saying that a particular parade or a protest will not affect adversely the rights and freedoms of others, if that issue is settled, then you get to the issue "Can that right be protected, in the way, one presumes any right would be protected?" On my diagnosis, that takes you into the territory of the police. Where the Rights body decided that a parade should not take place because it would affect adversely the rights of others, on my proposal there would be no question of anybody being able to overturn that verdict. Nobody could say, "Well, on the balance of forces, or for the lesser of two evils, the parade will go ahead." That could not happen on my proposals. Where the Rights Panel judged that a parade should go ahead and the police had the responsibility to protect that parade, I think the police then are entitled to be given the professional decision, "Can we protect it?" If they decide that they cannot, they will say themselves, very properly, within the European Convention, "We have got to restrict the right because it would affect adversely public order," so I think they can take that decision. The area where I think there has to be a long stop for a secretary of state is where the police say, "The Rights Panel has said all right. We think we can protect it". I think a secretary of state has got to be able to say, "I must disagree with that. I don't think it can be protected without detrimental consequences." In other words, my proposals actually diminish the area where a Secretary of State would feel that he should have some power and responsibility, but indicate very clearly where he would have a critically important role if the circumstances arose. I hope that is an answer.

Q25 Mr Clarke: Sir George, I maintain a healthy disrespect for members of the legal profession. I think, to a man and a woman, they have a tendency to take far too long to say far too little and usually charge the taxpayer for doing so, and yet it seems every time there is a recommendation to set up a new body there is a recommendation that the chairman

of the body be legally qualified. So it is in respect of the Independent Rights Panel. We have the recommendation that a legally qualified person be chosen as Chairman. Could you explain your thinking as to why it is important for the Chairman to be legally qualified?

Sir George Quigley: Yes. I will not follow the Member in his views of the legal profession since I have to live hereafter in a different environment. There are situations where legal expertise is important, just as there are areas where medical expertise or accountancy expertise is important.

Q26 Chairman: Or even political expertise?

Sir George Quigley: I would thoroughly endorse that, yes. In fact, if one is anchoring a new structure in the European Convention on Human Rights, that is very much living law, and therefore it will be important to have somebody presiding over that Panel who knows what is what in relation to the Convention, who knows what it means, how it can be interpreted, what the developing case law is in Europe, the developing jurisprudence, so that we can benefit from that. I think that requires a particular set of expertise. I make this point, that one wants somebody who is able to control proceedings in an effective way, somebody who can make sure that the quality of decision-taking is good. By that, I mean that systematically people look at what are the facts here, the information available to us, what are our findings on those facts, how do those facts stack up in the light of the criteria, how do we express those findings in terms of a decision, and so on and so forth. There is room there for that kind of expertise, and I would not see it as being at all legalistic. I think it can be user-friendly. A lot would depend on the nous, the ability of the Chairman to make sure that anybody appearing before him, or her, knew that grandstanding would gain them nothing, that excessive legalism would gain them nothing. In fact, someone who would be able to say, when the lawyer appeared in front of him, proposing to turn what could be a 15-minute, half-hour session into three days, that he was not prepared to put up with it. I think you need somebody who can control the proceedings in an effective manner and make sure that the tribunal is respected as a tribunal.

Q27 Mr Clarke: We may have to agree to disagree, Sir George, as to whether or not a legally qualified person would be the best to hold those qualities and be able to perform any better than a lay person. However, I am sure you would agree that it is incredibly important that the committee, or the panel, is representative of the community which it serves. Do you have any comment as to how we can ensure that any Independent Rights Panel is representative of the entire community, given the problems which exist currently in forming bodies in Northern Ireland which are entirely representative?

Sir George Quigley: That is an important point. In my recommendation, I did not see the panel of people from whom any particular sitting of the Panel would be chosen (and I envisaged maybe 10 or 12 people, and for a particular hearing you would have

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the permanent, legal Chairman and you would have a couple of sidemen or sidewomen) I did not see those people necessarily as having to be people who are soaked in either tradition, really who are there to say, "We're in favour of parading. We're rather sceptical about parading." I do not think that is the kind of balance you want to achieve. What I think you do want to achieve certainly is an appropriate mix of gender, so this is not a male-dominated exercise, also one wants to get some kind of geographical balance, so they are not all from Belfast, or whatever. Likewise, one wants to get people essentially who would be regarded in the community at large, and there are such people, as being totally fair, open-minded, prepared to listen to argument, who have not taken up positions in relation to everything and where you can predict what their verdict will be on any issue that you might raise. I think you want people who have a lot of experience of the world, of dealing with things, people who can listen to an argument and assess it. Not people who are, and I think I used the expression in my report, social engineers *manqués* but people who are looking at the evidence put in front of them in a sane, sensible way and saying, "That's what really we find on the basis of what has been put before us," and who are able to command respect. One is not going to get 20,000 people who will fit that specification. I could almost, I think, draw up a slate myself, and obviously there are massive options beyond anything I might think of, but really I think one could devise a Panel which would fit that bill very, very well. If I could make one point, Chairman, and it touches on Mr Clarke's point. I introduced a very radical proposal, which I have not seen anybody pick up, in relation to the Board of the Facilitation Agency, and I was bold enough to say there that I felt that on that Board there should be people who were immersed in the parading argument on both sides. Here is an agency whose very purpose is to reconcile difference and I think it would be a tremendous symbol of a new start if we had a member of a Loyal Order and a member of a residents' coalition sitting on the Board of the Agency reconciling differences in relation to parading disputes. I would not expect either of those parties to be comfortable sitting on the Panel deciding on the particular parades issue. I think that would be expecting something that would be totally unrealistic, but I see no reason at all why they should not be sitting on the Board of the Facilitation Agency. I think it is a fairly carefully constructed and balanced view of the governance of both bodies.

Q28 Mr Clarke: I am grateful for that answer. I think you have moved towards my way of thinking. If you look at the history of the Parades Commission, I think you will find that the parade decisions usually have been taken by people in the communities themselves, to have parades and/or to allow protests, and really it is not those at the top who have taken risks, usually it is the community themselves and people at grass-roots level. I wonder if I could move on slightly and talk about the issue of early notification. Within your report, you suggested

that parades should be notified far earlier. Do you think it is realistic to have such front-loaded decision-making, in terms of timescales? For instance, how realistic is it to require parades organisers, first of all, to give six months' notice, and do you think that really you would have the staff to enable the negotiations which would suffice and would arise from such early intervention?

Sir George Quigley: Yes. I think not only is it possible but it is highly desirable to extend the problem-solving over the whole year. The Parades Commission is actively involved now over a greater part of the year, but I think the expression used in a Parades Commission report was that traditionally there has been a surge along the activity curve, as one approached June to August. It means that all the problem-solving has been crammed into a very, very short period of time and the pressures are on. In regard to feasibility, I was told very clearly by those I met in the Marching Orders, during the Review, that they all could put the dates in their diary for a year ahead without the slightest difficulty. That does not mean that there would not be the occasional parade where that could not happen, but I make provision for that, people ought to be able to say, "I'm not able to do it," etc, etc. Of course, also, out of the 3,300 parades each year, there are something like 600 parades which have nothing to do with either parading tradition, they are Boys' Brigade, British Legion, gay rights, whatever it might happen to be, and clearly one would have to make some kind of provision for that. So far as the areas which give rise to difficulty are concerned, I see no problem with that at all. I think it is very, very important to give a chance over a period of months for that to happen. Obviously, any Agency would have to programme its work, and people would not be available 24 hours a day to deal with this anyway. One of my points is that a Parades Facilitation Agency should not let things drift on. One of the things which is happening now, as possibly Members may be aware in the industrial tribunal world these days, is that there is a much greater emphasis on resolving things outside the tribunal. Also, there is an emphasis on putting time limits on it, so you might say, "We're going to take three months to get to grips with this." It does not just drift on so it takes ten months to deal with, whereas it might take one month to do it. Also it is important that people should be able to lodge their objections at the same time, or within a month of the formal notification. Oddly, at the moment, despite what the North Committee recommended, there is no formal provision for the lodging of objections. I make that a very important part of the Report. Suppose one found that settlement was reached in the month of January; great. Suppose one found that in the month of January people said, "We've given it a good shot, we've used good faith efforts, now it has to go to formal adjudication by the panel," there is no reason at all why the issue of conflict of rights cannot be settled at that time. The issue of whether subsequently the parades had to be restricted because of a law and order problem—inevitably that is a decision which can be taken only much closer to the time. This is one of the reasons,

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I think, why it is quite useful to separate those two aspects of the problem. If I may make just one point, Mr Clarke, that, interestingly, the North Committee majored on the importance of starting problem-solving at the end of the previous season. They did not recommend formal notification because they felt that, on its own initiative, the Parades Commission itself should institute action at the start of the next marching season, ie back in October. I think experience has shown that unless there is some formality about injecting it into formal process, through the Facilitation Agency, it will not happen. People will say, "Well, let's do it in three or four months' time," and it drifts.

Q29 Mr Clarke: You see, Sir George, one of the concerns I have is that a lot of the work which we talk about in respect of mediation is undertaken in various guises already through projects supported, for instance, with Peace II funding, where communities are brought together to discuss difference. Surely there is a risk that, if we start earlier, first of all, in notifying and then discussing mediation, an all-year-round negotiation could put pressure on some of those other attempts to mediate which are going on currently in communities. Do you accept that the clock ticking towards midnight is always a good time to focus the mind as to what needs to be done, and if we come to a decision too early we run the risk always of further objections and different objections being raised by the party which may seem to be aggrieved at the decision which already has been taken?

Sir George Quigley: The view coming to me in evidence was that the argument was very much in favour of using much more time to get started. That is all I can say. That was what was coming across to me very clearly. When I think of most comments on the parades situation, for example, if one takes the flurry of interest in Drumcree this year, which developed from roughly 1 June, I think many people were saying, "What was happening between last July and 1 June?" There may have been a great deal happening, but I think that certainly one of the parties to those difficulties was saying, "We weren't involved, we didn't know anything about it." It is terribly important to use the whole year to try to get to grips with the problems, and I think that would be wholly beneficial. Also it means, if one does have to go to the panel, it gives the panel time to do a proper job. I think the Parades Commission has made the very cogent point that, given the way things are compressed at the moment, there is no way in which they could do a significantly different job. If you have got a whole raft of cases to deal with from the middle of June onwards, you cannot deal with those in accordance with the kinds of principles and processes which I think everybody wants to see, certainly which everybody was telling me they wanted to see. You have got to make space for proper process, and I think that does involve getting in very early.

Q30 Mr Bailey: Transparency; an issue. You advocate greater transparency in the process there, but there has been some evidence that some parties to the process feel they would not like to put things on record, and that indeed greater progress has been made by virtue of the fact that the process has not been that transparent. What is your position on this, how do you feel about it?

Sir George Quigley: I think, at the pre-panel stage, at the facilitation stage, I am not talking about transparency there. That process would develop its own dynamic within the guidance offered by the professional people involved. That is a matter of negotiation. There would be nothing secret about it. I think one of the things we have got to get away from is the fact that there is something slightly unrespectable about the word getting around that people are trying to solve a difficulty. I think people in Northern Ireland would welcome the fact that people are getting together to solve difficulties. It does not mean it has to be a public performance, in fact, it would be a private performance, but nothing secret about it, or secretive about it, or furtive about it. It is one of the issues I would have about a great deal that is going on at the moment, it is highly furtive. It does not need to be. I think that when one comes to the Panel, that is an entirely different matter, and what people were saying to me on all sides was, "We really need to have transparency there, we need to know what the objections are, we need to be able to address the objections, we need to be able to challenge the objections, the objectors need to be able to challenge the people who are organising the parade, anybody else who has an input to make needs to make it." There may be cases where people will say, "Our information is so sensitive that we think it has to be given in confidence," and there can be provision for that. It is quite interesting that the North Committee said (I paraphrase) "We doubt if proceedings should be public, but we do think that it could be beneficial to get more than one party into the room at the same time, and where there is a need for confidentiality we think that should apply." That is not a hundred miles from my own proposition. I think also it is interesting that, in one of its reports, the Parades Commission makes the point (and again I paraphrase) "We think a great deal of progress could be made if people could hear each other, even where they disagree, because it might lead to greater mutual understanding." I think that when you look at the merits of the case you want a process where people are going away—and this is a point made in the Leggatt report on tribunals generally—they want to be going away feeling, "I think I got a fair hearing. I may not like the outcome but I got a fair hearing." This is where I was so impressed by the way in which Scottish local authorities handle this. It is a model of lucidity and order, and what else would you expect from the Scots, but there it is, with everybody having an opportunity to have their say. It is all there, it is beautifully recorded and nobody could feel he had not had his day in court. I think that is the kind of thing we want to achieve, that feeling of fairness whatever the outcome. Going

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back to the Chairman's earlier point about the political dimension to all this, I think everybody's problems will be eased if there is that feeling that, "We have had a very full hearing, it has gone against us, but we know why the decision was taken even though we don't like it."

Q31 Mr Bailey: Looking at it from the outside, your proposals that parties to a disagreement should be required to exchange evidence and even cross-examine each other, whilst as a process it might seem desirable, it could work either way, it could inflame positions. That is a perspective from outside. Would you not say that this is quite a high risk strategy, and actually could it undermine the trust that we hope is beginning to develop between the communities on this?

Sir George Quigley: I think it would be an overstatement to say that there is a vast amount of trust around. I think the level of trust is extremely low. Up to the moment, the method of operation has had the effect of undermining confidence in both communities. For example, the case taken to judicial review is a very clear case, where within the Nationalist community people are saying "We don't think this is a fair process." It is being said on the other side of the house as well. When things are done secretly, particularly when sensitive decisions are being reached, I think that people react much more adversely than they would react if it were a more open process. For example, one of the elements of the current process is a system of review by the Parades Commission of decisions where fresh information is made available after they have taken an original decision. Something like 20% of cases are reviewed in that way, and the reason given by the Parades Commission is that the information is incomplete. One of the reasons why the information is incomplete is that it had not been garnered through an open process on all sides before the original decision was taken. The very fact that a decision is reviewed, after a number of individuals have come in and talked to the Parades Commission, without anybody else being present, for 15 or 20 minutes, means that if the decision is overturned inevitably people say, "Well, what was said that resulted in the decision being overturned?" I think we need to inject confidence by getting more openness, and that will be to the benefit of all parties. The other element in this, of course, is that I think, in terms of vulnerability to challenge, the present arrangements are on very, very shaky ground. I quote in the Report the cases taken to the Sheriff's Court in Scotland, where local authorities, which had relied on information which was not made available to all the parties, were trounced, and also Article 6 of the European Convention on Human Rights makes it quite clear that there should be, as it says, a public hearing and a fair hearing. I know the Parades Commission have been advised that it does not apply, but the fact that it does not apply does not seem to me a very good argument for not doing it. If it is the right thing to do, one does not have to be forced to do it by an Article 6. I think also there is a whole raft of European Court cases which indicate

that they expect rights issues to be dealt with in that fair, open, transparent fashion, so I think that to put the premium on confidentiality runs totally counter to the tide. An argument used very often is that, "Well, it's all so sensitive and confidential in Northern Ireland that really we can't have openness and transparency." I had the benefit of looking at about 24 sets of case papers, probably two or three feet high, in relation to particular parades decisions, and I saw very, very little in those papers which could not have been exposed in the kind of process I am talking about. If there were such issues, as I say, they could have been dealt with through an appropriate system of confidentiality on these points.

Q32 Mr Bailey: Thank you. I am sorry to labour the point, but I believe that existing Commission Officers, in effect, have fostered relationships and obtained information which has been given to them in confidence, basically. Do you not think that there is a real problem, that if you have a process which has enforced transparency, if you like, then the benefits of that confidential information for them will be lost?

Sir George Quigley: Again, I go back to my experience of the case papers. I think that, if there is anything being said which is relevant to the resolution of a conflict of rights, there is very little of it that should not bear saying, with the other people present who are affected by that information. In the kind of regime I am talking about, where one is looking at what is the nub issue, which is, will the exercise of this right adversely affect the rights and freedoms of others, if one is measuring that, as North recommended, by very, very practical, concrete factors, then I do not see any reason at all why that should not be in the domain of all those who are affected by the decision. I think that it creates suspicion, and in an area where rumour abounds, allegation abounds, misunderstanding abounds, the present system could not have been more skilfully devised to compound the difficulties, if I can put it as strongly as that.

Q33 Mr Bailey: Would you accept that even within a more transparent system there may be a need on occasions to have some sort of mechanism, some sort of flexibility to protect somebody who may be particularly vulnerable as a result of divulging information?

Sir George Quigley: I agree totally with that. Let us take a practical example. You could have a situation where a particular community is saying, "Here's our view, in relation to X," and there might be 10% of that community who would disagree with that view. I do not see any reason at all why that 10% should not write to the panel and say, "We that view. I do not see any reason at all why that 10% should not write to the panel and say, "We really getting the full facts about community attitudes in this situation," there is no reason at all, for example, why they should not have an attitude survey. I am not aware of any case, oddly enough, where such a survey has been done in relation to parade issues, certainly not

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all of them. Funnily enough, the suggestion that attitude surveys might be useful was made to me from a very significant Nationalist source in my evidence.

Q34 Mr McGrady: Sir George, in the structures which you have suggested, and I have hinted already at the question which is coming, are you not fearful that you are suggesting the establishment of a process of a quasi-judicial nature, whereby, both in terms of the transparency and the structure, the parties become engaged in litigation virtually and employ junior counsel, senior counsel, costs on both sides and the whole thing becomes a stand-off? Does that not suggest, as you do at certain times this afternoon, you refer to industrial tribunals, I do venture to suggest that they are bogged down, because instead of what was intended they become judicial amphitheatres virtually?

Sir George Quigley: Which, of course, is one of the reasons why people are looking to alternative disputes resolution procedure without going through a formal tribunal process. I think everything would depend on how the panel was set up, the personnel appointed to it and the procedural rules which it devised for its operations. There is no reason at all why one should not say any sensible hearing in relation to a dispute should be capable of being conducted in half a day. I would doubt whether it is likely, particularly since papers will have been circulated in advance, that much will emerge after half a day's hearing. There is no reason at all why a good chairman would not make sure that he simply did not put up with time-wasting activity. This is what chairmanship of such an institution is supposed to contribute to the proceedings, and I think that could happen. In terms of litigation, no, this is not conventional litigation, I agree totally, but nonetheless there are two claimed rights, very often, which are in conflict, and there has to be some means of getting a resolution to that. There has to be some means of saying, "Here is a right claimed to parade," in such and such a way. Here are other people saying, "That is going to impact on our rights in the following respects," and this is why getting the objections listed carefully is so important, what do these people actually say? Those have got to be addressed seriously. That is the kind of situation where people sitting in a room can put their points of view, explore each other's positions and a panel can arrive at a conclusion. As I say, it might not command wide agreement, universal agreement, but certainly where people say, "We like the process, it's been fair, it's a great improvement on what has gone before"—where there was a black box, frankly, out of which a decision came.

Q35 Mr McGrady: I must say, through you, Chairman, that I am most impressed by your optimism that lawyers in a room can address the issue in an afternoon; however, that is another story. I want to leave that and go on to another matter. Would you agree that there are very useful, informal contacts and relationships between communities in dispute at the moment, and indeed between those

communities and the Parades Commission? I think there is a general consensus that greater transparency is required in the entire process. Can you suggest any means by which greater transparency can be put in place by maintaining what I consider to be the very useful, informal methodology of resolution between the communities and their relationship with the Parades Commission?

Sir George Quigley: I think what is going on between the communities, whether it is directly, or facilitated, or whatever, whether it involves the Commission or whether it does not involve the Commission, all of that is what I call informal process. The agency which I propose would give it more structure, so that, in fact, I would foresee a situation where if there are still some disputes around, and there are, where those contacts are not happening, there would be a body gripping it and making sure that the process was instituted. Nobody could expect to sit around whilst a dispute was on the table. Then one comes to the situation where that all breaks down and there is no resolution and there is going to be a parade on the 12 July, somebody has got to take a decision as to what happens, and really this is what I am addressing through the panel mechanism. That, I think, is where transparency comes in. One is not going to get transparency in the sense of documents being published, or this kind of thing, at the facilitation stage, but at the Panel stage one is getting the circulation of all the relevant documents to the parties and then they are able to interact with each other in that panel setting. To take a point. If, in fact, parties are having difficulty in coming together to get to grips with things, maybe the Panel is quite useful machinery for getting them sitting in a room, arguing out the points between them.

Q36 Mr McGrady: You do not see any even intra-mechanism by which that which is good at the moment can be sustained through to greater transparency without the entirety of the new structures which you suggest?

Sir George Quigley: It is extremely difficult. The Parades Commission has nailed its colours firmly to the mast of preferring, indeed thinking that confidentiality is the only way of doing it. I do not see how an organisation can suddenly reverse engines and say, "We were doing it this way, now we're going to do it in a way where everybody will be invited to put their objections on paper, it will be circulated all around to the parties in dispute, they will all have a chance to come together in a room, they will all have a chance to talk about it." It is a totally different concept, as different as day is to night from the existing arrangements. I do not see how that can be done. Also, there is a point that, at the moment, and it is a point I argue very strongly in the report, one has got a whole mass of criteria by which decisions are made. We have got the North principles, we have got elements taken from the 1987 Order and from the 1998 Act, we have elements added by the 1998 Act. We have got rules about engagement, which are in one of the Parades Commission reports. We have got a whole plethora

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of criteria. What I am suggesting is we have got to sort all that out and say, "The nub is, can the right be exercised without detriment to the rights of others?" That is the key point, that is how it all began, with people saying, "We have a right," and other people saying, "We have rights." I am getting back to basics and saying that was how it started, that was the issue, and let us get back to that and let us go to the European Convention framework which exists already and put that issue which started it all off within that framework and get an open, transparent, natural justice process for determining. Essentially, that is the proposition.

Q37 Mr McGrady: Changing the subject slightly, Sir George, once the decision is made, once the determination has been published, as it were, you have been critical, I think, in terms of how effective enforcement is of those determinations. How do you see the current problems with compliance in that respect and have you any suggestions as to how they could be better addressed?

Sir George Quigley: Yes. I put a great deal of emphasis on compliance, and again that was responding to the evidence I got. People were saying, "The Parades Commission makes a ruling, there is not necessarily full compliance with that ruling. The Code of Conduct is not always adhered to. What happens about it?" Most of that was coming from the Nationalist community, but from the Loyal Orders I was getting the point, which I felt was a very reasonable point, "If there is a breach, nobody comes along and tells us X and Y happened, can we discuss with you how that is prevented from happening again?" Instead, the issue would arise when they put in their next application and then it was used against them perhaps, as they saw it, in relation to the decision which was reached. What I am suggesting is that after each parade where monitors or the police were reporting a breach, that would be reported through to the Rights Panel, but furthermore, and this is quite revolutionary, where any citizen felt that there had been a breach they could report that, again to the Rights Panel. The compliance section of that Panel would assess that. Now some things might be trivial, they would say "There's no point following that up, that was a slip," and so on and so forth, but where they felt that there were significant issues, they would put those issues right away. I come back to my 'at the end of the season' point. Even before the end of the season, they would put that point to the relevant parading organisation and tease it out with them: "Why did it happen, have you any points to make on it? Did it happen like that, is your perception different?" Etc, etc. Out of that would come either an agreement between them, "Yes, we have got to remedy this in future years by doing X, Y and Z," or it could be that it is regarded as a grosser fault and the panel would be saying, "Before you parade again, you will put down a bond for X," and I was suggesting £500, as an earnest of good faith for the future. It could be that the breach was so severe, for example, you might have had people parading flagrantly in breach of everything that has been said about paramilitary

uniforms, and all the rest of it, provocative behaviour, whatever it might be, you might have the panel saying, when the next application was made, "We don't think you can credibly argue that your intentions are peaceful, so you are not even at first base, because the European Convention says "peaceful assembly" and you are not in the game at all." I regard compliance as critical, and I am not talking here about being punitive, retributive, or anything of that kind, really I am talking about what ultimately is in the best interests of those who want to parade. They must make sure that their house is in order. This is why I deal with not only compliance but also the code of conduct which I suggest needs to be revised. I deal particularly with an issue which always comes up when people talk about parades, and that is bands, or band parades, and I really focus on that, I think, very significantly, to say two things. One, that I was quite encouraged by some very positive things which came up in my discussions with the bands. I think that the Government and its agencies would be foolish not to build on the possibilities there, for social education, for upgrading people's musical skills, for getting them to take pride in doing the job superbly well. There is a whole series of things which could be done there which are highly positive and constructive. Equally, I say that, on conduct, there ought to be a more rigorous regime and that ultimately the provision which has been on the statute book for 30 years, in relation to the registration of bands, should be invoked. Yes, I major on compliance. The other point I make, which is important, is that where the police have been dealing with a parade, if it is felt that the policing could have been done differently and better then, again, that ought to be coming out and examined thoroughly. It is putting it all up front, getting the issues identified and tackling them, not letting them fester and drift on.

Q38 Mr Luke: Sir George, it is now over a year since you reported, and the Government, in extending its review period, argues that it needs to wait on the responses of interested parties before it responds to your findings. Did you have any difficulty in drawing opinions from those interested in or affected by parading, and how long do you think it is reasonable to wait for the Government's response?

Sir George Quigley: I must confess that I had no difficulty at all in extracting views in the context of my Review. I would say, quite genuinely, that, in 60 meetings, with such a diverse range of interests, all political parties, residents' groups, Loyal Orders, I have never been engaged in such an enjoyable series of meetings. I am very disappointed, I am bound to say, that the consultative process has dragged on for so long, and I would have been quite glad to assist in that process if I had been asked. If people had points they wanted to raise on my Review I would have been perfectly happy to elucidate those points, or perhaps help them to understand the points better, but I was not asked to do that. I think it is a pity, because if it is decided ultimately to implement the report, it is going to drift on to the Greek calends, quite honestly, and I think that is unsatisfactory, if

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something should be done. The people who have made very serious points and constructive points, and, as I say, very few people were asking that the regulatory machinery be dismantled, they wanted regulatory machinery, they were making very valid points about it, I think they will be very discouraged.

Q39 Mr Luke: Ultimately though how important do you feel it is that these changes which you propose should happen?

Sir George Quigley: I think it is very important. I think it is always rash to say that things are getting better so we assume they will continue to get better indefinitely. One of the great pitfalls in any significant change management process, whether it is in a company or in an organisation, is to get along the path and then decide that really the job is done. I think it is far from done. We should take great encouragement from the progress that is being made, but we should not become conditioned to complacency. I think that, therefore, we should beef up the capacity to do what is being done to achieve settlement of issues without judgment, and we should put the whole basis for coming to judgment, which is if it reaches the panel stage, on a much stronger footing which is able to stand the test of time. For example, if, in five or six years' time, an area in which we may all have felt "There'll never be a problem there" suddenly erupts, we do not want another Drumcree which festers, because once one gets one issue becoming centre stage, one then can find that what appeared to be a benign movement

towards a solution simply falls apart. Also we do not know what the general context will be in Northern Ireland. The flashpoints generally in Northern Ireland last summer were much less inflamed than they had been previously, but who knows, in six months' time, what the factors will be which influence towards moderation or away from it? Northern Ireland is potentially far too dangerous a place to say, "We can really be happy with arrangements that are not going to stand the test of time if they're subjected to significant challenge." I think, to say the arrangements are all right as the context improves, fine, but will they stand the test of time if we are back, as hopefully we will not be, but we cannot guarantee we will not be, in a situation of confrontation?

Q40 Chairman: Sir George, you have been very generous with your time and given us the fullest possible answers. We are very grateful to you for coming and I am sure everybody is grateful for the time and effort you put into your report. Thank you very much indeed for appearing in front of us.

Sir George Quigley: Could I thank you very much indeed, Chairman, and your colleagues, for the courtesy with which you have treated me and the opportunity you have given me to express my views. I would just like to say that if you feel that in some other way I can be helpful to the Committee as your proceedings go on, well then, I will be delighted to be as helpful as I can.

Chairman: Thank you very much indeed.

Tuesday 10 February 2004

Members present:

Mr Michael Mates, in the Chair

Mr Adrian Bailey
Mr Harry Barnes
Mr Tony Clarke
Mr Iain Luke

Mr Stephen Pound
The Reverend Martin Smyth
Mark Tami

Witnesses: **Professor Brice Dickson**, Chief Commissioner, **Professor Tom Hadden**, Commissioner, and **Mr Ciarán Ó Maoláin**, Researcher, Northern Ireland Human Rights Commission, examined.

Q41 Chairman: Good morning, gentlemen. Thank you very much for coming to help us with our Inquiry into the Parades Commission and Public Processions. Let us start off with Lord Quigley and his report. He recommends that the process for dealing with contentious parades should have a stronger focus on rights than it has at present. What difference would that sort of change make in practical terms?

Professor Dickson: Good morning, Chairman. Can I just begin by introducing myself and my colleagues? I am the Chief Commissioner of the Northern Ireland Human Rights Commission. On my right-hand side is Professor Tom Hadden from the Commission and on my left-hand side is Ciarán Ó Maoláin who is one of our researchers in the Commission. I think your Committee will have received the written response that we made to the Quigley Report and possibly also a letter that we sent to Sir George Quigley prior to the publication of his report in which we summarised the work that we had done to date on parades and the policing of parades. To answer your question specifically, Chairman, I think an increased rights focus in the determinations on parades would help to ensure that a proper balance is maintained between the right to march and the right to protest against a march. We focus our work on the European Convention on Human Rights and on other international human rights standards and we have looked closely at the way in which Article 11 in particular of the European Convention has been applied both by the Parades Commission and more generally in Northern Ireland. To date we think that it has been applied fairly well, but we would like the legislation itself dealing with this whole issue to be more specific in its reference to rights, not just Article 11 but other Articles in the European Convention. The Convention itself incorporates this idea of balancing rights, the rights of one individual or group against the rights of another individual or group and we think that proper application of that balance could lead to a more peaceful settlement of the parades issue here.

Q42 Chairman: You say more peaceful, but given the history of public order breaches relating to marches over the years, is it practical to do this? Is it not likely to make a bad situation worse?

Professor Dickson: We do not think so. If the rights in the European Convention are supplemented by other rights and duties which we have referred to in our response to Quigley, in particular the duty to show tolerance and respect, the application of those principles and rights will help to diffuse tensions, will help to create the kind of balance that I referred to and will allow both protesters and paraders to exercise their rights in a free society.

Q43 Chairman: When you say that all these rights have equal importance, of course you have to restrict them sometimes in order to accommodate the rights of the other side. In some ways you are arguing against yourself, are you not?

Professor Dickson: I do not think so. I think we are recognising that everybody has rights but they have to be exercised responsibly. The European Convention itself requires that, "... with due regard to the rights and freedoms of others". In a democracy such as ours it is to be expected that people who hold different views should be allowed to express those different views. Provided they do so peacefully and in accordance with the law there should be no difficulty with that.

Q44 Chairman: How do you limit the rights of one side to accommodate the others in a way that is going to be seen to be fair?

Professor Dickson: By imposing reasonable conditions on both sides, conditions that permit the exercise of the right without unduly restricting it.

Q45 Chairman: Which is what you do at the moment, is it not?

Professor Dickson: Yes.

Q46 Chairman: Does the Quigley model reflect this best practice?

Professor Dickson: As you will know from our response to Quigley, we have one or two doubts about it. In particular, we do not like the distinction he draws between restrictions on the right to assemble that are based on the rights of others or the morals or health of the nation on the one hand and restrictions which are based on public order or disorder or crime on the other. He seems to suggest that those latter restrictions should be imposed by the police rather than by the Rights Panel. We would

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prefer that the Rights Panel take into account all of those Article 11(2) considerations when making its determinations.

Professor Hadden: One of the reasons the marching issue causes problems is that one side or the other feels that their rights are being denied. They feel, particularly on the Loyal Order side, that they are being denied their right to parade peacefully. My understanding and the understanding of all the people who have looked carefully at the jurisprudence of the European Court is that that Court veers towards the upholding of the right of a peaceful assembly. One of the oddities of the situation here is that neither the residents nor the Loyal Orders have ever taken a case to Strasbourg and I have never quite been able to understand why that should be so. My feeling is that on both sides they are slightly wary of having an authoritative statement of what the rights should be. I think that doing what Sir George Quigley suggests, which is making whoever is determining the issue adhere precisely to what the Strasbourg court would decide, would be an advance. One of the difficulties with the present regime is that lots of other issues which are very difficult to decide, like the impact on the community, are thrown into this. The view of the Commission is that it would be better if we stuck quite closely to the provisions of Article 11 of the European Convention which, as we say, incorporates all the other ones, although we are very much against splitting the two issues. The information that we have from our discussions with PSNI is that they do not really want the issue to be split again. They would prefer to have a ruling on the whole range of Article 11 issues, which includes public order and public safety and then for them to be required or expected to enforce or apply that ruling subject to—as we say and as Sir George Quigley says—their right to intervene if things begin to get out of hand. So far under the rulings of the Parades Commission the police have not had huge difficulty in enforcing them. I think they are much happier, based on our discussions with them, having a ruling and then it is their job as professional public order people to ensure that it is applied insofar as it is possible.

Q47 Rev Smyth: Is it not significant that when court cases have gone against residents' groups here they have not proceeded to appeal them to Strasbourg?

Professor Hadden: It is the same answer. I think both sides prefer to assert what they believe to be their human rights rather than to get a balanced judgment from the highest court here. Insofar as I would have a personal view, I think it would be helpful if either side took a case and got a ruling because I think a ruling from Strasbourg would help to clear the air as to what the balance of these rights is. My reading of the recent cases is that the Court veers towards the protection of the right of a peaceful assembly and that that should be more clearly reflected in the rulings of the Parades Commission. The other concern I have is that going down the route of allowing people to assert ownership over territory, such as "You can't come into our area because we

don't like it", is not a good way to go. I feel the cases that the European Court have decided would be against that concept and that is again why I think it would be helpful if either side could be persuaded, or even both, to put a case to the European Court.

Mr Ó Maoláin: In my opinion it is probable that the European Court would regard balancing so many rights from so many interests as a matter best determined at national level. Every state party to the European Convention is allowed a fairly wide margin of appreciation on how to interpret the rights domestically. It is quite likely that any reference to Strasbourg would not result in some final determination of a black and white division of rights in the area of parades and processions.

Q48 Rev Smyth: I appreciate the answers given. It might be that both groups do not think they should be funding lawyers to have an easy life. Maybe you could give us the cost that might be involved in doing it and tell us whether the Commission itself would fund them to take it to Strasbourg?

Professor Dickson: We have been approached on more than one occasion to support cases where we have the powers to do so, but in the end we have decided not to support such cases because we have not thought that they merited the support when we have examined them more closely. Taking a case to Strasbourg is not that expensive at the end of the day partly because Legal Aid can be provided but also because the costs of taking cases domestically to an appeal court or to the House of Lords are usually far in excess of what it costs to go to Strasbourg.

Q49 Rev Smyth: Are there any Convention rights which were not given sufficient consideration by the Quigley Report, or which are more generally overlooked in relation to parades?

Professor Dickson: The Human Rights Commission is on record as saying that it would like there to be more transparency in the method by which determinations are made by the Parades Commission or by the Rights Panel and that would probably require greater consideration to be given to Article 6 of the European Convention on Human Rights, the so-called "fair hearing" provision. We are in favour of the reasons for objecting to a parade or a march being made more obvious and more accessible to the people who want to organise the parade or march so that they themselves can deal more openly with those objections. At the moment we understand that the very rules under which the Parades Commission operate preclude it from revealing to the people who want to march or parade the details of the objections. Whilst we recognise that there might be difficulties in identifying some of the protesters or objectors, we do not think there should be any difficulty in revealing the substance of the objections and if that were done it would therefore allow the paraders to deal more openly with those objections. We think Article 6 should be given a bit more prominence. There are other Articles, such as Article 17 of the European Convention which makes it clear that nobody is allowed to exercise their rights in a way that is

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designed to take away the rights of others. I think the Rights Panel or the Parades Commission should pay more attention to that provision.

Q50 Rev Smyth: Evidence given to us shows they believe Article 9 should be given more consideration. I will use it in the context of a decision to prevent a parade going from the Loyal Hall straight to the church, with 50 people involved and in order to make sure that they did not go the place was swamped with police. Is that not actually an infringement of religious freedom, because they were just going for a church service?

Professor Dickson: The Human Rights Commission is looking closely at the particular Dunloy situation that you mentioned, Reverend Smyth. We have not yet come to a conclusion on it. We accept that the right to religious freedom under Article 9 does need to be carefully borne in mind when looking at parades issues, although the right to religious worship does not necessarily entail the right to march to a place of religious worship.

Q51 Rev Smyth: Would you agree that traditionally it has been part of religious manifestations, pilgrimages and other things and it has never been denied as a right, has it?

Professor Dickson: You are correct, it has not been denied as such, but, like all rights, it needs to be exercised with due regard to the rights and freedoms of others.

Q52 Rev Smyth: This is the very point that we are trying to figure out. What rights are being infringed if walking up the street as an organised body to a place of worship is infringing the rights of someone else?

Professor Dickson: I would accept that, but we have to look at the particular facts of each case. The Dunloy situation may be different from the Garvaghy Road situation and entirely different from another situation. So much depends on the facts of a particular case.

Rev Smyth: It has been many years since I have preached in Dunloy at such a service and there were no problems.

Q53 Mr Clarke: Good morning. Toleration is a difficult word. It means to disagree with, to put up with and yet in your memorandum you take it one step further and call for an obligation to be placed on both parties during mediation “to tolerate the expression of opposing views”. We are now into territory where we are saying people should be obliged to sit and listen to opposing views. Is that obligation not likely to put a strain on mediation rather than to assist it?

Professor Hadden: I think there is a misunderstanding in the list of questions or issues which were supplied to us that the idea of putting something in an Act about toleration is exclusively about mediation. My understanding of the Commission’s position is that this is a general statement that it would be desirable if somewhere in the guidelines or in the legislation some reference

were made to the desirability of either side tolerating the expression of the other’s culture and practices and religion and all those other issues. It is not to do with mediation, it is to do with the general concept which is built into most of the human rights Conventions—although it is not specified as a right—that people should be expected in a democratic society to tolerate the peaceful expression of views or practices or culture which they do not agree with. I think building that into the legislation or the guidelines would assist in avoiding the danger that I mentioned earlier of different communities asserting ownership over territory and even ownership over territory in which somebody else may have a church, as the Reverend Smyth has indicated. That is a problem. It is not to do with mediation, it is to do with the general concept that it would be desirable for there to be in the legislation or the guidelines some reference to the duty or obligation of people to tolerate. In our submission we make it clear that the Framework Convention on the protection of national minorities actually imposes a duty on states “to encourage a spirit of tolerance and encourage a dialogue and to take effective measures to promote mutual respect and understanding”. What we are suggesting is that an effective measure on the part of the state would be to build into the legislation or to the guidelines some reference to this idea that you should tolerate the peaceful expression of views that you do not agree with.

Q54 Mr Clarke: I think many of us would probably feel more comfortable with respect and understanding rather than tolerance. Tolerance suggests that we are just putting up with something. Even if it is not at the mediation stage, even if it is just part of the legislation, how do we enforce an obligation of tolerance?

Professor Hadden: The reason we have referred to tolerance is because the word tolerance appears in most of the international human rights Instruments and we have used these words because we are committed to international standards. Respect is in a sense putting a higher duty on people, in effect you are saying there is some measure of agreement. Toleration is to say the other fellow has the right to his view even though we do not agree with it. I think the lower standard is actually more helpful in this area rather than expecting people to respect views which they find difficult to agree with.

Mr Ó Maoláin: The obligation is not on individuals, for example those involved in negotiations or in parades, to tolerate or respect the other person; the obligation is on the public authorities, it is on the state to promote tolerance. While tolerance is a fairly low standard, no meaningful negotiation can take place unless that bare minimum is achieved. If the higher standard of respect were achieved, that is if all parties to a discussion about a parade respected one another’s views and one another’s right to express those views, then there probably would not be a need for any kind of formal determination process.

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Professor Dickson: We see this as part and parcel of a more general approach to good community relations in Northern Ireland. We have recently made a response to a consultation paper on that topic and in that we have said that the law should be amended so as to include a statutory definition of good community relations which would include something along the lines of a duty to promote good relations, including reasonable and proportionate measures to foster mutual tolerance and respect within different communities. We are very much in favour of that general approach to the conflict in Northern Ireland and the issue to do with parades is just but one aspect of that more general conflict.

Q55 Chairman: Professor Hadden, when you spoke just now about ownership over territory you said that ECHR jurisprudence was unfriendly towards the assertion of ownership by the community. Are there any relevant cases on this subject?

Professor Hadden: If you are asking whether the European Court has expressed a view on that, the answer is no. What I was trying to say is that the kind of statement that the European Court has made has indicated that there is some duty, obligation or expectation on people to accept the expression of views which they do not agree with, and in our particular circumstances that comes down to the question of whether a group of residents have a right to say we will not have somebody whose views we disagree with in our territory. That is why it seems to me that it would be desirable to look at the implications of the kind of general statement that the Court has made on the particular circumstances that we have here, which is in some areas an assertion of exclusive control over access to particular pieces of territory, villages or roads. Clearly there has to be a proportionate response to this. I think if somebody sought to march round and round an estate which was exclusively inhabited by one or other community that would be unreasonable, but larger roads access provisions seem to me to be a slightly different matter and a proportionate response would be different.

Q56 Mark Tami: Turning to determinations themselves. Are you happy that the present guidance on the criteria for making these determinations is sufficient? What do you think could be done to improve on it, if there is indeed scope to make such improvements?

Professor Dickson: I think generally speaking we are happy with the guidance and the Code of Conduct. We have drawn attention in our response to the Quigley Report to the need for matters such as tolerance and respect and the avoidance of provocation or harassment to be taken into account by the panel making determinations. As we have said earlier, we would like the determinations to refer more specifically to other Articles in the European Convention, including Articles 9 and 10 and indeed 8, the right to a private life. Generally speaking, subject to what my colleagues might want to say, I think we are reasonably satisfied with the guidance.

Q57 Mark Tami: Do you not feel that some of the language used does not translate very well with people out in the real world? I understand where you are coming from, but all the words that you are using do not necessarily translate very well, there is a lot of coded language being used. Do you think it could be improved so that it comes across in a more open and understandable way?

Professor Dickson: We are in favour of accessible language being used at all points and we try to follow that in our own publications. I cannot put my finger on any particular phraseology which is unfriendly to people, but again my colleagues might have comments to make.

Professor Hadden: The one that it is quite difficult to fit into a human rights perspective is the impact on relationships in the community and Sir George has indicated in his report that the North Report felt that that would in some way assist, but I think the general view is that that particular criterion has not proved terribly helpful. My view is certainly that if changes are being made that is the one that should be focused on and that is the one that is so difficult to make a judgment on.

Mr Ó Maoláin: I would add that the general obligation on the state is to facilitate parading and protesting. It should only intervene when the rights of other people are significantly impacted on by the proposed activity. In addition to the Articles that have already been mentioned I would like to mention Article 5, the right to liberty, which in the past has certainly been engaged or possibly violated by over-zealous containment of local people who objected to parades passing through their "territory".

Professor Dickson: Just one supplementary point on the community relations point. Even if it is a legitimate criterion to apply, my understanding is that the courts in Northern Ireland, when looking at this issue in cases where there has been a challenge to the determination, have held that what is in question here is community relations within the whole of Northern Ireland rather than community relations within a particular locality. So you can get a situation where a determination is made to allow or disallow a parade or to impose conditions on a parade for the sake of good community relations 100 miles away, which is not a reasonable application of that criterion. If it is to be retained at all it should be confined to the locality in which the parade is to take place.

Q58 Chairman: If the determinations make greater reference to specific Articles that is going to open up all sorts of legal challenges, is it not? Will that not give the lawyers a field day?

Professor Dickson: We are not in favour of giving lawyers a field day, but we are in favour of the European Convention on Human Rights standards being explicitly applied and referred to. If they are applied carefully and in accordance with the European Court's precedents then it is unlikely that significant challenges would be made to them.

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Q59 Chairman: If a determination is made and in aid of that determination is prayed a specific Article then it is open to people to disagree with that and to challenge that. If that is the reason you are giving then that reason is wrong. You have just quoted an example of community relations 50 miles away. Are you not making a rod for our own back if you do that?

Professor Dickson: I do not necessarily think so, Chairman. The Parades Commission or whatever panel is set up to replace it is a public authority for the purposes of the Human Rights Act. It has to apply the European Conventions standard whether it is explicit about it or not. Whatever reasons are given by such a panel will be open to challenge through the normal processes of judicial review. I think our view would be that the more transparent the process then the more protected it will be ultimately against a traditional challenge. Do not forget that people who apply for judicial review have to seek leave first of all to take the case and if a judge thinks that the determination being challenged is perfectly clear and well reasoned there is a possibility that leave would be refused.

Q60 Rev Smyth: Is it not a fact that there has been some confusion in the minds of parades organisers and residents' groups because of the diverse decisions given, sometimes contradictory decisions, as is your interpretation of that one 100 miles away having an impact? Has that not been one of the difficulties in understanding the decisions already given?

Professor Dickson: You might be right, Reverend Smyth. I do not think the Commission is in a position to give you a definitive answer to that. We have not done a systematic review of all the local cases in which the determinations of the Parades Commission have been examined. We do know that there is difficulty sometimes in the time it takes for judgments to be issued by the courts on judicial review applications and that is, and can be, a difficulty, but because the facts of particular cases are so important it is often difficult for a judge or an appeal court to issue a ruling which can be easily applied in other situations. That may well be the case even if the European Court of Human Rights were to make a determination, because it is used to making very specific rulings that are not designed to form a precedent in the English common law sense.

Q61 Mr Bailey: I would like to pursue this issue of determination. Quigley argued that consideration of public order concerns should be separated from consideration of the right to parade so that the arguments about rights can be heard solely on their own merits. Do you agree with that assertion?

Professor Dickson: No, we do not agree. Whilst it is important to consider the rights and the balancing of rights, it has to be borne in mind, as Article 11(2) of the Convention makes clear, that the prospect of public disorder or crime can be taken into account when striking that balance between rights. As we have said earlier today, we are very much in favour of the panel making the determinations and taking

into account the public order aspects of any application to march rather than confining that aspect of things to the police.

Q62 Mr Bailey: So in effect there is an inconsistency in the approach insofar as the human rights provisions actually take into account public order consequences?

Professor Dickson: We do not see that as an inconsistency, we see that as entirely consistent.

Q63 Mr Bailey: It is inconsistent with the Quigley assertion that they should be dealt with totally separately, that is what I am trying to say.

Professor Dickson: Yes, we disagree with that view.

Professor Hadden: Sir George Quigley has sliced Article 11(2) in two and given one bit of it to one panel and another bit to the PSNI—and our view is that that is likely to make matters worse rather than better because there will then be two bodies involved in the decisions and any judicial hearings will get even more complicated—rather than having a single body determining the full range of Article 11 and particularly the limitations under Article 11(2).

Mr Ó Maoláin: It would arguably be improper for any public authority subject to the Human Rights Act to attempt to apply only part of 11(2). It may well be unlawful to try to arrive at a determination on the right to parade without taking account of the public order implications.

Q64 Mr Bailey: This is getting back to my original assertion. In effect this approach is inconsistent with human rights legislation. Yet you have mentioned that you would not favour the police making a determination. An option which does not appear in the Quigley Report would be for public order decisions to be made by the Secretary of State. How would you consider that?

Professor Dickson: Again you must recognise that at the end of the day it may be necessary for the police or for the Secretary of State to take decisions dealing with public disorder, but we remain of the view that the Parades Commission or Rights Panel should itself, as my colleague has just stated, fully apply the European Convention on Human Rights which would require it to take into account public order or disorder aspects. We would prefer the Secretary of State's role to be kept to a minimum in these situations.

Q65 Chairman: Why do you say that given that very often in the past—one hopes not in the future—some of these decisions have had a highly political flavour? One of the problems we had in the past was that the Chief Constable was right in the middle of all of this, he was responsible for making determinations which he was bound to do only for public order reasons when in fact very often there were wider reasons. Is there not an argument that says since these are political decisions they should be taken by a politician?

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Professor Dickson: There is that argument, Chairman, but we would disagree with it. We understood that the whole point of the North Report's recommendations was to try to depoliticise the whole issue of parades in Northern Ireland.

Q66 Chairman: I think you only depoliticise them by banning them, do you not?

Professor Dickson: I think you can depoliticise them by giving to a separate independent body that is obliged to comply with the European Convention on Human Rights the responsibility of taking decisions. We are in favour of that approach and we are in favour of sidelining the role of the police and of the Secretary of State as much as possible. As has been indicated already, we are not aware that either the Government or the police are keen to reclaim responsibilities in these areas.

Q67 Chairman: I was not suggesting that anybody would be keen, I was merely suggesting that on the rare serious issues there is an argument for saying that the decision should be taken by a politician who is, after all, the supreme authority on Northern Ireland.

Professor Hadden: The object of a rights approach to this issue is to take it out of the hands of political decision-makers and to create a panel or a body to say that these decisions should be made in accordance with the European Convention rather than some political judgment of what may or may not be the situation. As my colleague has said, it is undesirable to slice up the decision and to give to the Secretary of State a crucial part of decisions on public order or security while somebody else is deciding on the rest. I am not sure that anybody is saying that the whole of this issue should be decided on a political basis by the Secretary of State. The argument is that the security and public order issues should be taken out. I think exactly the same arguments apply to slicing up Article 11(2) in respect of the Secretary of State as they apply to the giving of that responsibility to the police. As my colleague has said, there are serious legal problems with it as well.

Q68 Chairman: One is not suggesting this, we are probing. There are other cases where you have this clash of rights which we referred to earlier. So you have got one body making a rights determination and another determining whether there should be an exception to those rights under Article 10, for example, but in the end someone has to say, "I have looked at all of this. This is my decision," and the question is who is that?

Mr Ó Maoláin: Chairman, is it not the case that if it is perceived as a purely political decision, something that is down to the Secretary of State or some other elected politician to determine, it is more likely to remain a contested arena? The more it is taken out of the hands of a politician and given to a body which has a manifest duty to determine these issues on a rights basis the less likely it is that those who want to engage in contested parading will feel that if they put on a bit more political pressure they will be

able to secure something which really ought to be determined on the basis of rights and not as a political concession.

Q69 Chairman: If everybody was content with this system I think you would be correct. There are a lot of people who do not accept it and who believe their rights have been infringed and overruled. Is not that the case?

Mr Ó Maoláin: There will always be people who are discontent.

Chairman: It is simply a question of who you attach the blame to.

Q70 Mr Bailey: It does seem to me that by having one body responsible for the decision or responsible for the political fall out and political consequences of a parade that goes wrong in effect this body is placing itself in a position where it sits in almost Olympian-like detachment and it takes decisions but it does not have to take the consequences of them. Do you think that is a satisfactory way of dealing with the issue?

Professor Dickson: I do not think that that is a fair description of the way in which the system would work if Sir George Quigley's recommendations were implemented. For a start, if there was a compliance branch to the new Rights Panel or determination body it would be able to monitor the way in which the determinations are in fact implemented or not and one would hope the body would learn from its own experiences. If it decides that in retrospect it ought to have imposed this condition or that condition then it can do so in future cases. There is a certain iterative process at work in all of this and while no one body should have the sole responsibility and sit in Olympian dominance over this issue, it is important that an holistic approach be adopted to the whole of the parades issue and that a body that takes determinations and monitors compliance is in a position to do that. There will always be those rare cases—and they are rare even under the present situation and were rare before the Parades Commission was established—where the police will have to step in at the last moment to impose restraints that were not envisaged initially because certain circumstances have developed, but that will always be the case.

Q71 Mr Bailey: So you would envisage consultation and then input from the police prior to the determination being made and in certain circumstances presumably from the Secretary of State as well?

Professor Dickson: Yes, very much so. We are in favour of all the relevant information from all sources being made available to the determination panel so that they can take as informed a decision as possible.

Q72 Mr Luke: Professor Dickson, in an earlier reply to my colleague Reverend Smyth you raised your concerns to do with human rights in relation to the transparency of the determination process, which was an issue also raised by Sir George in his report.

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How can transparency be improved without either undermining the dialogue which currently takes place through the Authorised Officers, or putting vulnerable individuals at risk of retaliation?

Professor Dickson: I should preface what I have to say by emphasising that the Human Rights Commission would not want to undermine any mediation process that might take place before a determination is issued in relation to a parade and we are in favour of as much engagement between different sectors of the community as possible in this and in many other areas. We think that there would need to be in place methods of ensuring that the identity of individuals is not revealed in situations where their lives or physical integrity might be put at risk and indeed Articles 2 and 3 of the European Convention would require that, but it ought to be possible to ensure that the substance of the objections being raised by protesters is put to the people who want to organise the parade or the march in a way that allows them to deal meaningfully with that substance. At the moment the organisers of the parades are often left in the dark as to the exact reasons why going ahead with the march would cause offence or difficulties as regards community relations so they are not able to answer the putative objections. We would like there to be more openness and transparency in the whole process.

Q73 Mr Barnes: Sir George Quigley wants adequate time for mediation to take place. He feels that protests should be notified significantly in advance. What are your concerns about that proposal?

Professor Dickson: We do have some difficulties with that proposal. While we are in favour of a reasonably long period of notice having to be given by those who want to organise parades and marches, always allowing that there will be exceptional situations where spontaneous assemblies ought to be permitted, we do not think the same notice requirements should be applied to protests. It is often very difficult for those who want to protest to know some time in advance what the actual parade or march will look like and to require formal notice to be given of protests and of the form that that protest will take is very difficult. We are in favour of protests being proportionate and in compliance with the European Convention standards and we are in favour of the determination panel being able to impose conditions on protests, but we do not think that there should be a formal notice requirement given, certainly not a five month notice requirement which I think is the minimum required by Sir George Quigley. We are not in favour of that.

Q74 Mr Barnes: Earlier on you said that you wanted protest reasons to be more obvious than they sometimes are. Might it not be the case that if a reason for protest has to be put in at an early stage, even if it is not fully worked out in detail, it actually begins to get clarified during the process of negotiations and so people's views and their rights on that side are more clearly understood within the negotiations?

Professor Dickson: I am not saying that people who want to protest should be unable to give notice ahead of time if they want to, indeed they should be engaged to give as much notice as possible. I think it is important to make a distinction between people who want to register their objections to a proposed parade or a march, which is a perfectly legitimate thing to do and if they find that their objections are not accepted they might then tolerate the march going ahead regardless, and a situation where people want to organise a protest against a march or a parade with which they disagree and we think that they ought to be free to do so subject to the requirements of law and to any conditions which are imposed by the determination panel, but those conditions could be imposed much later in the day than is the case for the proposed parade itself.

Mr Ó Maoláin: There is a great deal that can happen between the date when permission is given for a parade and the date of any possible protest against it. In an ideal world I am sure those who are parading would not wish there to be a protest and so they may engage in some positive diplomacy that could avert the protest. Alternatively, things that happen 100 miles down the road can influence the atmosphere. When we have had particularly bad Drumcree years, that can certainly influence the nature and temperature of counter-protests in places far away from the Drumcree area. The treatment of protests as different from parades is partly to acknowledge the necessity of making maximum use of the space between the approval of a parade and the date on which it takes place to allow for some positive approaches to resolve the differences around it.

Q75 Mr Barnes: There seems to be a habit in Northern Ireland of decisions being made at the eleventh hour when crises are around. Is not time helpful in terms of reconciling conflicting interests? If there is a parade and then a protest that is proposed in connection with it, being able to get through all those difficulties might be something that requires considerable discussion and negotiation and involvement from people on both sides.

Professor Dickson: Yes, we would not disagree with that. It is just that we have a difficulty with a legal obligation to notify the Parades Commission or the Rights Panel that a protest will take place. We think that is a disproportionate requirement. It may be one that the European Court of Human Rights itself would consider to be in breach of Article 11. The six month requirement for parades themselves may be questionable under Article 11. We just do not know until there is a more general ruling from that Court.

Professor Hadden: One of the things that we think would be helpful is to allow determinations to be made over the whole marching season or even over two years so that everybody knows roughly what is going to be permitted by the Rights Panel and can organise themselves accordingly. One of the difficulties with the present regime is that because a determination has to be made in respect of each individual application you get repeated applications, particularly in the Drumcree area and

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that is an awful waste of time and energy for everybody. In our view it would be better if the Rights Panel were given the authority to say, "Over the next year so many parades will be permitted. We think this is reasonable in this particular area," rather than having each individual application dealt with. That kind of approach will allow those objectors, as my colleagues have said, to make their case well in advance of any possible march and to allow all the mediation operations that you are talking about to take place. We think that is the way to go. We would extend the period of the determination rather than extending the period of notice.

Mr Ó Maoláin: Even when there is not formal notice given of an intention to protest it is usually fairly easy to tell who would protest. Those who objected to the initial parade are likely to be the people who are influential in determining whether there is any protest. So there is still an opportunity to engage, to head off protests or to minimise their impact even before there is formal notice given of an intention to protest.

Q76 Rev Smyth: We have been dealing primarily with protesters and I understand the situation there. Is the law not being devalued when the law

concerning notice for parades has been ignored by people and there have been no follow-up prosecution cases? That is one question we have to answer. Professor Hadden made reference to a period of notice. With the bulk of parades people know when they are going to be held and there have been few changes of routes for decades and the same dates come up every year. There is no real difficulty in dealing with what Professor Hadden has said, but there is difficulty when people apply the law and abide by the law and discover their neighbours up the street have actually had a parade and given no notice of it and there has been no notice taken thereof. Is that not devaluing the law?

Professor Dickson: It would be if that indeed is happening. The Human Rights Commission has not been monitoring the incidents of what you have described. We do not know if it is common practice that certain parades take place without due notice being given, but obviously we would encourage the law enforcement authorities to ensure that the law is properly applied in all cases.

Chairman: Professor Dickson, gentlemen, thank you very much. That is the end of the questions that we have for you. The Committee will now break very briefly while we change the cast and we look forward to seeing the Ulster Bands Association representatives in your place. Thank you very much.

Witnesses: **Mr Alistair Simpson** and **Mr David Hoey**, Apprentice Boys of Derry; **Mr Iain McAfee**, Chairperson, and **Mr Eddie Kelley**, Vice-Chairperson, Ulster Bands Association, examined.

Q77 Chairman: Gentlemen, welcome. You are two different associations and maybe you will have different views. It is perfectly in order for anybody to answer questions which are put by the Committee and some of our questions actually are aimed at one route, either the Apprentice Boys of Derry or the Ulster Bands Association, but that does not limit anybody's ability or desire to reply. It seems to be the general view that 2003 was the quietest marching season we have had for years. Is that the experience of your two bodies?

Mr Simpson: Good morning, gentlemen. My name is Alistair Simpson, former governor of the Apprentice Boys of Derry. That seems to be the general view all over the province. You have to ask why it has become the view. Although it seems to be quieter, that is only the tip of the iceberg and until law and order is grasped like a nettle and dealt with I am afraid the whole thing could blow up within the next couple of years again. There seems to have been a lot of papering over the cracks, but I am sure as the questions go on we will be able to tell you how we feel that law and order is not being dealt with in a proper manner in Northern Ireland.

Q78 Chairman: I am talking now to the Apprentice Boys of Derry. You suggest that the quiet 2003 season was nothing to do with the Parades Commission. What factors would you therefore identify as contributing to the quiet season, if it was not the efforts of the Parades Commission?

Mr Hoey: I think in the media at the end of the summer it was certainly strongly hinted at that Mr Trimble and Mr Adams had come to some sort of arrangement with respect to parades over the summer, and Mr Adams probably has the wherewithal to exert some influence within certain communities to keep things quiet. It was quieter partly because the political situation was somewhat quieter overall. People were looking at an election coming up and perhaps did not want too much happening on the streets. It had a lot more to do with the political necessities of groups rather than it having to do with the Parades Commission. There are fundamental issues where we cannot move on doing anything with the Commission. We are waiting for a review of Quigley. We have not been formally informed that there has been an extension to the consultation period. We have not been asked to have a meeting with reference to the consultation period. I think everybody is waiting to see what happens.

Mr McAfee: I would agree that it had more to do with the political developments and maybe the behind the scenes negotiations and it was due to the elections, etcetera, that was probably the main reason for the quieter year.

Q79 Chairman: It is interesting that we had a situation of political limbo throughout the summer, the elections had been postponed and the Assembly was suspended. Are you suggesting that it was the desire of the political leaders to get some sort of

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settlement in the autumn and then go on to elections and in following that they thought it was in everybody's interests not to have any trouble on the streets during the summer? Have I summarised your thoughts correctly?

Mr Simpson: Yes, I think you have. The politicians at the top wanted to make quite sure that they could have an easy run in and consequently they tried to force a settlement in their own areas so that they would have no bother. It certainly had nothing to do with the Parades Commission.

Mr Hoey: Within the Unionist areas there is a lot of dissatisfaction with direct rule. I think it would be better to have direct rule and to have Martin McGuinness in education and Bairbre de Brun running health. We are talking about the grass-roots level and we are getting feedback from that. There was neutrality with respect to the political process. They saw that things were not as bad on the streets because there was not that tension between the communities on a political level.

Q80 Mr Luke: This question stems from comments submitted from the Apprentice Boys. You have made it clear that you have found it difficult to develop a close working relationship—I think you refer to it as a relationship of trust—with the Parades Commission. How would you describe your relationship with the Commission? Do you think the suggestions in the Quigley Report would make any improvements?

Mr Simpson: The last time the Apprentice Boys officially met Tony Holland and the full group of the Parades Commission was on 28 October 2001. Along with the governing body from Londonderry, we had Apprentice Boys from Belfast, Portadown and Castlederg which we felt represented the whole of the province. Half-way through the meeting we made suggestions for a better way forward and immediately Tony Holland turned round and said to us, "I do not take orders from anyone. Meeting closed". The Apprentice Boys have not officially met the Parades Commission since. I feel that Tony Holland has a different outlook on the situation compared to the former chairman of the Commission, Alistair Graham, who met with us on many occasions, he met residents' groups on many occasions from different parts of the country, he had gone and visited the parades and he had come along and discussed the whole thing. We seemed to get on better when Alistair Graham was at the top, but Tony Holland seems to stay in his Ivory Tower in Belfast and dictate to the rest of us what we should do. On many occasions we were told by him that we have to have talks if we were going to get anywhere. Yet when we suggested having talks with him and put forward ideas he was having nothing to do with it. That immediately put us on guard and made us mistrust the Parades Commission.

Mr Hoey: That is coupled with the "Spygate" issue of last year where a number of our members were approached by the police to look after their security on the basis that information from within the Parades Commission was in the hands of the IRA. We have not had any communication from the

Parades Commission with regard to that matter. A fax containing names and addresses of all the participants of the parade was sent to a Sinn Féin member. They said, "Don't worry. Our security is tight. It will never happen again," and then our members had visits from the police. We are not being told of any way in which that information can be secure within the Parades Commission. They talk about confidentiality; that is nonsense. At that level it is just very difficult to go in. Those of us who have been in there expect that our names are out there, but it is obviously very difficult to ask others to go in when there is the chance that those names will be passed to the IRA at some stage. The Commission is being compromised and there is no way out of that. Given that the Parades Commission has made no effort to sympathise or to make any contact with us in this regard trust is a very long way off.

Mr Kelley: We met with the original Parades Commission with a view to them having an insight into what our mindset was, why we did what we did and how we did what we did. A year after we met with them they were disbanded and the new Commission was brought in and we made the same offer to the second Commission. We wrote to them in February 2000 asking for a meeting. We had our meeting in May 2000 and that meeting lasted 15 to 20 minutes. At the outset of the meeting Mr Holland advised us that there was a conflict and he would have to leave the meeting at eight o'clock but that he would arrange another meeting with us. We waited for the date. We did not get one. We phoned and we were told that only one commissioner was prepared to meet with us. I do not feel that that gives us any sort of reassurance that they are going to be fair and even-handed. We are still waiting to be contacted by the Parades Commission. We are a voluntary organisation. Most of our members work for a living. We are province-wide in our membership. We have bands from Londonderry and we have bands from Keady. All our bands are scattered throughout the province. I think there is one county that is not represented in our membership. We are a voluntary organisation and we all have our livelihoods to seek. When we asked for an evening meeting we were told, "We don't do evening meetings. If you want to meet us you will have to come during the day." That does not foster trust. We warned the first Commission and the second Commission that we were not happy with security matters. We asked for their staff to be covered by the Official Secrets Act. We were told that was not necessary, that their security was adequate and that nothing untoward would happen and we should trust them. What was the net result? As previously stated, details of our membership were sent to Sinn Féin and as a direct result of that my colleague's house is like a fortress. You need to phone this man 10 minutes before you arrive so he can get his door unlocked because his name was on the list. Does that inspire trust, gentlemen? It does not for me.

Q81 Mr Luke: I think it was Mr Simpson who referred to the fact that he had been asked to make representations on the Quigley Report. Will you be considering making a representation?

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Mr Hoey: We do not know what to do. No one has asked us to make one. We do not know what this consultation process is about because nobody has told us. There has been no communication. We have written to both Jane Kennedy on the matter of IRA targeting and we have written to Paul Murphy because we did not see why it had to be extended, we still do not understand why. Everybody had plenty of time to read Quigley and plenty of time to respond. Six months is a pretty long time in anybody's book. We do not know what this consultation process is. We have not been told officially it has been extended. We read about it in the newspapers. We have not been told what the process is for making representations. We have asked for meetings and we have had no response to that. When we asked for a meeting, all the other Loyal Orders had a meeting but not the Apprentice Boys of Derry and yet we are the only people who have engaged with the Parades Commission. We do not understand. In terms of chasing and hassling and harrowing, we are a bit tired. This is the fourth or fifth review. You are doing a review before the other review has concluded. We are just a wee bit sceptical about where things are going given that issues from your last report have not been addressed and indeed have been specifically ignored by the Parades Commission. We are getting a little bit tired.

Mr McAfee: Our organisation has not received any notice. This is the first time I have heard about an extension. Maybe I have missed something in the newspapers. I have never received any correspondence whatsoever.

Q82 Mr Bailey: This is a question for the Apprentice Boys. Both you and the Bogside Residents Group have been identified in the Quigley review as "models of genuine engagement". How has that been achieved and what do you think has been the key to that success?

Mr Simpson: When I hear people coming out with statements like that it angers me, especially when it is the Parades Commission and they have done it on umpteen occasions. Less than a month ago Tony Holland, when I met him at another gathering, told me that we were "a model".

Q83 Chairman: This is not the Parades Commission, this is Sir George Quigley.

Mr Simpson: I want to give the answer to the question. The Apprentice Boys have spoken to every conceivable body possible. We saw the Bogside Residents Group as the people who were doing the damage in the City of Londonderry. In August alone they did £5 million-worth of damage. The following December they did £4 million-worth of damage. How do you talk to people with that sort of mentality? We decided that we would talk to the other residents of the Bogside, we would talk to businessmen, to church leaders and priests to tell them what the Apprentice Boys Association is all about and out of that grew the Maiden City Festival which has been very successful in the City of Londonderry. A lot of hard work went on behind the scenes with the Parades Commission, with the

head of the police and the Minister for Home Affairs. The Apprentice Boys did not sit back and the whole thing happened; we worked hard at it. The Parades Commission seem to have pulled the rug from under us and we seem to be in limbo now. I would like to see a situation where this body here today could at least do something to rebuild the confidence that we have lost.

Mr Hoey: Everybody uses Derry as a good example because it is a very large parade that goes through a city that is perceived as Nationalist. There was a comment in the Human Rights Commission's submission about tolerance and respect. I think to a certain extent at many levels that has been shown by both sides in Derry but it is absent in other areas. There is a lack of respect in other areas. Sometimes we draw Derry out and say that it is a wonderful example of genuine engagement, but the work done in the lower Ormeau area by our colleague, Tony Cheavers, and the Belfast Walking Club has been exceptional. They have had 18 meetings and we have 1,100 pages of minutes from the early stages of dialogue which was across the table with a single facilitator. You cannot ignore that amount of dialogue. The previous Parades Commission certainly recognised the value and the sincerity of that process, but it did not end up anywhere and the reason it did not end up anywhere is because of the Parades Commission and their attitudes. Derry is a peculiar city. You cannot simply say it works in Derry so it will work everywhere else because it will not. That does not mean to say there are not other examples of very hard work being done by the Apprentice Boys in terms of engagement with local communities and representatives of those communities, it is simply that nobody bothers looking at those because they have not succeeded and it is an embarrassment to many people that the Apprentice Boys have not succeeded in reaching a conclusion because it reflects on the other communities much more harshly.

Q84 Mr Bailey: What did the Parades Commission do that undermined the efforts you had made for engagement there? Secondly, assuming that you think your engagement has been successful and there is a body of opinion that certainly does, what do you think you need to do to sustain that success in the future?

Mr Simpson: If the Parades Commission would come down to earth and meet the grass-roots not only of organisations like ours but of ordinary people they would get a better understanding of what is happening. If Northern Ireland is to go forward the politics of Northern Ireland will have to be seen to be working. I believe it has to come back into the hands of the people of Northern Ireland. No disrespect to those from across the water, but we have got to be in charge of our own future and our own identity. That might be a mouthful to come out with, but time has shown that the English politician has come over here and tried to tell us what to do. We have been living with 30 years of violence, death and destruction. Surely we are the ones that ought to give the answer at the end of the day.

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Q85 Chairman: We are going very wide indeed.

Mr Hoey: There are very particular circumstances in Londonderry. You would to undertake an exercise where you sit down and look at the particular circumstances of Londonderry and compare them with other areas. It really is not easy to give a simple answer to your question because it is too complicated.

Q86 Mr Bailey: I believe Mr Simpson said earlier that the Parades Commission had pulled the rug from under your feet. I am still not clear what they did.

Mr Simpson: That was the last meeting that we had with the Apprentice Boys representing the whole of the province in Northern Ireland. We were trying to come to an agreement for our members in the whole of Northern Ireland and Tony Holland thought that we were dictating to him. We were not dictating to him, we were putting forward suggestions and that is the way forward with any group that is going into consultation. We felt we had been left without an answer because we had gained no more mileage from having consultations with the Parades Commission than what the Orange Order had accepted.

Mr Hoey: The Parades Commission made a determination in December 2002 with respect to parades in Londonderry. There had been no consultation prior to that. It was in respect to four bands that they believed should not be parading in Londonderry. We had not been consulted about this in the run up to that determination, it just landed on our table. Not only were most of those bands not parading in Londonderry and therefore there was no need for the determination and if they had been asked they would have been told those bands were not parading, it also meant that there was a determination on the table and we were not ready for it. If you make a determination there are those people, no matter what the issue is, who will start focusing on that issue and create problems. If we are not aware of what is going on and we are not being made aware of what is going on then we are not ready for it and we cannot prepare for it and that is half the job and we have to prepare people for it. We still do not know who it was that said about these four bands because the Parades Commission will not talk to us. We believe a growing issue is where the Parades Commission are picking on bands very specifically, without evidence and without due pause and that is going to cause us difficulties at some stage. That is largely outside our control and we do not understand why this is happening.

Q87 Chairman: Can we please ask to have slightly briefer answers. We are going back to the same point again and again and we have heard it all the first time.

Mr Kelley: The question you asked was what the Parades Commission does for us. We have a member band in Maghera who organised a parade and received a determination. Both Iain and I attended when that parade took place. The conditions laid down in the determination were stringently adhered to, so much so that at the end of the day the

Authorised Officer came over to us and said that it had been a very well run parade. The following year the same organiser put in an application for the same parade on the same route and we got a further set of conditions and determinations. Those were adhered to. This year, on top of the determinations that we received the year before last and last year, the Parades Commission came in again with further conditions. The band involved adhered to all the conditions and the two previous parades had been run without incident. There were no complaints from the police or to the police. It is almost as though we are playing on a football field that is like that (indicating) and when you get half way it goes like that and the goalposts are not there any more, they are back here. We do not know where we are or how to police them.

Q88 Rev Smyth: There was a joint gathering convened by businessmen and there may have been one person from the Residents' Group there along with somebody from the Apprentice Boys of Derry, but there has been no meeting between the Bogside Residents Group and the Apprentice Boys, has there?

Mr Simpson: I always maintained that I would not meet the Bogside Residents Group face to face but that I would meet residents of the Bogside without any problem. The meetings we had were called by the businessmen.

Q89 Rev Smyth: I want to deal with the other question since it does affect me as the representative for south Belfast. Am I not right in saying that the reference at an earlier hearing to a decision affecting something 100 miles away was when a decision was made that the Walking Club could not walk down the Ormeau Road because it would have an impact on the gathering in Londonderry.

Mr Simpson: Yes, of course the reason why that came across was that the residents of the Bogside Residents Group, namely "Donncha" MacNiallais, had gone to south Belfast and had a meeting with the Residents' Group and they had decided that, either at Londonderry or south Belfast, there would be problems and therefore the parade would have to be called off.

Q90 Mark Tami: This is a question for the Ulster Bands Association. You are very critical of the role of Authorised Officers and talk about them being hostile to the mediation process. Could you perhaps elaborate a bit on that?

Mr McAfee: We can only use our own experiences. We have met some Authorised Officers who have been very open and good, but some are almost impossible to deal with. Face to face they are not too bad but two days later you may find that the goalposts seem to have moved. It is as though there is a persona put forward when you meet them and when they meet with opposition or whatever you want to call them their attitude changes or maybe the drive up the road is enough to change their attitude. Another incident this year was where there was a parade in Carshalton which had been deemed to be

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contentious in the eyes of the residents of the community. The Authorised Officer met the band and there were conditions imposed and then met. The only problem was the PSNI asked for it to be held back for ten minutes because a group of local people wanted to get out before the parade, which was agreed and the leader of the band held them back. The parade met the timescale, it met the conditions and the leader in charge of that parade shook the organiser's hand at the end of the parade. We had SDLP members standing watching it and I have spoken to them recently and they have no problem with it. Eddie touched upon the fact that you can seem to do no right.

Q91 Mark Tami: You are more positive about community forums. Why would they be different?

Mr McAfee: I am a member of the local one in Ballymoney where we sit down and there is a range of views taken from the SDLP, the Republicans and people come from a camogie club. It might not solve all the problems, but we were able to talk about issues in very structured surroundings.

Q92 Mark Tami: This is a question for the Apprentice Boys of Derry. You talk of informal and trusted persons playing a more positive role. Are you talking about Authorised Officers? If not, who are you talking about and what is your view of the role of Authorised Officers?

Mr Hoey: When you go into dialogue the people involved have to trust each other. I do not know who those people are. In Londonderry it was the businessmen who were entrusted to take the process forward. We had an agreed facilitator, Avila Kilmurray, who was head of the Northern Ireland Voluntary Trust at the time, who chaired the meetings in Belfast for us and that was an agreed trusted person. Her job was not to take part in them and he let the two sides talk together. Our experience of Authorised Officers is that they are a very mixed bunch. At a meeting with the Parades Commission back in the early days we unveiled that the Authorised Officer was holding back information that was crucial to the decision because he did not think it was very important. We have Authorised Officers who are trying to engage and to facilitate engagement and they are the ones that we never hear of. I think a problem in the past year has been that I believe the Parades Commission has now taken on directly the employment of their Authorised Officers. We have noticed a change in Authorised Officers because now they work for the Parades Commission directly. The two are playing off against each other; they do not seem to be working in tandem. Those with experience of the issues seem to be in some sort of conflict with the Parades Commission and the Parades Commission are putting Authorised Officers as a barrier to the Parades Commission which is creating tensions in terms of trying to find a peaceful settlement.

Q93 Mark Tami: So it is more of a mixed bag.

Mr Hoey: It is a very mixed bag.

Mr McAfee: The word trust was brought up earlier. We had an incident three years ago at an Orange parade where the Authorised Officer was watching the parade and we had an interest because the band was taking part the following month. The Authorised Officer was seen getting into a local Sinn Féin MLA car to drive off. Does that instil trust? That may not seem significant, but what that symbolises is very significant.

Mr Kelley: In all my time of dealing with the Parades Commission I have yet to see an Authorised Officer's report on either a discussion or a parade that has passed. If these people have a problem we do not hear about it and we cannot address it. The first time we discover it is when the Parades Commission hand out a determination on the following year's parade. When we go to meet them to ask them what the problem is they tell us, "It's confidential. We cannot tell you."

Q94 Mr Pound: I think that is a very interesting point. It is one that we were not possibly going to pursue today. Every Saturday I mark the referee who officiates at the game that I am at and the referee marks the club and we see each other's reports. I appreciate we are talking about transparency. Sir George Quigley is not a great distance away from us and he is hearing what is said. One of the core proposals of Sir George's review is the abolition of the Parades Commission and its replacement with two separate bodies. I want to ask the Apprentice Boys a question. In your memorandum you said how dissatisfied you are about the proposal for a Facilitation Agency. What would be your alternative?

Mr Hoey: We have been quite specific in terms of how we would envisage the development from Quigley. I think Sir George raised the Scottish system which has a different legal process. We do not need more bodies set up. We need things to be simple, clear, transparent and fair. If you have two bodies there is going to be competition, conflict, all sorts of problems. We want a simple process. If there was a register of parades everybody would know when these parades were. There are only a few parades that suddenly get thrown into the pot at the last minute. There could be a register of parades, a period of time in which you could raise objections and that would be heard by the registrar; the registrar would make a ruling after considering all the facts in an open hearing and everybody could come in and say what their objections were to that parade, if there were any objections. The police, the local residents or whoever wants to come in could simply put their objections down and then we would have the ruling by the registrar. If a conflict remained then it would go straight to a tribunal and it would decide.

Q95 Mr Pound: You say that you fear the tactical use of some of the formal processes. Can you imagine a situation in which a public meeting would take place to comment or inform about a particular parade?

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Mr Hoey: It would be a public hearing rather than a public meeting. If people were disorderly they would be removed from the room. I think that is a fair situation and that happens in any courtroom. If the crowd is unruly they are in contempt of the hearing and they get removed. That might not be something the police might anticipate. We are looking at how many. I think this will also raise the issue of confidentiality and I know that is one of the issues you want to look at. When we are in dialogue we know everybody we are talking to. Judicial review is taken with regard to a decision or a determination by the Parades Commission and as a party to that judicial review we get the names and addresses of everybody who actually has made that complaint within the process. Let us face it, everybody knows everybody in Northern Ireland. Confidentiality is a bit of a red herring here at times. We have never asked for total confidentiality. If there is an affidavit and substantial views are put forward, we would be happy with that as long as they are put forward by a solicitor and as long as the registrar is satisfied that that is a genuine purpose. There are details to be sorted out. We do not believe that it is over-complicated and we do not think it should be either.

Q96 Mr Pound: I appreciate everybody knows everybody here. You have, quite rightly, made an issue over the release of some people's names which ended up with Sinn Féin. There are still barriers that need to exist.

Mr Hoey: There is a distinct difference there in terms of names and addresses being faxed. In the lower Ormeau there were 10 or 15 people from that community who took part in the discussions. Everybody who was going to make an objection had some opportunity to come into that meeting and make an objection. The LOCC in their own mind were representing that community. So if they are taking on the leadership and representing that community, what is the issue over all these other people because surely that can be channelled through the public representatives, which again is not a secret matter. Many other people make objections and we do not know who they are. We talk to the LOCC and then Uncle Tom Cobby and all turns up at the Parades Commission, but we are never told who they are or what they are saying. A public hearing would take that away. It is a much more fair and simple process.

Q97 Mr Pound: The Bands Association say in their memorandum that the Parades Commission has lost all credibility and should be wound up and replaced. Could you elaborate on that loss of credibility? To be honest, you have addressed the credibility issue in many of your earlier answers. What would you like to see as a replacement?

Mr Kelley: Anything that is fair, even-handed and open.

Q98 Rev Smyth: As I understand it, you have expressed concern about recommendations to give notice of proposed parades for the following season no later than 1st October and for a parade falling

before 1st April at least six months should be given. What problems would this create for associations such as yours?

Mr McAfee: We would not be totally against notification of intent. Our problem would be notification of exact dates and details of the parade, but that is very difficult to organise and any parade organiser would find that near impossible. It is the same with protests, you could not organise it that far down the line. A notification of intent has already been mentioned. Most parades are annual and so it is not a problem for the organiser to notify that they will be holding a parade the following year.

Q99 Chairman: Why is there this difficulty about specific dates since these things are repeated year after year after year?

Mr McAfee: It has been more relevant for us than the Apprentice Boys who hold their big days on certain dates. The bands will hold a parade usually some time during the year, but it is a bit of a juggled area and there are less localised clashes of parades in the same area. The police do not like to be policing two parades in the one area on the same evening. You could have one or two parades in the same area but there will have to be changes.

Q100 Rev Smyth: Am I right in saying that most of these parades that the bands organise would be charity or fundraising in the local community?

Mr McAfee: Yes, the majority of them would be community events. The people taking part in organising the parade are people that live in our community and they have pride in that community and they are usually carrying the name of that community in their band.

Mr Kelley: All bands are amateur, they are a society of musicians and as such they have their annual general meetings and they have their annual break from practise. Unfortunately most of them are on this annual break from practise in October; they generally stop at the end of September and start again in January. They start with an annual general meeting where the office bearers of the bands change invariably from year to year. For somebody to be able to notify people in October would be impossible administratively speaking, but a notice of intent would not be impossible.

Q101 Mr Clarke: Mr Hoey spoke of an ideal world where we could have a public hearing and allow people to put their views across. I would like to mention part of the memorandum from the Ulster Bands Association. In that memorandum you state, "One of the greatest problems used in making their determinations"—this is the Parades Commission—"is the arrogant secrecy with which they surround themselves and their actions. It is frequently difficult to ascertain why they acted as they did and what evidence was at their disposal to substantiate it." Is there not a contradiction between your comments earlier on in respect of "Spygate" and information being available and a call for transparency on determinations when the evidence presented is often

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presented in confidence for the very reasons that were mentioned earlier, the protection of the individual?

Mr McAfee: We need to deal with the evidence. We are not looking for names and addresses of people who are kicked off the parade. We need to know what their concerns are. We went and met the Parades Commission back in 2000 regarding a parade in Maghera and it was the same parade where the details were handed out, the 11(1). We were not told why there was a determination put on the parade. We went into that guessing that there was a problem here but we did not know what the problem was. We were not told the specifics of the concerns and the criticisms of the parade. So we went into the meeting to try and fight something when we did not know what it was we were fighting. We were going there in the hope that we could justify the right for a parade. Thankfully we did that, but the simple fact is we were not given any evidence whatsoever to suggest there was a problem. The parade suddenly became a problem ten days before the actual parade.

Mr Kelley: When we went into that meeting we spent almost 15 minutes arguing with the Parades Commission that we could not put forward a defence unless we knew what the allegations were and at the heel of 15 minutes somebody from the other side of the table said, "Well, it's a urination problem," and I said, "What is the problem?" and they said, "We've been told that in a certain street in Maghera bandsmen habitually fall out and urinate." So we asked for the name of the street and when we were given it the chap from the Maghera band started sniggering. I turned round to him and I asked him what he was laughing at and he said, "That's where the public toilets are!"

Mr Hoey: I will put the question the other way round. We are out in the local community trying to address the issues and if we are not being told what those issues are, the local community is refusing to give us the issues and the Parades Commission will not give us the evidence, how are we meant to understand what the problem is to deal with it? You make the point but I will throw it straight back. If we are to deal with the issue we have got to know what the problem is. We currently have a letter with the Parades Commission in respect of lower Ormeau. For the past two and a half years we have been asking for the genuine and relevant concerns of the lower Ormeau community so that we can then sit down and deal with it across the table. We wrote to the Parades Commission before Christmas and we have just received the following back: "Our client also notes the Commission believes that the LOCC has provided genuine and relevant concerns in relation to their parades. Our client has repeatedly stated that these are the bases of the new dialogue and is keen to receive full details of those concerns. Please forward these to us and upon receipt of such details they would wish to initiate a meeting at the earliest point with the officer." We are not going to hold our breath.

Mr Simpson: Since the Apprentice Boys in Londonderry have met the business people in conjunction with the Bogside Residents Group there

has never been a meeting with the Authorised Officers, but the Parades Commission and Tony Holland told me himself that there was no need to because we were solving the problem ourselves. The situation has been that Tony Holland never once tried to get help for us to solve that problem.

Mr Hoey: Then they sent us a determination without talking to us.

Q102 Mr Clarke: Are you not calling for part transparency? Are you saying that you want the reasons of objection but not necessarily all the time and detail in terms of who gave the evidence?

Mr Kelley: It is important in any judicial application that the process is not only even-handed but is seen to be even-handed. If we could see for ourselves the mechanisms used in arriving at a decision then that decision could be accepted more easily because of that clarity. I do not think you would trust anybody who when asked "Why did you do that?" said "I'm not telling you," and that is the answer we get.

Q103 Mr Clarke: Are there any circumstances in which you can see that it would be correct for the Commission to withhold information? Let me give you an example. If there was a member of the Apprentice Boys who contacted the PSNI and said that they were party to information which had led them to believe there would be unrest during a particular parade and they felt uncomfortable with that, would it not be wrong if that evidence was presented back?

Mr Kelley: No. As we said before, we do not need to know the specifics of a complaint we just need to know the nature of it.

Mr Hoey: The other aspect of that is information is not passed on because of a grudge and there are plenty of grudges around as well within the organisations. If it is a real and genuine grudge people can come forward and make that complaint. This is getting into detail that is very difficult, but if you have a lawyer that is presenting something and the registrar is absolutely assured that that is clear and it is honest and it is from someone who has a genuine interest that is fine, but you still have to have examine evidence. We are not able to defend ourselves because we have not got access. This is the issue of natural justice that is currently sitting in limbo land with the Northern Ireland legal service.

Q104 Mr Barnes: At present the police advise the Parades Commission on public order concerns, but the Quigley Review recommends giving greater responsibility to the police for decisions on public order. Do you welcome this recommendation? What do you see as its advantages and disadvantages?

Mr Hoey: The police make the public order decisions and always have. The point of the Commission was to take the police and the Secretary of State out of the loop with respect to parades and to try and depoliticise the issue and make it more open, fair and transparent and clearly that has not been the case. We have a fear that basically the Parades Commission is rubberstamping the opinion of the police and we are back to a public order

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commission rather than a police commission. We have no evidence to that effect because they will not give it to us.

Q105 Mr Barnes: What is the understanding of this by the Bands Association?

Mr Kelley: Band parades and parades in general have always been regulated. Prior to the Parades Commission we were regulated by the police using whatever criteria they had at their disposal at the time. We find no difficulty in living with that.

Q106 Mr Barnes: Is not the situation that has existed after 1998 that advice is provided by the police to the Parades Commission in public order areas and although there is bound to be police involvement in those matters it is not a matter that is affecting determinations, whereas the new provisions in Quigley tend to divide the human rights concerns, which are the matters for the Independent Rights Panel and the public order concerns which are in the hands of the police?

Mr Kelley: I see no problem with the setup proposed by Sir George. The police are the professionals. They are the people who know what is happening. They have intelligence. The parades panel can be advised by the police as to the likely impact of this decision or the likely impact of that decision and they can arrive at a decision having taken that advice on board. I see no problem with human rights in that area.

Q107 Chairman: Would you like to see the police's advice to the Commission published?

Mr Simpson: Yes, the Apprentice Boys would.

Mr Kelley: The content of it, yes; the specifics of it, no. If the police hold that trouble is likely then that is their opinion and their opinion, if it is published, cannot be challenged. However, if you wanted to know Informer A's address in such-and-such a town then no, I do not want to hear that at all.

Q108 Chairman: The Quigley Report suggests two possibilities in terms of band parades. Firstly, that no parade should last longer than two hours or finish later than 10 o'clock; or secondly, that no parade on the public highway should last longer than one hour and should then proceed to an open area, at a distance from residential properties where it could

finish the evening until approximately 11pm. Do you think these are realistic possibilities? Which would be favoured?

Mr McAfee: Every band and every parade is individual so you cannot have a straight rule for all and in different towns there are different situations so you have local situations to deal with. Many towns would welcome a parade that would last longer than that and many parades have a very carnival atmosphere. Should it be restricted to a situation where it has to stop in two hours? There is also the local situation where admittedly there is not a green area or an offset available. I assume the public highway issue is based around access. What we have found in the last two years is that access is given at nearly all parades. PSNI will allow traffic to move around towns when something is taking place.

Q109 Chairman: So you do not approve of either suggestion?

Mr McAfee: We do not see a big problem with what exists. It has been very difficult to get this situation sorted, but because we have been hit with a legal situation we have had no choice but to do it. There are many parades which will take longer. In Ballymoney there is a festival which runs from about half-past six and parts of the town are closed off and there are dancers and music and different types of entertainment. That parade still goes on until half-past 10 at night. Should that carnival atmosphere that has been developed after many years of work—and there have been estimates of over 10,000 people in that town—just be knocked on the head? You talked about models earlier on. That has been used as a model. Should that be scrapped because of a direct line rule?

Mr Kelley: The point at issue here is not so much should one rule be applied at all. From the Association's point of view, if a march is not contentious then why interfere with it. If the residents in the area are happy with what is going on is there a need to make unnecessary conditions? However, if it is a contentious thing and time is a factor in a contentious parade then, after due consideration, if the adjudicating body decides that a parade should start at such-and-such a time and finish at such-and-such a time, we are all adults, we could learn to live with it, but I do not think that one rule for all in relation to the time-span for a parade should be included in any legislation.

Chairman: Gentlemen, that is all we need to ask you. Thank you very much for coming and giving us your views.

Wednesday 3 March 2004

Members present:

Mr Michael Mates, in the Chair

Mr Adrian Bailey
Mr Harry Barnes
Mr Roy Beggs
Mr Tony Clarke
Mr Iain Luke

Mr Eddie McGrady
Mr Stephen Pound
The Reverend Martin Smyth
Mr Hugo Swire
Mark Tami

Witnesses: **Dr Duncan Morrow**, Chief Executive, Community Relations Council, **Mr Paul Mageean**, Acting Director and **Ms Maggie Beirne** Research and Policy Officer, Committee on the Administration of Justice (CAJ) and **Dr Dominic Bryan**, Chair and **Dr Michael Hamilton**, Research Associate, Democratic Dialogue, examined.

Q109 Chairman: Good afternoon lady and gentlemen, thank you for coming to help us with our inquiry into the Parades Commission and Public Processions (Northern Ireland) Act 1998. Thank you too for the memoranda which the various organisations you represent have submitted to us. May I put the first question to the Community Relations Council? Dr Morrow, you indicate that since its inception the Parades Commission has been fraught with difficulties due to the sensitive and contentious nature of the issues it addresses. What have been the main difficulties it has faced?

Dr Morrow: I suppose the primary difficulty has been that there is no consensus broadly around the rights and the responsibilities issue in Northern Ireland. The Parades Commission itself was a response to crisis around marching which had emerged in the 1990s and some of that has continued to reverberate in the sense that, for example, the Orange Order has had no direct, formal contact with the Parades Commission in most circumstances and at various other points there have been difficulties with the determinations. On the other hand, I have to say, controversy around parades is far from new and this issue has ebbed and flowed and waxed and waned over the centuries. We certainly had a major crisis in the 1990s. Every year the decisions of anybody deciding about parades have been anticipated and have been controversial. Speaking more positively, I suppose I would say that in general terms it has not been a rising problem; it has been a problem which has probably lessened over the ten years since 1995.

Q110 Chairman: What do you think are the main difficulties the Commission itself has faced?

Dr Morrow: The main difficulties the Commission has faced are broadly about the transparency of its decision making, the acceptability of the whole process to various parties, the right of an independent body to be taking decisions on peaceful assembly and issues of that nature, the status of the Commission within broader law, all these kinds of issues and recognition of that by the different parties. Then of course there are other issues around the consistency of their decision making and how they determine matters, but those are lesser problems.

Q111 Chairman: It seems from the evidence we have taken so far from various groups with various points of view that community relations are under pretty severe strain. How would you describe them?

Dr Morrow: Yes, in many ways community relations are under strain if we measure them by the fact that there remain very serious outstanding difficulties which continue to reverberate. Over the years we have seen continuing sectarian difficulties on the interface; we continue to see difficulties around policing and parading, we continue to see big problems in the political arena. So that is true. I would also argue that the process of solving the deeply rooted historical conflict in Northern Ireland cannot be carried forward without risking disagreement and dispute. In many ways one of the other measures of community relations is surface harmony, but even there, although there may be major improvements, certainly in some of the area, particularly around parading, over the last few years, in the depth and the consistency with which real issues are being engaged, there is no solution currently to some of them. I would argue that community relations measured as harmony remain difficult, but community relations measured as people addressing the real issues are probably advanced in Northern Ireland at the moment, that the real people are talking about the real things now in a more real way than ever before. That is no guarantee that we will get through without serious difficulties. On the other side it is certainly not clear to me that it would be possible to engage with these problems without risking community dispute.

Q112 Chairman: How do you think the communities themselves view the issue of parades?

Dr Morrow: There are at least three ways in which people view parades. There are communities largely associated with the Orange tradition, who view parades as an inherent right to freedom of assembly and peaceful assembly and continue to believe that the intervention of anything between them and that right is unjust, unlawful and so on. There are communities who believe that behind Orangism is a political project which excludes them. They could broadly be called Republican and they continue to believe that the Orange Order is not about peaceful assembly but that behind it lies political intent which

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is exclusive to them. That has led to disputes where the Orange Order has passed through neighbourhoods which have been understood to be Nationalist or Republican. Then there is a broad swathe of people who feel ambivalent around this question and who are now tending to take their summer holidays so as to avoid the potential of dispute, who simply wish for a mechanism to find a way past this, who have basically taken the view of “A plague on both your houses. We can’t stop this. We don’t know how to resolve it but we simply want to find a solution to it which works”. I would say that is a fair proportion of the Northern Ireland population who are ambivalent about different aspects of specific disputes and may be tied in one direction or the other. Certainly there is no evidence that more people are getting involved in these disputes on the broader level where they do not affect their locality than were 10 years ago.

Q113 Mr Luke: This question is primarily to the Committee on the Administration of Justice and follows on from some of the comments made in the first questions. In your memorandum to the Committee you made the point that the Parades Commission could do more to promote greater understanding both of its role and of the conflict of rights surrounding these parades. To what extent do you think there is a misunderstanding or a lack of awareness of rights issues and of the role of the Parades Commission across the communities? What practical measures do you think should be taken to improve the different communities’ understanding of the Commission’s role and the conflict of rights issues?

Ms Beirne: As we pointed out in our submission, we would say that the Parades Commission could do more. We have certainly urged that they use their function in a more educational sense, both to make it clearer in their determinations what rights’ standards they are applying and how these impact on the different perspectives and on the rights dispute. It is important to encourage people to explore the fact that respecting rights also implies the responsibility to respect the rights of others and that while asserting rights is extremely important, it is important to recognise that human rights belong to everyone and therefore that the rights of other people with very different perspectives on this must be borne in mind. From the outset in CAJ’s very, very early submissions to North and so on, we felt that the rights language would begin to give a framework within which people could start to have this dialogue. It may be putting it too simplistically, but perhaps we sensed that at the outset of the debate, there was almost a sense that there were absolute rights on either side: either an absolute right to march, or an absolute right for residents to say “Not here.” We noted this and said yes, of course there is a right to march, to freedom of expression of opinion, religious belief, and that therefore this implies the right to march, but that there are limitations to these rights both in the European Convention and now the Human Rights Act.

Similarly, with residents, we said that there might be very many marches which would be excluded in Northern Ireland if it just went on a popularity poll, but that they had rights not to be discriminated against and the rights of protection of minorities, a right to freedom of movement and so on. Therefore these are issues which people need to come together to discuss. What we were saying to the Parades Commission was that they could perform an extremely important function, both in using the language of rights, making sure their determinations met with the construct of rights and then trying to engage, with the different parties to the dispute, to recognise that conflict and try to move beyond it.

Q114 Mr Luke: Do you think the role of the Commission itself is widely understood across the communities? Is there anything more they could do to heighten awareness of what they are supposed to do?

Ms Beirne: It would be fair to say that people know the Commission has to make determinations. I do not know how much they have been able to go out and about to explain their work. Reading the determinations, you see that they are using rights language, but I do not know how much of that has been conveyed through public debate and exchange. People just see a decision made either to block a march or to allow a march, but do not really understand what the arguments for and against were and how one might move on to a more shared perspective as to what should happen.

Q115 Mr McGrady: This question is primarily addressed to CAJ and the Community Relations Council, but I should be very happy to have a response from Democratic Dialogue as well. You are concerned about the suggestions from the Quigley report that any amendment to the Public Processions (Northern Ireland) Act 1998 should include a specific reference to Article 11 of the European Convention on Human Rights. Both CAJ and the Community Relations Council have expressed some great concern, as I read your articles, on these issues. Would you like to elaborate further as to what your main concerns are?

Mr Mageean: To be frank, it is primarily a matter of clarity. The Parades Commission is a public authority and as such is subject to the Human Rights Act and therefore has to comply with the various rights included in the Convention, including Article 11. Our concern with some of the Quigley recommendations in this area is that simply replicating Article 11 in a new piece of legislation, or in a new amendment to the current legislation, will not really have any legal effect, in that the Parades Commission is already subject to this. It seems that there is unclear legal reasoning around this. There are many public bodies which are subject to slightly different aspects of the Human Rights Act and Parliament generally does not see the need to replicate aspects of the Human Rights Act in the legislation which applies to those public bodies. It is primarily a matter of legal clarity that we do not

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think Sir George Quigley has sufficiently justified the inclusion of that particular recommendation. I know there are slightly differing views on this on the panel.

Dr Hamilton: I agree with what Paul has said in the sense that the argument around the possible change of the criteria in the Public Processions (Northern Ireland) Act is about clarity. I think that the argument around clarity provides justification for changing the criteria in the way that Sir George Quigley has suggested. The reason for that is fairly straightforward. On the one hand you have two criteria at least within the current Public Processions (Northern Ireland) Act: the criterion relating to the traditionality of parades, which a range of organisations, including, I think I am right in saying, CAJ, has said they would be happy to see removed from the current Public Processions (Northern Ireland) Act. The other criterion is the criterion on the impact of a parade on community relationships. That criterion has been criticised by the Community Relations Council in the past in that the Parades Commission have not provided any clear base line on which they assess the impact on community relations. In actual fact in one of the judicial reviews concerning the Parades Commission, the Tweed decision in relation to a parade in Dunloy, the reasoning of the High Court in Belfast was based on the fact that the Commission had taken two of its criteria into account: the impact of parades on community relations and the potential for public disorder. To my mind the only reason that decision was upheld was because the Commission had taken into account the public order criterion, therefore could be easily aligned with the European Convention on Human Rights, namely Article 11(2) and it leaves the community relations criteria in somewhat of a grey area. In the interests of clarity, it loses nothing to have the criteria in the Public Processions (Northern Ireland) Act framed in exactly the same way as they are within the European Convention. What you have at the moment are two sets of criteria. Why not simply have one rather than having to align the first set with the second set.

Dr Morrow: Just to clarify our position: our position would be closer to that of the CAJ, partly on the basis that clearly all public authorities have a duty on them to act within the constraints of the Human Rights Act, as is the case universally. The concern would be certainly that community relations criteria could not be understood outside already taking consideration of the Human Rights Act. In that sense it already involves that. There may indeed be a number of other issues in other articles of the Convention which come into play at various points which could then be interpreted. If only one article is picked out, it would have a paradoxical effect: rather than focusing people on the human rights complexity it would focus them on one article of it rather than on the very fact that is at hand which is the balancing of rights within the Convention as a whole. Why pick out one article of it?

Dr Hamilton: May I address that last specific point? This has been raised, that by focusing on Article 11 there is an omission of the other relevant articles within the European Convention. I would argue that is not the case, simply because under Article 11(2) of the Convention, the Commission would be obliged and is obliged in any case to take into account the impact of the parade on the rights and freedoms of others and that would include then all those other rights within and beyond the European Convention as well.

Q116 Mr McGrady: May I just take your answers a little further? In the recommendations from Quigley, there is a suggestion that he is separating human rights considerations from public safety considerations. Then somewhere he refers to Article 11(2) and suggests that the tenor of those, not the exactitude of them, be somehow implanted in an amendment of the 1998 Act. CAJ have stated some concern about that. Perhaps you could elaborate on that and then also on the comments of Democratic Dialogue and the Community Relations Council.

Mr Mageean: To be frank, our view on a lot of this and on a lot of the Quigley recommendations is that broadly speaking—and there is room for improvement—the Parades Commission is working reasonably well. To some extent, we ask ourselves, if there is no value added in making the changes, why make them? Similarly when you get down to some of the detail around the recommendations on Article 11. Yes, you are absolutely right, he suggests splitting up some of the criteria in Article 11(2). To us, that is simply going to lead to a situation of legal confusion, because you are going to have part of his machinery which will look at part of Article 11(2). However, the Commission is still going to be a public authority for the purposes of the Human Rights Act, so they are going to have to look at the bit of Article 11(2) which is incorporated into any new Act and they are going to have to take their decisions subject to the Human Rights Act, which includes all of Article 11(2). It is a situation which will lead to some confusion for those who are trying to implement this. Part of our concern is that by separating out the public order considerations and giving them essentially to the police to deal with, brings us back to a pre-Parades Commission situation. Certainly it is a situation that the police have no particular interest in seeing replicated and they have expressed to the Committee their view that they do not want to go back to the situation where they are making these decisions. This is all relative, but from our point of view, one of the successes of the Parades Commission has been that it has removed decisions on public order matters from the police. The police did not feel comfortable in making those decisions and they were often in a very difficult situation. That change has been relatively successful. To divide out public order from other considerations again is not only, in our view, bringing us back a step or two, but it also would lead to a situation of legal confusion.

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Q117 Reverend Smyth: This is Democratic Dialogue. You note in your memorandum to us that while there can be no substitute for voluntary direct dialogue between parties, the Parades Commission should not require parties to engage as an end in itself, irrespective of the rights issues involved. Do you think that dialogue, that engagement has been forced upon parties? If so, what do you think it has achieved?

Dr Bryan: This is a really key issues and a very, very difficult issue. Right from the start of the Parades Commission it was understood that one of the roles the Parades Commission was to undertake was to try to develop local engagement and they used this word “engagement” and it appeared everywhere and it became very central; it almost felt as though it was being imposed on people, without people necessarily knowing what that engagement should involve. I know in a number of cases the Loyal Orders felt they had engaged.

*The Committee suspended from 4.10pm to 4.24 pm
for a division in the House*

I was just going briefly into the history of this engagement and mediation and the difficulty that the Parades Commission has had of coming up with a way of working which both distances mediation from the decision but then also, for them, keeps mediation, which is one of their elements, within the organisations. There has been toing and froing over that over three or four years and there is a debate over whether you should enforce people into a position of having to go to mediation or whether mediation should be a process which is quite separate. In our submission we think that there are some advantages to Quigley, in removing that from the Parades Commission. The next element to that is to try to see how the human rights focus can then be integrated into the processes of mediation.

Dr Hamilton: You asked whether we thought the Parades Commission had forced the parties into dialogue in certain situations and it would be difficult to argue one way or the other on that because from the lack of clarity in some of the determinations it is not clear. Certainly in some respects you would think that dialogue was a condition before future parades. First, just in terms of a general point and then I will briefly say something on specifics, I would concur with CAJ’s and I think Community Relations Council’s position on Quigley in that they think in broad parameters the Parades Commission has been working. However, I would concur with Quigley’s diagnosis of the problem with engagement in that there is an undue emphasis on moving parties into engagement. This has been seen in a couple of the judicial reviews which have occurred, one in relation to the Lower Ormeau Road, the Payne judicial review in 2001 and just last summer in relation to Ardoyne, where there was a judicial review concerning the decision to allow the Orange parade on the morning of 12 July or the evening. What that decision demonstrated in a sense was that although the Parades Commission had made some sign that engagement with the residents was necessary before

a parade would be allowed to take place, in fact there had been unilateral discussions between the Parades Commission and the organisers or parties associated with the organisers. That was essentially the basis of the Parades Commission’s case that that type of engagement should be seen as a precursor for possibly later engagement. That demonstrates that the Commission has got itself tied in knots almost around this question of engagement. I should be very keen to argue that engagement should never be a condition for a parade to take place, although it may be, as any number of other factors are, something which the Commission takes into account when arriving at its decision.

Q118 Reverend Smyth: Do you agree that there has been an accusation that it led to a pretence of engagement, that people met but were not engaging?

Dr Hamilton: There is confusion about what engagement actually means and the danger of having engagement fed into the adjudication process means that it becomes a box-ticking exercise for both parties concerned and people simply engage to try to get a parade or not get a parade. To my mind, while there are arguments on the other side, it is a very difficult question and that would strengthen the argument for separating entirely the mediative and adjudicative functions.

Dr Morrow: In general terms it is the position of the Community Relations Council that where possible relationships on the local level and between people and institutions should not be mediated through the courts when they do not have to be, or through administration and that dialogue and meeting and discussion of key issues is critical in a democratic society where there are obviously disputes and issues which need to be resolved as a basic principle of citizenship and respect. However, it strikes me that there is a difference between requiring people to show that they are in a respectful position in relation to their neighbours, which seems to me to be normal, and forcing any particular box-ticking exercise of what that looks like. It strikes me therefore that in relation to the particular issue at hand, the requirement should not be of a particular model of dialogue. There may be good reasons not to engage in particular dialogues at a particular stage. However, where that is the case, that needs to be part of the decision about respect taken by the body with the final authority. In other words, and I heard Hugh Ord talk about this once, when he said that in legitimating failure it is not a question of whether failure is good or bad. If we fail because we tried and it is a good story as to what we did, then that is okay. If we fail but there is no story, that is different. It strikes me that we should not insist on dialogue or any particular model, but that the softer body, the body which is envisaged in Quigley, should be reporting on the nature of the conversations and engagements which have taken place at local level as part of the consideration by the final body, but that the weight to be attached to that is to be taken case by case if it is separate. In other words, there cannot

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be a direct connection, they cannot be the reason why. The reason has to be because the rights are balanced up and a rights decision taken.

Q119 Mr Bailey: This is essentially to Democratic Dialogue. In your memorandum you suggest that there are several drawbacks in having a team of mediators dedicated solely to the parades issue. Can you expand on that? I know you have already touched on it to a certain extent.

Dr Hamilton: Yes, it links in with the last point. It is important to see that the work the authorised officers have done over the last number of years has been vital to the work of the Commission and that they have done an exceedingly difficult job of very much forging a role for themselves. In terms of the Quigley recommendation to have a facilitation agency, whether or not that particular form for a new process is a runner I am not so sure, but the argument we make in our submission is that there is a role much broader than parades issues which might reasonably be expected of a mediation agency or a body which deals with types of facilitating communication beyond mediation. So it is not just dealing with parades, but also flags issues and other issues. The reason we raised this possibility is that in some situations it is fair to say that the authorised officers have felt that their hands were tied because they have exclusively a parades remit and parades issues do not take place in a vacuum and are very often contingent on a number of other local issues at hand. In some ways it makes sense to have a mediative body established which can take a broader view on the range of issues at stake.

Dr Morrow: My view and the view of the Council is that there is a difference between these two positions which is that there is a specific issue related to parades and parading, but there must be a way to relate what then has to be done in connected and related areas to another body. Therefore that suggests that if the Parades Commission evolves or the parading arrangements evolve in the direction Quigley is talking about—and I tend to share the view that is possibly something to be looked at in the future but not necessarily urgently—it should evolve in such a direction that the authorised officers or the group of people responsible for mediation should be connected to the Parades Commission and to a wider body and I am offering the Community Relations Council as a group which can take on the wider issues as and when they appear, but they should not necessarily be the same person.

Q120 Mr Bailey: You propose that an independent agency should be charged with pursuing local accommodation on a range of issues “. . . pertaining to the marking of territorial boundaries (including flags, murals and other local disputes)”. What importance do you think the communities attribute to territorial issues in relation to parades?

Dr Bryan: I have been doing some work recently on flags and emblems and the flying of official and unofficial flags as well. The marking of public space and how public space is demarcated is just a key

issue in Northern Ireland. If we look at the way the conflict developed in the late 1960s and early 1970s, the way the civil rights parades at that point started to create insecurity by the fact that they seemed to be taking space which large parades which were oppositional to the government had not done prior to that, in many ways the feeling of space and security are right at the heart of the conflict in Northern Ireland. For those reasons I have been personally very impressed by the way the authorised officers have conducted themselves in very difficult conditions. There is an argument that a body, possibly the Community Relations Council, could run field officers who were working on a whole range of disputes. With issues such as flags and emblems and official flags flown on lamp posts, it is really difficult to tell whose responsibility it is at the moment and councils are going through the issues and I know that the Deputy First Minister's office is looking at the issue as well at the moment. It seems to me that if you had a body which made it its job to look at a number of these issues, that would be quite a powerful and useful body which would replicate what the authorised officers have done and maybe expand the sort of work they do.

Q121 Mr Bailey: I am a little unclear. You have talked about the importance of mediators. You have also highlighted the need for, in effect, a more independent body to adjudicate over a wider range of issues. Are you saying that an independent body should take over the role of the mediators or that the role of the mediators should be expanded?

Dr Bryan: Yes. It is a little more complicated than that. I would not want to designate who the mediators are. The role the authorised officers take is often not as mediators but to be aware of the mediation processes which might be taking place. Sometimes they have been mediators, sometimes they have not. The role that I see an authorised officer playing at the moment, this large role, would be as a field worker or field officer, who may be able to encourage, may be able to pull parts together. There may be particular bodies which could usefully do it; often it could be a local minister or priest who is the ideal mediator. I certainly would not want to tie mediation down to being one body and only they could do it. The field workers need to have a broader perspective than that.

Q122 Mr Bailey: If I may deduce, there should be an authorised body which could use mediators as appropriate in particular circumstances.

Dr Bryan: Yes. The issue then becomes on the parades issue, if they write a report on it, what status that report has in any determination which might then be made and the difficult issue is whether it has some sort of a role or whether the mediation process simply stays within the mediation body.

Q123 Mr Bailey: My last question has to a certain extent been pre-empted by the comments of the Community Relations Council representative before. Basically the Democratic Dialogue have

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suggested that there should be a more proactive role in co-ordinating the work with an independent agency. Would you be prepared to take that on? I would gather from your comments that you would be sympathetically inclined towards it.

Dr Morrow: Yes, we would. We are not making a pitch for it, but we would. I think though that the connection has to be that reports from such a body would be written; they will write reports. The weight to be attached to them has to be determined by the parading decisions. They may take them into account. It is “will write” and “may take into account”.

Q124 Mr Beggs: My question would be to the Community Relations Council. Sir George Quigley recommends that the process for dealing with contentious parades should have a stronger focus on rights and, to this end, recommends the creation of an independent rights panel for parades and protests. You express concern about the new organisational structures proposed under Quigley. Is it possible that the communities would have greater trust or confidence in a rights panel than they have in the Parades Commission? Do you think it could improve community relations?

Dr Morrow: It is a complicated matter and in a sense it depends on the process as much as on what happens. It is clear that whatever body takes a view on parades should evolve in the direction of rights in the sense that what they are really trying to do is educate or bring Northern Ireland along to where the rights balance is and how that actually works and that there is a consistency between cases, not just a case approach. In that way we all concur that is appropriate. The question at hand in Quigley is whether the two functions should be separated and my broad view would be that you could go either way on that. The danger in it and the concern we have is that the process of changing this may undo the current work that the Parades Commission is involved in, that the Parades Commission is new and evolving and that there are different ways to skin a cat. In other words, the loss of power in the process of reform will do it now. The question is whether the Parades Commission has lost all credibility. In my view it has not. In terms of time it is evolving. Should it be more rights based? Yes. Should mediation eventually be separated out in a clearer way? Yes. It strikes me that to undertake that reform now has certain dangers. If it looks as though it is undermining the evolution of the Commission towards rights, that is really the concern we have. If it is currently functioning, the reform should not actually undermine that.

Q125 Mr Beggs: Why do you consider that it could take up to two years to establish the new bodies?

Dr Morrow: That is a kind of inference from the fact that the current Commission was given two years' further life and, looking at the legislative timetable for change, that it probably would take that kind of time. Obviously once a decision is reached, that can be implemented, but the reality is, as anybody in

Northern Ireland knows, if there is any delay there is another year of decisions to be taken; the thing is a moving picture. It strikes me that even within Quigley the position on parades from 2001 when he began is no longer the position on parades now; this is a moving picture. Time spent tightening up the procedures of the Parades Commission might be better than focusing on rebuilding it, if it takes a long time and we go back to any doubts in these areas.

Ms Beirne: Part of your question was also about perception—that there is a strong feeling in certain parts of the community that the Parades Commission either has no credibility or no legitimacy, or there are concerns around the actual operation of the Parades Commission and the question is whether that would change if a different body—a rights panel—were created. In a sense there would be the same potential problems regardless of the model. The rights panel would have to look at exactly the same issues in terms of the application of the Human Rights Act to the parading dispute. The particular concern we have about Quigley is that it is separating out the public order considerations from other considerations which are part and parcel of what should be considered as part of the rights debate. We in our written submission referred to the problems which existed around the creation of the Fair Employment Agency, as it then was, and there were really a lot of antagonism around its creation and it was seen to be working in an extremely contentious and difficult area. Obviously there have been changes in the legislation and the nature of the body, but over time people see that it actually made a positive contribution to moving forward in Northern Ireland. To some extent our expectation is that may be true of the Parades Commission in due course too. It is difficult to look ahead into the future but the Parades Commission is at a rather early stage. A rights panel is going to be looking at the application of the Human Rights Act to these issues and in that sense it is not automatically going to change the agenda which is being addressed by the current actors.

Dr Hamilton: There is nobody on the panel who is arguing that the Parades Commission should be abolished, rather the charge is that it could do better in some respects. The question was about whether a rights approach might increase confidence in the community as to the role of the Commission. My feeling would be that what the Commission can contribute, both through its determinations and through its statutory documents, which would include its guidelines document, would be a very explicit and clear explanation of how the different rights issues involved in parades disputes could be understood. Rather than blandly asserting in each of its determinations that the Commission has taken into account the various rights, it should actually set out the evidence and facts of the case in relation to the specific rights and also that in relation to the guidelines that it should lay down clear and prospective guidelines which affirm what considerations the Commission has taken into account in reaching its decisions.

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Q126 Mr Beggs: The question I was going to put to CAJ and Democratic Dialogue has more or less been covered. Is there anything you want to add further? I was going to ask what your views were on Sir George Quigley's recommendations to replace the Parades Commission with a parades facilitation agency and an independent panel for parades and protests?

Mr Mageean: We have probably pretty much addressed that.

Dr Hamilton: We are all very much in agreement on that.

Q127 Mr Barnes: My question is for Democratic Dialogue, at least initially. Sir George Quigley recommends an increase in the statutory notification period for parades. What are your concerns about this recommendation?

Dr Bryan: We broadly felt it was unnecessary. This issue has quite an extraordinary history. I seem to remember that when the legislation changed in 1987 the degree of notification was moved from one day to three days and there was a big furore. We are now up to 28 days and people have accepted that. I feel that in a democratic system, where you want to give people the opportunity to hold parades and demonstrations, the bureaucratic system which processes those notifications should be able to work in a reasonable period of time. I personally think 28 days is as long as one should reasonably expect organisers to have to put that in. The reason that the Quigley report has suggested it be longer is firstly that we know when many of the parades are taking place; that of course is true. Secondly, that then creates a situation where mediation then takes place. It puts the process through. My feeling is that the very fact we know the issues over many of these parades makes that unnecessary and the process of mediation should and can be taking place before notifications are put in. We see no reason why there should be an extension beyond 28 days.

Dr Morrow: My feeling would be that to insist on that might in itself be open to challenge on freedom of assembly. The second issue is that it may indeed, if it is too long, preclude the possibility of changing things for accommodative reasons; it might actually make that impossible, because they had not been indicated. So that would be a down side to anything which is overly rigid.

Q128 Mr Barnes: How far is Democratic Dialogue looking for an alternative in reintroducing evidence gathering sessions which would trigger the provision of mediators?

Dr Hamilton: It is not so much looking for an alternative, because the Parades Commission as it stands would have evidence gathering situations. It perhaps does not do what it did in the initial couple of years in going out to different areas, although it has done that too in recent years. Because one of the charges levelled against the Commission has been this idea that its processes are not transparent, that is one way of triggering the process as well, but also of increasing transparency in the work it undertakes.

It is not re-introducing something which has fallen off, but it would be a way of increasing the transparency of the process.

Dr Bryan: It might also be worth adding that the role the authorised officers now play is to gather evidence and to be aware of what is taking place in the areas they cover. We would see that sort of role as being enhanced. There is nothing taking place now. The idea is that these field workers, the authorised officers would be involved on an all-year-round basis; indeed there might be an argument that they would be full-time posts rather than the part-time posts they are at present.

Dr Hamilton: It is not that Democratic Dialogue is arguing for absolute transparency in this respect, that there would be the possibility of closed evidence-gathering sessions. Some of the initiatives that the Commission have proposed themselves, such as providing post-mortem reports on parades to the organisers, or providing a summary of the objections which are raised against parades, those things of themselves, if they were combined with greater opportunities for parties to raise concerns about parades, would obviate against the charge that it is not being transparent at the moment.

Q129 Mr Barnes: Does the nature of the way that the Parades Commission operates impact back on your feelings about the length of notification required? Does the way the Parades Commission functions, the degree of transparency in different types of circumstances, the way it might make use of mediators, influence your attitude towards notification periods? Would some pattern of the way the Parades Commission operated mean that there should be longer notification than other patterns?

Dr Bryan: From a bureaucratic point of view, depending upon the processes the Commission feels it needs to go through, the notification period has to be longer. However, if you look round the world—I am trying to think of the places of which I am aware—certainly South Africa and the US would be two examples, we would already have a longer notification period than many of these countries. I am aware of these countries and in South Africa they have a process where they enforce people; they ask that people meet and almost force a process of mediation. In the South African system, they do it in days. I cannot remember the exact figure, but I think it is something like 10 days, it may be fewer.

Dr Hamilton: The Goldstone Commission specifically addressed this question of whether notification should be extended and they said there was no need because you can have mediative process prior to official notification in any case.

Dr Morrow: My own feeling on this is that parades do not exist in a vacuum. In other words, the role of what we are calling the mediation body is not just to mediate a specific march, it is to have a range of different possibilities which require long-running relationships, not just immediate short-run relationships. Any individual parade and the problems around it grow out of a wider context. One of the problems I have is that the length of time for

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any individual parade is actually a secondary point. The key point is the establishment over a longer period. Already what is happening in Northern Ireland, in my experience, is because most of the parades happen in the period between April and September; nearly all parades happen between April and September. There is a period outside the marching period which is already critical for any meaningful dialogue to be generated and it is not actually impacted by the length of time of notification given by any particular event.

Q130 Mr Pound: I have listened with great interest and some concern. It seems to me almost as though there is an unbridgeable gap between fundamental rights and conflicting rights, but fortunately people with far more between their ears than I am wrestling with that and I am grateful for that. Sir George Quigley recommends that the amended guidelines in fact be reduced almost to public order as the predominant issue with rights as a secondary issue. Democratic Dialogue have suggested that there should be much clearer guidelines in relation to the rights issue as opposed to the simple public order issue. How would you like to see this prioritised?

Dr Hamilton: I am not sure from where Sir George Quigley takes the headings he has in his report for prospective new guidelines, because they do not seem to relate to any existing legislative criteria or human rights convention. Our perspective on the guidelines would be that they are to explain further the criteria on which the Commission must make its decisions. The headings naturally come from the European Convention on Human Rights. I would see the guidelines being quite explicit about the section in Article 11(1) about what is peaceful assembly and that is a crucial question: what constitutes peaceful assembly? In terms of moving beyond that to Article 11(2): when is it necessary in a democratic society and in Northern Ireland's democratic society, for restrictions to be imposed? In that respect, other concepts such as reciprocal tolerance and a capacity or a willingness to recognise that others have rights, could be brought in. Beyond that, the specific rights and freedoms of others and what those rights are, whether it is Article 8 of the European Convention, Article 1 of Protocol 1, how exactly the Commission is going to assess the impact of a parade on those rights, is what the function of guidelines would be.

Q131 Mr Pound: I love the expression "reciprocal tolerance". I am not sure whether you can point to any examples of what has actually occurred. Are you aware of a growth of reciprocal tolerance anywhere?

Dr Morrow: In the world?

Q132 Mr Pound: No, I was thinking of Northern Ireland particularly.

Dr Morrow: I have to say for example that there have been specific marching situations involving situations where things are possible which were impossible before. The example I would want to give is the White Rock parade last year. As a result of

various conversations which were had and as a result of important interventions there was a fundamental agreement which allowed it to happen with a very low level of policing and with a counter-demonstration which was entirely peaceful, with no intervening police line, in which the march went ahead as proposed. Restrictions were imposed on various symbols which various people had to bring and certainly in terms of costs and in terms of a willingness to engage next year and in terms of a recognition that there is a right to peaceful assembly on all sides, there was a measurable improvement last year and the previous year where, if you look at it, it was much worse and there is hope that will knock on into this year. I also think there have been particularly difficult circumstances emerging in East Belfast around Short Strand and the end of the Newtownards Road. As a result of conversations which were had the police have been able to get them to agree procedures which allow the main march in the Newtownards Road to pass peacefully right through the summer. If that is called "reciprocal tolerance", there may be some doubts there if you dig too heavily.

Q133 Mr Pound: Painful acceptance rather than tolerance.

Dr Morrow: Painful acceptance may be the first stage of reciprocal tolerance in Northern Ireland and if the alternative is reciprocal rioting—

Chairman: We ought not to pursue that. There is not a lot of it about in Westminster, is there, except in this Committee?

Q134 Mr Pound: May I ask the CAJ about the recommendations in Sir George's guidelines that they should be made more specific. What type of considerations would you ideally like to see included in the guidelines?

Mr Mageean: First of all the issue of separating out this issue of public order is really a recipe for disaster. That is what we had in the past and when the focus pre-Parades Commission seemed to be predominantly on the issue of public order. Not surprisingly this tempts both sides to up the ante in terms of increasing the likelihood of public order, thinking that might be a way of getting their way. Since we have had the Parades Commission and with the expansion of the relevant criteria, and particularly since the incorporation of the Human Rights Act, this has meant that the public order criterion has lessened in importance. We also believe that it is important that all of the criteria in Article 11 and in the other rights in the Convention which are relevant—and there are certainly at least five or six other rights which may be relevant (and indeed, from our point of view as a human rights organisation other relevant international human rights conventions)—should be taken into account as well. Our view is that we would very much favour a rights based approach. Public order is clearly a part of that and that is something which the relevant authorities need to take into account, but it should

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not be the predominant factor. It is one of a series of factors and most of those are articulated in Article 11 and in the other Convention articles.

Q135 Mr Clarke: In all three submissions there are comments in respect of the need for greater transparency and in particular in the CAJ's submission there is acknowledgement of the importance of confidentiality. How do we square this in terms of the greater the transparency the greater the risk that individuals will be put at risk? Obviously there are two types of transparency: there is transparency of the process, but you also mention transparency in respect of the determination. Could you comment in terms of how we can improve transparency whilst at the same time maintaining the confidence of those who give evidence that they will not, as a result, be under threat and/or the victims of a crime themselves?

Mr Mageean: From CAJ's point of view, this is clearly a difficult question. Certainly when we say we would like to see increased transparency, that still needs to be seen against the need for proper respect for the right to life of individuals and the right to security of individuals. Individual names are something which the relevant authorities would need to consider withholding if that were appropriate. On the other hand, I think when you look particularly at the determinations, you do get the sense that they are rather formulaic and that it is not often the case that the Parades Commission goes into the particular problems with particular marches or indeed engages in a meaningful way with some of the human rights arguments. From an outsider's point of view it tends to look as if this is rather a box-ticking exercise. If in the determinations there could be more information about exactly what some of the objections are and also how those feed into a rights based analysis of the decision, that would increase transparency and presumably lead to the parties understanding more about what the reasoning was behind the decision. One of the other issues we have in relation to transparency is around issues dealing with compliance. This concern relates both to compliance with decisions which have been made on restrictions on parades, how those have been complied with on a year to year basis—there does not seem to be a lot of information around about that—and also, and this is certainly something we have pursued, what have been the statistics in relation to the police action and subsequent prosecutions related to particular marches or particular public disorder situations. That is something we have pursued with both the police and the Director of Public Prosecutions, but from our point of view there is precious little transparency in relation to that and that is something which should be looked at.

Dr Morrow: The primary transparency is in time, in terms of development of consistency, so people can see the ongoing basis on which decisions are taken and the transparency around that; rather than that

this is a politicised body against anyone, this is actually an independent body judging on something about rights. It is critical that it is not seen as belonging to one party. So transparency is about the consistency of the basis of decisions and how they relate to one another; transparency in relation to process, so that at least you know what the process of engagement is, how the Parades Commission reaches its decisions and how to interject. Guidelines from the Parades Commission in relation to stuff, what they mean in terms of the nature of a parade, the arrangements, the characteristics, the impact of a parade on relationships and what those actually mean could be made clearer because that is what transparency is about: clarity. Also, in terms of the code of conduct, I think there could be consistency issues around making sure what the Parades Commission is actually about. What the Parades Commission is actually about is ensuring that the rights in relation to parading and public order and freedom of assembly are, as far as it is possible in the context of Northern Ireland, applied fairly and without favour to the people they apply to and that is the basis on which that has to be maintained.

Q136 Reverend Smyth: May I ask the CAJ whether you have done any study on the concept of transparency or whether you have any information on the transparency of the administration of justice on those who have organised parades in flagrant disobedience of the law?

Mr Mageean: This is one of the issues we have tried to raise with the authorities, both with the police and the Director of Public Prosecutions, not perhaps in those exact terms, but we have asked, around the issue generally of parades and protests, about the extent to which they can give us information about the number of people they have arrested, the number of people who have been charged, with what offences, in what geographical areas and the number of people who have been convicted. Generally the response we had on that is that that is not information they hold. That is the information we have been given by the relevant authorities.

Q137 Reverend Smyth: Would you accept that there has been a tendency to turn a blind eye to those which have been illegally held, which has caused a reaction amongst those who have sought to abide by the law and give proper notification?

Mr Mageean: We have asked for this information from the authorities so that we will be in a position to make those sorts of determinations, but in the absence of any information we cannot really come to a conclusion.

Q138 Chairman: Lady and gentlemen, thank you very much indeed for coming to help us. It has been a useful session.

Ms Beirne: May I raise one issue which has not come up very much so far: the concern about the role of

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the police in the Quigley report. Because of his proposal to separate out public order from other rights issues, CAJ, having read the PSNI submission, and I gather you will be hearing from them separately, are quite concerned that this puts the police right back in the hot seat.

Q139 Chairman: We have had representations to that effect.

Ms Beirne: I just wanted to make sure that was very much on your agenda and it is a concern which we certainly feel very strongly about.

Chairman: Thank you all very much indeed for coming over and helping us with our inquiry.

Wednesday 10 March 2004

Members present:

Mr Michael Mates, in the Chair

Mr Adrian Bailey
Mr Roy Beggs
Mr Tony Clarke
Mr Eddie McGrady

The Reverend Martin Smyth
Mark Tami
Mr Bill Tynan

Witnesses: **Mr David Campbell** and **Mr David McNarry MLA**, The Ulster Unionist Party (UUP), examined.

Q140 Chairman: Good afternoon, gentlemen. You will know as well as we do why the Committee is somewhat truncated and why your leading witness is not here. It is because by the roll of chance we have a debate on the Criminal Justice Bill and our Bill. David Trimble has said that he will come if he possibly can but it depends when he is called. Others, I am afraid, will come and go for the same reason. It is just part of the crazy way this House operates. Thank you for coming to help us over “The Parades Commission and Public Processions (Northern Ireland) Act 1998”. We are trying to get as wide a range of views as we can. In the memorandum which you have sent us you noted that last summer was the most peaceful in the decade, and yet at the same time you are arguing that reform of the regulatory framework for parades is urgently needed. Do you think there is a link between the way the existing framework is working and peace on the streets?

Mr McNarry: We made that submission in recognition of the peace because we felt it was worth doing so. We would be very clear in our own minds that the relative peace, and we would underscore the word “relative”, of the summer had nothing whatsoever to do with the Parades Commission. It would be wrong of anyone to be feeling that the Commission contributes to it in any way. That is our clear understanding. What happened in the summer was a realisation, we understand, between those who previously would have been acting in a violent way and we are not so silly to believe that, whilst most of the good work that was done on the ground was done at a community level and at the interface level as well, particularly in Belfast but interfaces just do not apply to Belfast, had the Republican element in Northern Ireland wished or wanted violence on the streets, nothing would have stopped it. We also believe that it was part of their political agenda in terms of switching on or switching off. In this case they switched off the violence. I am sure that you would recognise that they are just as capable of switching it on. Therefore, because of last summer, we also look to this summer and hope that the relative peace that we had can and will be maintained.

Q141 Chairman: Others have said that, after a difficult start, the Parades Commission is beginning to bed down a bit; relationships and trust are being established. Do you really believe that had nothing to do at all with things getting better as far as parades are concerned?

Mr Campbell: As far as the Ulster Unionist Party is concerned, we very intensively worked with the Commission from the summer of 1999 through to Christmas of 2001, primarily on the Portadown/Garvaghy Road situation. It was as a result of that two and a half years of very intensive work that we reluctantly came to the conclusion that the Parades Commission as constituted was fundamentally flawed and primarily biased against the marching tradition in Northern Ireland. It was as a result of that that we lobbied Government successfully to put in place the Quigley Review. I would also say it was in part the maturing attitude being taken by Portadown District to the handling of the Drumcree/Garvaghy Road dispute that in many ways impressed upon the Prime Minister himself the need for a review mechanism to be put in place for the Parades Commission. The Quigley Review was in fact the second review. There had been an earlier review, which I think perhaps the predecessor to this Committee looked at and commented on. I would re-emphasise David’s comments that the quiet summer this year was in many ways in spite of the Parades Commission, not as a result of its work. Certainly, as an observer to my colleagues in the party, knowing the work that they did on the ground, not least by some of your own Members from constituencies in Northern Ireland, it was very much a political and community effort on the ground in Northern Ireland last year that led to a quiet summer. Unfortunately, the early signs are that that may not take place this summer again.

Q142 Chairman: You support the argument that Article 11 of the European Convention on Human Rights should be affirmed in the public processions legislation. Are there any other Articles which might equally be affirmed in that legislation with a view perhaps to improving the clarity?

Mr McNarry: If we may, we would, particularly on the human rights issue, like to write to you on that, Chairman. It is an immense subject, which we in Northern Ireland, I must say, struggle with all the time. It seems that no matter where you are heading in law, there is a referral somewhere down the line to human rights. We are still investigating, because it is an ongoing situation, aspects of the Human Rights Charter. We have in our submission pointed out instances and occurrences in other countries, and we feel in many ways that they seem to have handled protests similar to those we have witnessed in Northern Ireland over legitimate parades reasonably

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well without the necessity for installing a Parades Commission, without the necessity of making bad law and giving it legislation to operate in the fashion that it does. It is a great subject in which we are finding new experts. Three years ago, when you contacted the Northern Ireland Law Society, you could only find one or two recommendations as to those who were practising what is known as human rights. We are now finding that there are more experts coming to the fore, and I am glad to say some good young lawyers, who are beginning to specialise in it. With your permission, we would like to detail that. We have sent quite a lengthy submission in about it but we take your point about other Articles, which we are currently investigating.

Q143 Reverend Smyth: Quigley suggests that public order should be considered separately from questions about the right to parade and whether that right should be qualified. Is such a separation feasible in practice?

Mr McNarry: It is feasible to the extent that, if you do not have this overseeing of a Parades Commission, you go back to where you used to be in terms of parades, setting aside the aspect, as we have said, that historically legitimate peaceful parades have been targeted by opponents for political necessity. It used to be—and there is a grey area over this—that the Chief Constable was a satisfactory mechanism to solve the disputes when the disputes arose. The grey area that still exists there is that we do not think there is sufficient truth coming from the Parades Commission in that there most certainly is a clear perception among parade organisers that the other stick the Parades Commission have to use against a parade is this threat: if we give a parade, it may be that the police will refuse it. We are finding again that there is a doubt over that, there is not the certainty which parade organisers have been led to believe. As you know, and it may be a turn of phrase, we believe that what has happened is that the Parades Commission, in the manner in which they have carried out their operation and handled determinations, have benefited if not created a rioters' charter in terms of parades, and that significantly there has been one-way traffic. I think that what we need to see is far more transparency from the police in terms of what their reports are. In practice, what happens is that if you are an organiser and you are before the Parades Commission, they will tell you what they believe the police are saying, but you are not allowed to see any reports whatsoever from the police. We think it would be useful if that came about.

Q144 Reverend Smyth: You think therefore that it would be reasonable to ask that the police publish details of their reasoning when advising questions of public order?

Mr McNarry: I think so very much. Most of the people we are dealing with respect law and order and have been brought up to do so. Therefore, one would assume that they have been brought up to accept the report of the police, having been able to see it.

Q145 Reverend Smyth: May I deal with the right to parade? Should that right be qualified?

Mr McNarry: I think there is a necessity to qualify it in terms of where we are in Northern Ireland now. Sometimes I become concerned about the words “qualified” and “explanation”. I think more needs to be done, and certainly there has been tremendous work done, in trying to create more understanding for the objector. Where one could set aside—and it is very difficult—the circumstances in which they do not have political motivation for creating a disturbance or a dispute over a parade, I think more needs to be done in terms of the Loyal Orders in this case extending themselves and embracing the other culture, and to that extent you would create more understanding. There is still a long way to go on that because it is very difficult to approach that when you are really in a situation of taking sides or being put on a side. I know, and I think it is to their credit, that both the Orange Order and the Apprentice Boys have made approaches to do this and I think they have succeeded. There is still a long way to go, but I would certainly hope that they would keep on at that in terms of explaining and educating.

Q146 Reverend Smyth: Does that require the right to parade to be qualified, and that is actually dealing with how people handle it, because in one sense public order would take over completely? Whatever rights people may have, public order and other governmental reasons in other countries can step aside even basic human rights. Is that right?

Mr McNarry: I think you are right because I think in Northern Ireland terms no-one has challenged the right to parade in its truest sense. People have challenged and used the law and used the Parades Commission and used the legislation to dispute it and disrupt it. If we go down the road of actually re-establishing—which I think would be the correct term—the right to parade, I think we are just going to create terrible problems in society. If I may be given latitude to be a bit romantic, I remember as a young person going to watch Orange bands with my grandfather and his Catholic friends, and I remember that it was nothing other than a good day out. I also remember from country cousins, if you like, that when they went out to parade as Orangemen, their Catholic neighbours came and helped them on the farm to milk the cows, et cetera, because it is a full day. We have been taken away from that and there are people who would even deny that that sort of thing happened. I can assure you that it did and it still happens.

Q147 Mark Tami: Looking long-term, and you have mentioned the Garvaghy Road already and the problems there, in your memorandum you seem to say that mediation, even the longer process put forward by Quigley, is unlikely really to produce solutions to these long-term issues. How do you see that these can be resolved and how do you really think accommodation can be found in these cases?

Mr Campbell: I think in some cases it is probably impossible to find an accommodation and it is probably a pipedream to think that you can. The

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process we went through with the Garvaghy Road Residents Coalition was one in which the District did its best within the guidelines and within the policy of Grand Lodge to encourage as much engagement as possible with the residents. The residents, unfortunately, through their political manipulators, prevaricated at every opportunity. Our submission catalogues the efforts that were made over a period of two and a half to three years to give effect to the maximum amount of engagement that could be considered. The end result, which was the current process, conceded that the Portadown District would engage actively and face to face with the residents once a positive determination was given. At the end of the day, as David has said, when you are dealing with a protest that is politically motivated, it is difficult, in our view, ever to find an accommodation until the politics have been sorted out.

Q148 Mark Tami: You do not see a role for mediation there to try to resolve these issues?

Mr Campbell: We have acted as mediators and others have acted as mediators in this dispute and it still remains unresolved. Until a stick approach as well as a carrot approach is adopted, it never will be resolved. To give you an instance, since 1998, the Portadown District have submitted some 300 determinations seeking the conclusion of their parade. In every one of those determinations the rights of the residents have been upheld. Not once has effect been given to the rights of Portadown District. I think that has to go some way to showing the concern we have that you will never get any reciprocation from that type of residents' group as long as you have a structure and a Commission which is biased on its behalf.

Q149 Mark Tami: Looking on the positive side, and I know perhaps that really has not come through, do you see the possibility, if you can reach some solution, of that being a longer term solution rather than just an annual event that you just keep returning to this matter? Obviously that is something that Quigley would like to see.

Mr Campbell: Yes, one would hope so, and where we were finding favour with Quigley is, first of all, to go back to Martin Smyth's question, that although we accept there can be no absolute right, it was encouraging that Quigley was making a distinction between traditional church service parades and perhaps other parades which may be more political in nature. We would hope that, with some goodwill on both sides, an accommodation could be reached. If a different approach had been taken by the Parades Commission, we would contend the Garvaghy Road situation would have been sorted out at least three years ago.

Mr McNarry: May I add this? Your document seems to be a bit more condensed than ours; we have had our submissions re-printed. Quoting from the submission and referring to a meeting hosted by a Government Minister, Adam Ingram, may I read: The meetings failed to secure from the Garvaghy Road Residents' Coalition an answer to this

question: What was wrong with Orangemen leaving church on a particular Sunday and walking peacefully along the Garvaghy Road? In the end, those talks were called to an abrupt end with him refusing to give an answer to that question. The Garvaghy Road Residents' Coalition leader led a walk-out of his delegation, voicing loudly, "The meeting is over. We will never attend another meeting chaired by Brits". That is part of the problem in terms of the way you are dealt with in mediation and dialogue. May I add briefly that we have been very critical of the Parades Commission as to the manner in which they have seriously set aside mediation in terms of their own remit. They have generally formally come down heavy on adjudication. They have an obligation to act very carefully and to encourage mediation, and we find great fault with the Parades Commission because they have not done that and have failed to do so.

Q150 Mr Bailey: Continuing on the same theme, you express reservations about Quigley's recommendation on engagement and the requirement on parties to go through mediation in good faith before proceeding to a determination. Can you just expand on that?

Mr McNarry: Thanks to your Committee, you have brought the Quigley Report back into the public domain. We feared it was gathering dust on some shelf. It is like something that is topical at the moment, and that is the Truth Commission in our part of the United Kingdom, in that there is clearly a feeling abroad that it is very difficult for people to tell the truth. One of the concerns we have had with the system operated by the Parades Commission has been that they generally have believed only the protester or the disruptor but never the parade organiser. As David Campbell has been pointing out, in one instance in the Garvaghy Road, over 300 times that has happened and it happens quite regularly. Therefore, there is a shortcoming in it.

Q151 Mr Bailey: What do you think could be done to encourage a genuine engagement between the parties prior to a parade?

Mr McNarry: Again, it is a question of what is genuine and what is engagement. Since the Parades Commission was set up, we have found it very difficult to understand what they wish to interpret as meaningful and genuine engagement. They have as yet been unable to give a definition of what they consider proper engagement which would meet their criteria because they will actually encourage you into engagement on the basis of saying, "Through engagement the parade organiser should be able to make his case better and he could be rewarded with a parade". As yet, they have failed in the mediation role that they have but they have yet to give a definition. If you could produce a definition from the Parades Commission of what they mean by "meaningful engagement" which somebody could take as a blueprint and adhere to in order to establish that a parade would be allowed to proceed, then we would all be very grateful for that. In terms of what people want, it is very difficult, and I suppose

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obviously people are human as well. We have something in Northern Ireland called “thranness”—awkwardness. Take the Loyal Orders, if you belong to an institution which has a great tradition and a great history, you will find that there is an obstacle thrown in to stop what you have been doing for many years and what you want your family to take on from you and inherit as well. All of a sudden, there are no terms of engagement, there are no terms of mediation except that people come on to the road and stop you and provoke a riot, a stand-off and disruption. In many cases they do this in the terms that they are offended by this procession passing by their door. Very few parades in effect pass by anybody’s door, particularly on the Garvaghy Road, which passes by maybe five or six doors. In saying that, the toleration factor is such that people cannot tolerate something that has been going on unhindered as a tradition without provocation and in a very peaceful manner. People cannot for as short a time as three minutes, or maybe a longer time of seven minutes, tolerate and respect that tradition when a parade passes their door once or twice a year. It is very difficult to establish mediation in the midst of confrontation. I would go back to what I said to the Reverent Martin Smyth, that of course there is room for greater education but with that comes respect for a culture. I have attempted, and I only speak personally, to hold meetings in public, against some people’s wishes, with the leader of the Garvaghy Road Residents’ Association. I felt threatened, I felt great hostility in the atmosphere, and I felt rather insulted when the tradition that I was trying to speak for was referred to as “nothing short of the Klu Klux Klan”. I find that reprehensible, but indeed that is part of the propaganda that goes against the tradition we are talking about.

Q152 Mr Clarke: Gentlemen, earlier on you mentioned transparency and both in your submission and today in talking of transparency you say that there needs to be greater transparency about the grounds on which a determination is made. Quigley also calls for more openness, wider transparency, and in fact he goes as far as to say the system should be entirely open as it is, for instance, in Scotland. Do you have any fears that that degree of transparency in determinations within a Northern Ireland context could lead to vulnerable individuals being put at greater risk?

Q153 Mr McNarry: There is always that fear in Northern Ireland. Even going about your business, there is always the fear. We would welcome the openness and the transparency because we believe it would deal with the secrecy in the decisions that the Parades Commission arrives at. Whilst they issue a determination and whilst they go to great lengths to tell you how they arrived at it, without wanting to repeat ourselves, on the Garvaghy Road situation they have issued the same determination for five years repeatedly once a week. What they are admitting to is that nothing has changed in five

years, whereas situations and circumstances have changed. Transparency is very important in terms of—

Q154 Chairman: Over the Garvaghy Road dispute what has changed?

Mr McNarry: The residents are no longer on the street blocking the parade. The residents are not, in the manner in which they previously tended to do, creating and looking for support in other areas of Northern Ireland in support for their particular cause. Portadown itself is a quieter place. The District Orange Lodge goes to church every Sunday and processes down to a roadblock with one policeman now. The Orangemen do not break the law. They ask the policeman for permission to proceed. That one policeman says, “No, you cannot because the Parades Commission says you cannot”; there is a small service held there and they walk back. The difference is, Chairman, that only 12 months ago there would have been probably 15 Land Rovers in the background and probably 20 or 30 policemen there. The marked difference to everything, and where the change has not taken place, is that at the traditional service at the parish church in Drumcree to commemorate the Battle of the Somme we all know that basically what we have are massed barricades manned by Her Majesty’s Security Forces and the police. To have such a thing in the United Kingdom is a disgrace. There is no need for it. If a band of men can walk down last Sunday and next Sunday and be greeted by one policeman, then the whole thing is hyped up for this particular time of the year, for 7 July, by the Republicans. They are still manipulating the residents. But things have improved to that extent in that we do not have the weekly occurrences of trouble.

Q155 Mr Clarke: Just returning to the vulnerability of individuals, would you be satisfied with a determination that was not made transparent on the basis that there was a belief that individuals would be made more vulnerable by its publication?

Mr McNarry: I would believe that a parade organiser, if he was made aware of that, in normal circumstances would be able to accept it, but provided that it did not become just another weapon of deceit—there is always that concern—and provided it did not become something that you could hid behind. There is always a great concern. There is always the possibility of vulnerability but the parade organiser is vulnerable from the day that he organises because by law his name has to be submitted. His name is fully known to everybody. Bear in mind that this is a cycle. If there is a parade tomorrow that is a traditional annual parade, the next day that parade organiser on behalf of the organisation would be putting in a notice for the following year in his name. There is that vulnerability. The objector does not have to do the same. The objector does not have to submit anything in his or her name until close to the time that a parade is to take place.

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Q156 Mr Clarke: Could I move on to another aspect of your submission when you talk about those offering evidence to the determinations panel should be vetted on the relevance of their evidence. This suggests a further step whereby somebody will have to pass judgment on the relevance of evidence that is submitted before the determinations panel. Could you talk us through how this would work in terms of who would be responsible for vetting the relevance of evidence? Does that mean we just have another panel that needs to be set up before evidence can be presented to the determinations panel in the first place?

Mr McNarry: I hope you are not majoring on that point because it is something that we were dealing with in terms of trying to have a perfect solution. We would go back to our preference, and in fact what we put in our submission is that you replace this commission with a tribunal-based process. Through the tribunal-based process, it seemed that there would be an element of vetting, as you would have in most tribunals. We wanted to emphasise through the tribunal aspect that what we were wanting to do was to embody a rights-based approach through that. That seemed a key element for us because we believed that that would negate this current system that we have, which encourages last-minute applications and lobbies by objectors seeking re-determinations or overturns of decisions. What we are trying to get through is that in our opinion there is no substantial or careful vetting at this last minute, which is normally politically driven. There is no vetting of that at all in terms that people are putting at the last minute what they believe. We see their objections taking another turn. The clear knowledge, from the experience of it, is that, irrespective of what the Parades Commission says, if they give a parade, there will be a protest. If they turn one around and then reverse that, there will be a protest. Basically there is a vehicle being used all the time that invariably falls back on to the street. What we wanted to do with the vetting process was to try to ensure that nobody could just come along here and say, as they do to the Parades Commission, "We object", that there needed to be more vetting of who they were, what they were, and what they were putting forward. Invariably all it needs is a knock on the door of the Parades Commission and, "I object". It is as easy as that.

Q157 Mr Clarke: Finally, we started talking about transparency in terms of having a process that is very open but if we have a vetting procedure which decides which evidence should be put forward and which should not, then, by its very nature, the transparency is less. I wondered if there would be more happiness if the determinations panel considered all the evidence so that none was vetted but the relevance of the evidence was weighted by the determinations panel, rather than vetted, in terms of what should be public.

Mr Campbell: Weighting may be a better terminology than vetting. I think that is a point well made.

Mr McNarry: We wanted to simplify it.

Q158 Mr McGrady: Gentlemen, in response to the Chairman's first question, you made a very determined distinction between the more peaceful environment which you had in Northern Ireland and the work of the Parades Commission. In fact, you stated categorically that there was no connection between the ensuing of peace and the work of the Parades Commission in terms of parades. In fact, you went on to say that the peaceful summer that we have just had was in spite of the Parades Commission. Could you elaborate on the evidence of that?

Mr McNarry: Our belief is that it appears to us too often that the determinations, and sometimes one would use the words "determinations of the Parades Commission in making their determinations", have contributed to violence on the streets of Belfast and on the streets of towns and villages. Again, we find them culpable in their failure in that they have not embarked on anything other than making their rulings and their approach to their rulings always adversarial and always on the basis of adjudication. They have not involved themselves in mediation. There is clear evidence that the Parades Commission itself has not been involved in mediation. They have rather chosen to get other people involved in it, such as Brian Curran from South Africa, and local people as well. There has been no real product from that. In spite of what they were doing, because they had not greatly changed their minds from any previous years, those parades in many instances passed by relatively peacefully. A number of the parades, particularly in Belfast, were still subjected to violence. Violence comes about in different ways in that there is also the threat of the violence. Where you have an incident that may have been created at the start of a procession or a parade, say at 10 o'clock in the morning, that is fuelled right through that day and probably for the next few days. I have nothing to commend the Parades Commission for in terms of last summer. I have nothing that I could say leads me to believe that anything that they did contributed to that, but I do go back to what I said. Orange parades themselves do not cause violence. Orange parades are attacked and the attackers decided last summer as much as anybody else that they would not attack. The plea of most people this year is: if you could turn it off last summer, then why can you not do it this summer and for future summers? I can see you are ready to question me on what I have just said but may I defend what I said? I do not believe that Orange parades or Loyal Order parades cause violence in Northern Ireland. They are attacked because of the culture that they stand for.

Q159 Mr McGrady: The tenor of the weight of your evidence was mainly concerned about the Garvaghy Road and you say there were 300 applications last year out of a possible 3,300. In many of those determinations of the other 3,000 the Parades Commission endorsed the right to parade against the wishes of the local community. That is the first

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point, for which you do not appear to be giving any credit. Secondly, are you seriously saying that an Orange parade or a parade with an Orange participation has never attacked a community, because I have seen it? I have seen it on several occasions in my own time. That is not a true reflection of the facts, I am afraid.

Mr McNarry: With the greatest respect, I can only disagree with you. I have nothing to comment on your experiences.

Q160 Mr McGrady: That is not just my view but the view throughout many other communities. However, I will give you an easier wind-up question perhaps. The Quigley Report does make a number of minor or lesser recommendations concerning the importance of the enforcement of conditions relating to parades and, allied to that, the necessity for communication—he calls it—between parade organisers, police and monitors or surveyors, whatever you call them. Have you any further or additional comments to make on those add-ons, if you like, to the central themes which we have been discussing?

Mr McNarry: I do not want the Committee to lose the sense of what we are talking about when we talk about the Parades Commission and the Public Processions Act (Northern Ireland) 1998. There is tremendous emotion in what we are bringing to you through our experiences, and those experiences have been documented. They were real experiences David and I have lived through those experiences. Our approach to things that we find in living those experiences was entirely on the basis that parades of any nature would pass by peacefully in Northern Ireland, that people would not resort to violence in any form to stop those parades from happening, that they would not attack the culture and they would not disrespect the men and women who participated in them. The most difficult thing for people

associated with Unionism, because it is a broad spectrum of Unionism that participates either as a walker or as a viewer in the parades, and a side issue, is that most of us I think would share that that parade on 12 July could attract much needed revenue for Northern Ireland as something that people from the whole world would come to see and enjoy as a tourist attraction similar to attractions in other countries. It is a very vivid, colourful spectacle, and particularly when the Orange family, which is worldwide, comes together with representatives from the other countries in that family, it is spectacular and it is wonderful. I would not want anybody to think that in criticising the Parades Commission we do that for any other reason than that we strongly and firmly believe that they have not solved the problem; they have added to it and they have contributed to it. We want to change that and we want to help them. We have put out ideas. We believe that Sir George Quigley has taken the general view, and certainly our view, that the Parades Commission can no longer stay in business. What we have to do is find out how we replace it, if it is necessary to replace it, which is another question.

Mr Campbell: On the specific point on enforcement, I think all reasonable people appreciate that reasonable enforcements should be supported. For example, there should not be the taking of alcohol associated with parades; there should not be the display of paramilitary illegal emblems; there should not be the playing of insensitive or party tunes. I think the Loyal Orders as a whole are subscribing to that type of enforcement within the voluntary charters they have established with bands and parading bodies. In terms of that specific issue, I think we would support the thrust of those recommendations.

Chairman: Gentlemen, thank you very much indeed. It has been helpful, although not entirely without controversy. Thank you for coming to us.

Witnesses: **Mr Alex Attwood MLA**, and **Mr John Dallat MLA**, Social Democratic and Labour Party (SDLP), examined.

Q161 Chairman: Let us start from a different aspect. First, thank you for coming to help us with this inquiry. You support the Parades Commission and you say that because of its work “parades no longer top the public’s list of concerns”. How much do you think this is down to the Commission and how much is that because of other factors, the general prevailing atmosphere of less confrontation?

Mr Dallat: Thank you, Chair, for the opportunity to speak at the hearing today. Taking up your cue about the other half of the story, I do not think we would outline it as the other half of the story; we would think it is bigger part of the story.

Q162 Chairman: I said the “side”, to be clear.

Mr Dallat: Subject to the record, to answer your question directly, I have a number of observations. Any institution in the North that put at its heart a number of core values, such as the need for dialogue,

the need for respect for relationships, the need to hear people on the basis of equality, those core values, especially in a situation of conflict or coming out of conflict in the North can only help contribute to the wider good of the society. Those are the values that the Parades Commission has put at the heart of its conduct and operation. Given that those are the values against which an improving society in the North should be judged, the fact the Parades Commission judges itself and its work against those values I think cannot be underestimated. The second point I would make is that you cannot dispute the evidence. The evidence is that some of the most difficult public order community relations and parade issues—and you in your own personal political capacity in the North and many of the Members round the table would have full knowledge of them—at any one or other time define the conflict in the North. Disputes around marches in Derry, Ormeau Road, West Belfast or Garvaghy Road or

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elsewhere at any one or other time actually define the nature of our wider political community conflict. That is how important and central they were and yet no-one I think would argue that they have that impact or that profile any longer. That is a consequence, not exclusively but substantially, of the values of the Parades Commission and their method of working. That is why I think there is a fundamental contradiction in what was outlined earlier when, for example, Mr McNarry said, subject to the record and I think I quote him accurately, “the Parades Commission when they made the decisions always were adversarial on the basis of adjudication”. Far from it—yes, if it required a decision, they did not shrink from making that decision but how they conducted their business put dialogue in the centre, tried to build up substantive engagement between parties, developed the concept of respect for relations. I think all that created a context in which both the parades could be better managed if not resolved and our society could be at peace, even if not fully at peace.

Q163 Chairman: You say you are in favour of some of the reforms but that the replacement of the Commission itself would undo the progress made and threaten to reignite controversy, particularly you say at interfaces. Why do you say that?

Mr Dallat: Because if you replace the Parades Commission with a Parades Tribunal, then in the management of parade disputes and in their resolution you create a context that is adversarial, that is about some one side or other winning. That approach to politics in the North, never mind that approach to parades in the North, creates further problems and deepens difficulties. That is how it will be presented. It will be presented as one or other side winning. Secondly, if you adopt a strictly rights-based approach to this issue, then you downgrade other important aspects of dealing with this issue, namely issues of public order, issues of community relations, issues about what is in the best interests of the society. If you have a strictly rights-based approach that gives primacy, as some would argue, to the right of assembly, then a consequence of that is the danger that you will downgrade other necessary and important requirements in terms of dealing with this issue in the North. The consequence of that, in our view, is neither in the best interests of parading nor in the best interest of the wider management of society in the North. Ultimately, and I do not use clichés as the basis of evidence, “if it ain’t broke, don’t fix it”. That is why I would suggest, subject to what other Members might say, that there is a political lobby, but it is not a broad-based lobby within the North in favour of a Parades Tribunal as opposed to a Parades Commission. We would certainly like to see aspects of the Parades Commission adjusted and upgraded, not least in the role of mediation, but in its substance it is a proven winner.

Q164 Mr Beggs: Gentlemen, whilst your latter observation may be reflective of the community which you represent, will you accept that any hope

of any confidence ever developing within the Parades Commission by the Unionist community was completely shattered at the time of Stormontgate with the allegation and exposure at that time that there was a Republican mole within the Parades Commission? With that kind of observation, there is no prospect whatever of building confidence in the operation of the Parades Commission by the Unionist community.

Mr Attwood: I am not particularly aware of the allegation that there was a so-called Republican mole in the Parades Commission. I would say that if there is any intelligence-gathering operation by any organisation in any aspect of government in the North, that is not helpful. Whatever a Republican or other mole might be doing in gathering intelligence, I do not think that takes away from the core argument. The core argument is that: the Parades Commission and its method of doing work has been broadly successful; as a consequence, during marching seasons and on acute marching routes things are better managed; we no longer have a situation in which the police are not being relied upon to make judgments about parades on the grounds of public order, a position that they do not hold and they do not want to have and do not seek to have in the future; and we have a situation where, as the Parades Commission have said, as I understand it in a submission to the Committee, the critical mass of Unionists want to see engagement between the marching orders and the Parades Commission, even if there are Unionist representatives who say otherwise, at a time when in one way or the other marching orders are either directly or at arms’ length beginning to engage with the Parades Commission. Why put in jeopardy the evidence of success to the point where you could undermine that success in future years?

Q165 Mr Tynan: Welcome, gentlemen. In regard to the provision of the European Commission Convention on Human Rights, would you see that as being formally affirmed in the regulatory framework?

Mr Attwood: The European Convention on Human Rights is part of domestic law under the Human Rights Act in Northern Ireland as it is in Britain. Therefore, any legislation in the north, including the Public Processions Act, has to be adjudicated upon in a court of law and measured against standards of the Human Rights Act and therefore the European Convention. Those who invoke a strictly rights-based approach to the issue of parading have their concerns addressed by the fact that the Public Processions Act can be challenged in a court of law by way of judicial review, and that any court of law would judge the Public Processions Act or any decision arising therefrom in the context of the Human Rights Act and the European Convention. In our view, the requirements that people might have that the right to assembly is given a proper and due regard, when it comes to making decisions about the right to parade, is secured. We would also argue however that in the real world in the north, the right of assembly, or the right to parade as some might

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suggest, has to be assessed against other standards. Those other standards are those as outlined in the legislation and the codes of practice that form the work of the Parades Commission, namely the issue of community relations, the issue of traditionality, even if we dispute that one, and the issue of public order. If you are going to come to a mature outcome in terms of any disputed parade route, those factors have to be given due regard. That is not to dismiss the right to assembly that exists under the Human Rights Act and the European Convention, but it must be a right exercised, judged against other standards; and that those other standards about community relations, public order, *et cetera*, are appropriate where there are disputes around parades.

Q166 Mr Tynan: The question I was asking was whether you would like to see the provisions of the European Convention and Human Rights Act formally affirmed in the regulatory framework. Is the answer “no” to that?

Mr Attwood: My view is that the provisions of the European Convention and the Human Rights Act are already part of the workings of the Parades Commission. The right to assembly, which is the right that people rely on when it comes to the issue of whether they parade or not, is something that the Parades Commission must have due regard to. That is outlined in the Public Processions Act as well; so it is already part of the statutory framework under which the Parades Commission exists. If it has to be confirmed in any code of the Parades Commission, I have no objection to that, because that is the statutory basis on which the Parades Commission already operates. What must also happen however is that in assessing the right to assembly the Parades Commission in its conduct but also in its codes has to have due regard to other important standards—the ones that I have outlined. If the question is, should it be incorporated in protocols, I have no difficulty, because that is already the practice.

Q167 Mr Tynan: My question was actually on the regulatory framework. If we are going to incorporate the regulatory framework I was asking you whether you agreed with that. You say it is already contained within the articles at present in the 1998 Human Rights Act; so you would have no objections to it being incorporated in the regulatory framework.

Mr Attwood: I think I need to hear you define what the regulatory framework might be because it is already part of the framework that informs, as I understand it, the workings of the Parades Commission.

Q168 Mr Tynan: Which do you consider to be the important articles of the Convention that surround the parades issue? You have told me about right of assembly and other issues, but what do you consider the important ones to be?

Mr Attwood: All the provisions of the European Convention and Human Rights Act are going to be the standards against which any decision of a public

body has to be assessed. In respect of the north, the right of assembly, the right to privacy; there are four articles within the Convention that are relevant when it comes to the issue of public procession and parades. The issue, though, is that the right to assembly is not an absolute or unconditional right. That is the issue. As I understand it, submissions to the Committee move in the direction that the right of assembly, if not absolute, is verging towards absolute; and that cannot be the way in which matters should proceed. That is why the other relevant provisions of the Human Rights Act, in terms of the right to privacy, are the standards that have to be properly assessed when it comes to the right-of-assembly issue.

Q169 Mr Tynan: You are actually saying that as far as the European Convention on Human Rights and the interpretation needed, based on the circumstances in the north at the present time . . .

Mr Attwood: There are always going to be issues of interpretation around the Human Rights Act and the European Convention. That is why we have legal channels both within domestic jurisdiction and within Europe in order to finally assess on the issue the various rights outlined. The ability already exists in the north, where if somebody is unhappy with a decision of a public body, be it the Parades Commission or not, they have the opportunity to go before a court and to make the argument that any one or other right that they are relying upon has been infringed.

Q170 Mr Tynan: Moving to the issue of mediation, you say that the existing link between facilitation and determination aspects of the regulatory process should be maintained, but at the same time you call for a clearer separation of the facilitation and regulatory functions. How, therefore, would you like to see the existing framework reformed, and how would you ensure the separation of powers within the Commission is complete?

Mr Attwood: The first point is that we believe that the mediation method has had significant successes, when you look at the dispute parades round the north. If you look, for example, at the White Rock, Orange Parade held on the last Saturday in June, and what happened last June, you will see how a mediated process involving a number of interested parties worked to the benefit of both the parading tradition, those who were opposed to the parade in that area, and the wider community. A much more dramatic example than that would be the experience of the apprentice boys’ parades in Derry and other parades in Derry, where mediation in very difficult circumstances has led to an agreed, or at least a better outcome. We believe that that method has been proved to work, and it is a method that has generally been promoted in the north. Thus far, in respect of the Parades Commission, whilst they have had the ability to employ authorised officers and promote and encourage mediation as a method of proceeding, we believe that a dedicated mediation agency is desirable so that mediation and dialogue and all the values that should inform those principles

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is given further encouragement and further opportunity so that best practice can be standardised, people can be more professional in how they conduct mediation, and people can learn from other experiences of mediation both in the north and elsewhere. Upgrading and enhancing the role of mediation by a dedicated mediation agency would be very important. It is, however nonetheless important that there is a significant relationship between a mediation agency appointed by the Parades Commission and the Parades Commission as it conducts its work generally, particularly when it comes to making decision. That is because the Parades Commission has been seen to work best in our view when it has been able to take on board all the views, and have as much information and intelligence brought to it in relation to any one disputed parade, wherever it might be. Whilst you have to ensure that the Parades Commission is seen to act properly when it arbitrates on a dispute, nonetheless it is useful in an organic way to have the mediation you can see appointed by the Parades Commission and responding to the Parades Commission in a way that ensures the Parades Commission makes decisions taking on board all the relevant issues, having exhausted the mediation opportunity, with all full information before it when it comes to make a decision, rather than as has been suggested in one or two submissions to the Select Committee that if mediation does not work it should be seen as an honourable failure. We do not think so. We think that even if mediation does not work, the outcomes of that mediation and the content of it and the behaviour of people within that mediation all need to be given to the Parades Commission so that they have the fullest possible picture in order to make the best possible decision.

Q171 Mr Tynan: Do you think the existing framework needs reform, or are you happy with the mediation service at present?

Mr Attwood: In our submission we say that the mediation element of the Parades Commission work needs to be upgraded. We think that the experience has been good in hard cases, and that developing that experience and professionalising that service means that you can work towards getting outcomes at the moment where there are still not the best outcomes in terms of disputes around parades. That means that whilst the Parades Commission would appoint, there would be a mediation agency that would be fully resourced and fully functioning, not as something directly managed by the Parades Commission, but something that would be managed within its own resources and powers in order to ensure that it maximised the opportunities for mediation and get successful outcomes. Divorcing, legally and absolutely, the mediation agency from the Parades Commission, in our view, is not desirable because you can lead to a situation where you divorce the experience of the Parades Commission or the mediation agency from the Parades Commission, and you can lead to a situation where the Parades Commission is seen to be more of the arbitral body that some argue it

should be, rather than a body that has that much more broad-based approach to dealing with this issue.

Q172 Reverend Smyth: In your submission you say that a requirement on a mediator to report on the good faith shown by the parties towards each other would actually be damaging to the facilitation process. You also say that the extent to which the parties are willing to engage is in substantial sustained dialogue is relevant to the merits of the case. How might this information be communicated to the determination body, if it is not included in the facilitator's report?

Mr Attwood: I stand corrected if that is what the submission says. Our view is that in any report back to the Parades Commission from those who are involved in mediation, then it would not be appropriate as I outlined earlier for the report merely to say there was an honourable failure, in the event that there was failure. Our judgment is that in any report going from the mediation end to the Parades Commission decision—that that should give the fullest sense of how that mediation went, because there would be a danger—and there may have been experience of this in the past—that one or other of the parties to a disputed parade may, in a formulaic way, engage in mediation without demonstrating any genuine intention to resolve the difficulty. Therefore, it would be all too easy for one or other party to a dispute to go through a ticking-of-the-boxes exercise in order to try to demonstrate their good faith, whereas not actually engaging in a genuine and substantive dialogue. That is why, for example, when the Parades Commission in respect of Garvaghy Road a number of years ago laid down a number of principles around how a dialogue should be conducted. They said that there should be substantive engagement, and that is why a report back to the Parades Commission around the nature of the engagement, how substantive it was, would give to the Parades Commission a better and deeper understanding of what happened through the mediation, in order to inform them when it comes to the arbitration.

Q173 Chairman: Did you prepare this document or was it someone else's?

Mr Attwood: There have been two documents in response to Quigley, and there was a submission to Quigley.

Q174 Chairman: This is in response to the Quigley Report. It does say those two rather contradictory things.

Mr Attwood: I think, Chairman, subject to correction, that that might be an editorial omission.

Q175 Chairman: Fair enough. These things happen.

Mr Attwood: Because in the full submission to Quigley and—that is the point we outlined to—

Q176 Reverend Smyth: It can happen in the best of families. You mentioned Garvaghy. In the early days, church leaders met to be mediators and the

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Garvaghy Road residents decided they were not prepared to negotiate. In the Ormeau Road situation, on the first occasion there was negotiation between the County Lodge of Belfast and Gerard Rice. It was overturned at a meeting when the heavies were there. It is important, surely, that the Parades Commission, or whatever body is involved, should be aware of this. Would you comment on the recent attempt—and I understand the Parades Commission had a hand in this—to have a gathering in South Africa? An Orange delegate from Portadown went there, but Garvaghy Road decided “no” because there was nothing to discuss about Garvaghy Road. Surely that is an aspect to be borne in mind when decisions are made?

Mr Attwood: I would not dissent from that. I would not comment on a journey to South Africa or any one particular parade as you have outlined. We have no doubt that there have been people involved be it in protest groups or parading organisations, whose good faith can properly be seen to be challenged. I have no difficulty with that. The Parades Commission, when it comes to making judgments—and it has done so in respect of the Ormeau Road I understand, has read into the intentions of one or other of the interested parties good or bad faith, and consequently they have been influenced in the decision they have made.

Q177 Reverend Smyth: What needs to be done to encourage genuine engagement between interested parties in parades disputes?

Mr Attwood: I think if you look across the breadth of parades and parade disputes to the north, then you see the evidence that the method that has been adopted at the moment is the method that is best working; and that any other method, especially a radically reformed method, as has been suggested by some, carries with it radical risks of disputes becoming greater and not easier. Our sense is that even where people do not like what the Parades Commission stands for or its decisions, people have now come to the point where they accept them because they understand that in terms of better community relations and the better peace of the society in the north, then accepting decisions and accepting the work of the Parades Commission is a better way for things to go forward. Our argument would be that there should be enhanced mediation, addressing issues around stewarding, alcohol, the nature of the bands that participate in Orange parades. Enhance the mediation and the educational role of the Parades Commission—an area that has not by any means been fully addressed or developed over its years of operation—do all of that, but do not radically re-shape the broad framework because that carries too many risks for a model of operation that has been substantially successful. I know that John will want to talk about some of those issues.

Mr Dallat: On that very point, the work of the Parades Commission, as I understand it, sometimes has been to ensure that parades actually took place; and the difficulty was that they were taking place perhaps in towns that were 70–80% Nationalist, but included in the parade were bands that are overtly

associated with and linked directly to Loyalist paramilitary organisations. In those cases, the orders have quietly welcomed the existence of the Commission, in fact to give them strength to exclude those bands, which were behaving in a manner that would ensure in the future that there would be no parade at all. Certainly, as a party that is committed to shared culture and expressions of identity and riches of difference and so on, representing a town that is 70–80% Nationalist would like to see that continue, but without the existence of the Parades Commission, I do not think that would happen because the organisers would not have the support, back-up or threat if you like. If I could perhaps deliberate a little for the broader panel, there are bands parading that are carrying Loyalist paramilitary flags, which are on websites that have hosted the names of Catholic families that have subsequently been attacked with pipe bombs. As we speak, they are broadening their campaign to include racism; and that is particularly true in north Antrim and east Derry. I personally have been posted on the website, and that is why my house is now a fortress. The work of the Parades Commission is much broader than simply deciding whether or not a parade should take place. We are sufficiently down the peace process road now to create clear deep water between what is in effect an expression of culture, identity and heritage, and the other very sinister movement, which is the continued, overt operation of paramilitaries. I can speak particularly of those in my own area that are thriving as we speak. They are involved in business; they are promoting hatred, racism and sectarianism. In that respect, the Parades Commission has been exceptionally useful to both sides to ensure that democracy prevails, and that at the same time these people are excluded from parades.

Q178 Chairman: Can we get on the record, since you tell us of personal experiences, what was posted on the website about you, and on which website?

Mr Dallat: The information is freely available on the website. Most of these bands will have websites.

Q179 Chairman: Which website was your name posted on?

Mr Dallat: If I get the term right, Causeway Protestant Flute Band; and another one was Ballysally Young Loyalists.

Q180 Chairman: What did they put on the website about you? Have you looked at it?

Mr Dallat: Oh, yes, of course, and I have print-outs of it. A third band I should have included is the Moneydig Young Conquerors, who in fact had a question for people to respond to: “Should the UDA and the UBF unite to take out TEGS?” My own personal details were there. There was a message that I was a threat to the existence of parades and so on, and a short time after that I got a visit from the police and subsequently my house was fortified.

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Q181 Chairman: The Committee would be very grateful if you would send us a copy of those print-outs.

Mr Dallat: I would be more than happy to do that.

Q182 Reverend Smyth: I appreciate the point that you have made. That appears to be a public order point. By the way, my cousin was married to Bill Patterson, who was Drum Major of Colerain Fife and Drum, and I would like to hear you saying anything to the detriment of that band.

Mr Dallat: Absolutely not, but can I also say that in Portrush, which is very near to Colerain, one band paraded through the town with a makeshift machine gun attached to its big drum.

Reverend Smyth: I come on to the public order issue, because surely that was a case where the police should be acting? For example, while Alex was talking about the north, I thought automatically of Donegal and the attempt made to stop an Orange walk in St Johnston; and the Orange lodge decided that they would not walk home that night because they were coming from Londonderry, but the Superintendent said: "No, we are not going to let the mess that has developed in Northern Ireland develop here; you will walk through the village" and they provided the escorts through the village, and there was no problem. In other words, there is a responsibility, when Alex made the point you could not set it all aside on rights; but public order must come into it as well. That is an important aspect. You have given us information today that I was unaware of in regard to the Orange lodge, but I would have thought that by now the police should have taken action on that issue.

Q183 Mr Clarke: Gentleman, you would have heard my questions earlier this afternoon in respect of transparency. I will not repeat them verbatim, but you take a slightly different view to that expressed by the Ulster Unionist Party. You say there should be some relaxation in respect of transparency and confidentiality, but you would not go as far as Quigley in pursuit of openness. You have heard my comments in respect of fears of transparency leading to vulnerability of individuals. I wonder if you could help the Committee by expressing your concerns, and also tell us how far you think we can go in terms of making the process more transparent, without it leading to people being placed in vulnerable and dangerous positions?

Mr Attwood: I rely on the people who have managed the process to date, for their observations on this, in that the Parades Commission would say that they do get contact from individuals and residents' group, individuals and from parading orders themselves. That is contact and communication that has, by its very nature, to be strictly private and confidential, especially in a context where it may be coming from people who are not reflecting the wider view of a group of residents, or the wider view of a parading order. They have found all of that information important in terms of helping them make judgments in very difficult circumstances. That information would not be forthcoming if there was wider

knowledge about who the individuals were, or what the organisations were which were giving that information. That is the nature of our society. It is reflected in another way, in that the parties from the north represented round the table would all agree that those who give donations to political parties in the north should not be publicly identified because of the risk of exposure and vulnerability that might arise thereafter. You have to balance a commission being able to do its job, and getting full access to relevant information, against an understandable need for full disclosure. I think those are basic principles; that you do not put individuals or organisations at risk around an issue that has the profile of this one, and, as John has graphically outlined, one that leads to people being named in a way that exposes them to violence and other threats. I would rely upon what the Parades Commission has done in this regard. We have argued for the Parades Commission at meetings around various parades decisions that they really do have to give a lot more information in their determinations, because it follows a format of a lot of words and saying nothing. I think they should give a lot more detail about their assessment about the impact of community relations and the legal issue on right to assembly, and the issue on public order, even sharing the police advice in as much as the police feel comfortable in releasing that information without prejudice to whatever their security considerations might be; and outlining all the groups that gave them information or made representations, subject to the consent of that individual or group. In that way, you can give information about why, who and how all the various competing issues were reconciled.

Q184 Chairman: You have expressed worries about the suggestion that the police might again become more involved in making decisions about public order at parades, and you say that such a move would "encourage a culture where might is right"—to quote the document you sent us. What did you mean by that?

Mr Attwood: The first point I would make, Chairman, is that the Chief Constable, Hugh Orde, has said publicly and at the Policing Board, that he does not want to see a return to the situation where the police have a primary or greater responsibility when it comes to the issue of parades.

Q185 Chairman: That is understandable from their point of view.

Mr Attwood: It is particularly relevant in the situation where we do now have the PSNI, DPPs in operation, the Policing Board, and what we would assess as the growing opportunities on the policing issue. Given that policing is the big issue in town in the north at the moment and might be for quite some time, it is even more important to ensure that that is given every opportunity to develop. The police again having a greater or primary responsibility for the issue of making decisions about parades would, in our view, be particularly prejudicial.

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Q186 Chairman: In that case, do you think the current system is all right? Do you think it is fair and effective, or have you got another suggestion?

Mr Attwood: Which system, Chairman?

Q187 Chairman: The current one, considering questions of public order.

Mr Attwood: We think that broadly the current context is right.

Q188 Chairman: You are happy with that.

Mr Attwood: Broadly. We think there is an independent issue. This is the only point on which I would have some sympathy with Mr McNarry. Sometimes it is the actual management of the parade on the ground that leads to the greatest public dissent, not the decision or the rights and wrongs of the decision. We think, for example, that it would be helpful if it was a requirement of the Parades Commission to advise the Policing Board of any observations or findings that their authorised officers on the day of a parade may have in respect of the conduct of the police. Whilst police behaviour in respect of parades is considerably better than it has ever been—and we have a situation in the north where public disorder does not at this time have the profile it had a short while ago, nonetheless where the police have managed a parade in a situation where they might have contributed to difficulties, then we think that the Parades Commission should inform the Policing Board of what their observations might be, in a manner that could help the Policing Board better ensure the efficient and effective policing that is required by the statute. After all, if during a parade a police officer were to fire a plastic bullet—something that has not happened in the north for over 18 months in any context—the police are obliged to refer that matter to the police ombudsman, who will then issue a report about whether or not the firing of that plastic bullet in that parade situation was or was not justified. We think that broadening that principle into observations by the Parades Commission on the conduct of the police, and communicating that to the Policing Board, might be a useful way of ensuring the police continue to employ best practice when it comes to these matters.

Q189 Mr Beggs: You note in your memorandum that parades could be better regulated in practice with enforcement of requirements relating to the consumption of alcohol and paramilitary displays. Do you accept that there has been considerable effort made to marshal parades so that there is no drunkenness on the part of the parading organisations, and that difficulties from alcohol abuse, which often accompany the camp followers, are dealt with? Therefore, whilst the parading organisations should address any offensive paramilitary emblems brought in by guest bands or whatever, there is a role also for policing of alcohol abuse in public places. What other suggestions

would you like to make, in addition to those you have made, to bring about better management of parades and addressing problems?

Mr Dallat: Perhaps I will answer this question because I have been involved in precisely what Mr Beggs described. As recently as last year in the village of Garvagh, County Derry, a huge number of bands were taken into the village. When I arrived there, an entire estate was saturated in urine. It certainly would not have been realistic to expect the police, on their own, to have controlled the abuse of alcohol. Indeed, I saw one policeman on traffic duty being spat upon for no reason at all, other than that he clearly, in his new uniform, did not suit the people who were doing it. Bands congregated outside clusters of houses that were known to be Nationalist, and I know that this year if that band parade takes place that the work of the Parades Commission will be vital in identifying the bands that were particularly offensive.

Q190 Chairman: Which bands are you talking about?

Mr Dallat: There were a number of these bands, probably about 10 of them. I do not have the names in front of me, but the PSNI and the Parades Commission have them. It would certainly be the intention to work with the organisers of the parade to make sure that particular bands are excluded from the parade, and also that the parade itself does not descend on a cul-de-sac, occupied predominantly by Catholic families with young children. Without wishing to cause any disgust here, the scenes that I witnessed—no-one in this room would want to identify with them, nor could anyone expect the police on their own to have dealt with it. It was just totally out of hand and unacceptable.

Q191 Reverend Smyth: Was that a traditional charity evening collection or was it bands on a night out parading?

Mr Dallat: I cannot be certain if there was any fundraising. I do not think it was the major cancer charity—absolutely not, no, no. There is rivalry between a couple of bands that claim to represent Garvagh as their headquarters, and it was one of those bands that organised the parade and showed no responsibility as to the conduct of the bands that arrived. Some arrived after dark. The police prevented those bands from parading; and that is probably why they suffered the wrath of some of the more, let us say, active members.

Q192 Chairman: Was this in the marching season?

Mr Dallat: Yes.

Q193 Chairman: Arriving after dark is arriving pretty late.

Mr Dallat: Sorry, the marching season, Mr Chairman, where I live extends well beyond 12 July.

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I think it was about the end of August, but I am certainly talking about 11 pm—bands still playing after 11 o'clock.

Q194 Chairman: Playing? I thought you said they were arriving then.

Mr Dallat: Sorry, my apologies.

Q195 Chairman: You said they were arriving after 11 o'clock.

Mr Dallat: Thank you for putting me right. They arrived much after the appointed time, but some of them were still drumming after 11 o'clock, when young children were trying to sleep.

Chairman: Thank you very much. From what you have said and from what our two previous witnesses have said, we have still got some way to go; but if we can help to try and unravel this a little you maybe will have done a service. Thank you very much for coming and giving us your evidence in the way you have.

Wednesday 31 March 2004

Members present:

Mr Michael Mates, in the Chair

Mr Adrian Bailey
Mr Tony Clarke
Mr Iain Luke
Mr Stephen Pound

The Reverend Martin Smyth
Mr Hugo Swire
Mark Tami
Mr Bill Tynan

Witnesses: **Sir Anthony Holland**, Chairman; **The Rev Roy Magee**, Commissioner **Mr Peter Osborne**, Commissioner **Sir John Pringle**, Commissioner, **Mr John Cousins**, Commissioner, **Mr Peter Quinn**, Commissioner; and **Mr Andrew Elliott**, Secretary, Parades Commission, examined.

Q196 Chairman: Good afternoon, Sir Anthony and gentlemen, and thank you for coming to help us with our inquiry into the Parades Commission and Public Processions (Northern Ireland) Act 1998. The memorandum which you kindly sent us says that you perceive a general acceptance of the remit you have as a framework for the resolution of parading disputes, but the parading organisations that we have spoken to tell a slightly different story, that they lack confidence in your organisation. What evidence would you want to give us to show that your work is generally accepted? The first time you speak, would you identify yourself by name so we have it recorded.

Sir Anthony Holland: If I can introduce those here, we are one member short, who is in Australia on leave. On my far left is Peter Quinn, John Cousins, Sir John Pringle, Peter Osborne and the Reverend Roy Magee. Also, behind me is the secretariat of the Commission. Unfortunately, I do not have with me the authorised officers, who do an enormous task in what I can only describe as pre-mediative and confidence building measures behind the scenes. In many ways, they are the real heroes of the hour as far as this Commission is concerned. You asked me what our evidence is for what we do as being at least relatively successful. We have been here four years, and during that period we have doggedly kept going, facing sometimes quite serious issues which we were not able to resolve, and knowing that we did not have the answers that we perhaps would have wished. There is no suggestion, from this Commission at least, I know, that we have all the answers. We have a piece of legislation that we try to work to. It is not easy. It is the product of the North Commission. I think actually it is a typical product of Peter North in the first place; it is very intellectual, but it does work, in a pragmatic way, which is not always easy in some of the situations in which we find ourselves. We have never had to take a vote. We do have a very good way of working together, we think. The evidence, I suppose, is that although we hear about 3,200 parades a year, we do not, of course, look in depth at all those parades. Some are deemed contentious on the basis of police advice, some are deemed contentious by information from other sources, some on the basis of information obtained by our authorised officers. We look at roughly 200–250 a year, and of those, less than half are subject to conditions, and the rest, after examining them, we say “Despite what the advice

from the police may be, we prefer not to make a determination.” The volume has gone down; there is a lower proportion now that we actually impose conditions on. So we do feel that we have made good progress. That is not to say that there are not problems; of course there are; nothing is beyond improvement but, as a whole, taking what has been a very difficult situation for the people of Northern Ireland, we feel we have made a useful contribution, albeit it is always one that can be improved.

Q197 Chairman: You also say that given more time, you think the existing Commission model could become more effective than it is at present. Would you like to elaborate on the areas where you think improvements can be made and how long you think they will take.

Sir Anthony Holland: When I first accepted this role—and I am sure I can speak for the other commissioners in that sense—we did not think it was a short-term Commission, and the reason that we have been here four years is because we have taken that view and still in one sense continue to take it, because we are here for a further two years, so we will do in the end six years. It is a long-term problem, parading in Northern Ireland, but it is one that in fact is worth resolving. It is part of the culture of Northern Ireland and it is the kind of event that a lot of those who live in the province enjoy. Therefore it does behove us, I think, to work hard at it, and trying to do it in a short space of time, then having a whole fresh Commission, I do not think would produce the right solutions. If you keep pulling up a plant by its roots, it does not flourish, and we have endured quite a number of reviews. This is the third time we have been before this Committee, and we have had the Quigley Review, but we do believe that by doggedly carrying on, persevering, we have made steady progress, and it is that steady progress we feel we can build on. There must come a time when, frankly, we must recognise that there are some issues that perhaps are insuperable by this Commission. We do not think we have reached that point yet.

Q198 Chairman: Could you just tell us where you think those insuperable barriers may occur?

Sir Anthony Holland: Plainly, the engagement of the loyal orders is pretty helpful, if not fundamental to the way the whole process works. One of the reasons that I have some reservations about the Quigley

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Report is that it is predicated upon there being a consensus, which plainly is not there at the moment. If you have engagement with the Commission by the loyal orders, a lot of progress can be made. Evidence of that is the Royal Black Preceptory, the Independent Orange and indeed the Apprentice Boys of Derry. Obviously, the primary loyal order, the Orange Order itself, has not engaged with us formally. We have met members of that order, but in different capacities, and that, I think, is the single most important issue that we face at the moment.

Q199 Reverend Smyth: Sir Anthony, you have shared with us what you feel is your own role and where things might be improved. Could you actually share with us what you understand to be the parading organisations' concerns about the operations of the Commission and what steps the Commission has taken to address them?

Sir Anthony Holland: I think where it went wrong to begin with was the issue of the code of conduct, which was promised by our predecessors to be a matter of consensus, and certainly consultation never properly happened, and that did irritate, if I may say so, the Orange Order. We are trying to resolve that even as I speak. But the more important issue, I think, is that the loyal orders felt that because they did not get a full understanding of all the objections to the parade that was proposed on a particular occasion meant that they could not respond properly to that. There was this lack of transparency, the fact that the Statutory Instrument under which we operate provides that we have to treat the evidence we receive as confidential, and indeed, the advice from the police. Having said that, we have made quite a lot of changes since we have been in place. We now make a clear and firm point of indicating to all the parade organisers what the objections are, particularly if they come in. If they do not come in, of course, it is very difficult. We then have to use the authorised officers as the conduit. That is not quite the same because once you start relaying messages through third parties, they can become confused. Certainly, in relaying the message if they are in front of us, it is much clearer and, as far as we are concerned, much more transparent. I think we have to accept the need for confidentiality because sometimes people will say things to us in confidence which they would not want to be heard—on both sides that is; both the loyal orders, if they do come in, individual members, and indeed residents, will say they would rather we did not indicate what they had said and how they had said it. That was, I think, one of the main objections, but others here may want to build on that. Peter, do you have a view about transparency?

Mr Osborne: I agree, obviously, with the Chairman's analysis. I still hear, and I am sure other members of the Committee still hear people who would say that there is no communication from the Commission with regard to issues, problems and objections to parades, and that is just not an accurate reflection of the situation. It is made more difficult when people do not engage with the Commission in order to have

that dialogue, either verbally or in writing. If people write to us or come and meet us to talk about parades, they will get the gist of all of the issues and objections there are surrounding parades in whatever areas that they want to talk about. We are writing out to organisers or bands or others involved in parading if there are issues raised with us in order to receive views back, if possible, from those individuals and those organisations, and again, the issues are addressed in those letters. On top of that, the Commission has organised, facilitated, a range of meetings within the communities that are concerned: seminars, conferences, the South African experience, over the last two or three years. There are other examples of that, where we do discuss with anybody that we can the issues that are around that do arise, if necessary, and if people want to, in specific parade locations. The Chairman has already mentioned the authorised officers, who are continually used on the ground to liaise with anybody who is relevant in terms of parading in certain locations, where the issues and objections are discussed and fed back through to the Commission as well as Commission views fed through to people. I suppose one of the other issues is over the number of judicial reviews that have been carried out over the last few years. None of them have been lost on the basis of a lack of transparency. That was not an issue that was addressed in the judicial reviews, but I think the primary issue is that it is just not accurate to say that there is no communication about the issues and problems at specific parades or with specific parades with those who want to communicate with the Commission.

Q200 Reverend Smyth: Mr Osborne has made reference to the fact that you have written to bands for their views. The Ulster Bands Association have actually told the Committee that they are still waiting for a response for a bilateral meeting with the Commission going back to May 2000, and the frustration that they have had because the Commission feel they cannot work outside the normal working hours, whereas the band members themselves do work. Would you like to say something about that?

Sir Anthony Holland: I read that, with respect, with some surprise, because a lot of the meetings we have are outside office hours, and have to be, because people are working during the course of the day. Certainly, to begin with, when we first started as a Commission, we had enormously long days and long programmes to get through, and we had to be quite careful about how we allocated our time. I am bound to say that I certainly do not expect ever to be working what I would call normal office hours, seeing people, in the context of the Commission. In so far as they may not meet the whole Commission, there is always a member of the Commission or two members of the Commission who can meet these people. I was, as I say, disappointed, because I did actually take a lot of time with Mr McAfee on this

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issue of the bands, and still would wish to do so. I think he has moved on now from the Bands Association.

Q201 Reverend Smyth: I do not think they have moved on. I think they are still waiting. I know there have been delays in the post, but from May 2000, and we are now 2004, it seems rather strange.

Sir Anthony Holland: I have certainly seen him since then.

Mr Osborne: If I could add to that, the meetings and so on that I referred to, probably most of them, I would think, take place in the evenings in order to facilitate those that would be coming to them.

Q202 Reverend Smyth: I am speaking about the Association, which speaks for them all. That is what they told this Committee, and I am probing just to find out whether you have an answer to it.

Sir Anthony Holland: I want to be quite blunt with you. It is just not true that we have not met them since 2000.

Q203 Reverend Smyth: You did refer to the fact that the Apprentice Boys had been meeting with you, and the Committee was told that at a meeting of the Commission on 20 October 2001, Alistair Simpson said, "Halfway through the meeting we made a suggestion for a better way forward and immediately the Chairman turned round and said to us 'I do not take orders from anyone. Meeting closed.'" As a result, the Apprentice Boys have not officially met the Parades Commission since.

Sir Anthony Holland: Two things: I do not recollect saying that, but I would not want to challenge Mr Simpson if he says I said that, but the more important thing is that since then, we have met their representatives, because in fact the Apprentice Boys of Derry have chosen on some occasions more recently, particularly, to use a firm of solicitors in Belfast to act on their behalf, and indeed, to ask Mr Hoey to act on their behalf. So he has come to see us, as indeed have their solicitors. I might also add that they still do meet the Commission. Again, I can only say I have met the Apprentice Boys of Derry.

Q204 Chairman: Perhaps, for ease of understanding, I had better read to you what Mr Kelley said to us on 10 February. It became quite clear that he did not care for the change of personnel, if I may put it that way, between the old Commission and the new Commission. "We met them with a view to them having an insight into what our mindset was. A year after we met them they were disbanded and the new Commission was brought in. We made the same offer to the second Commission. We wrote to them in February 2000 asking for a meeting. We had our meeting in May 2000, which lasted for 15 or 20 minutes. Mr Holland advised us that he would arrange another meeting. We waited for the date. We did not get one. We phoned and we were told that only one commissioner was prepared to meet us. We are still waiting to be contacted by the Parades Commission. When we asked for an evening

meeting we were told 'We don't do evening meetings. If you want to meet us, you will have to come during the day.'"

Sir Anthony Holland: I have actually read that, Chairman, and I would say two things. First of all, obviously, there is a misunderstanding somewhere along the line. We have to meet them, and sooner rather than later. That I will do. Having said that, I do not accept the accuracy of what is reported there.

Chairman: OK.

Q205 Reverend Smyth: Can I then move on to another side of the issue? We note you wrote to the Grand Lodge of Lodge suggesting ways in which transparency could be improved. Two questions: have you had a reply yet, and secondly, what in essence were your proposals?

Sir Anthony Holland: We wrote to the Grand Lodge on 6 February 2003. I do not believe we have had a reply to that letter. What we were proposing in that letter was another way of tackling this issue of transparency. One of the issues that arises out of what we would call a lack of transparency is understanding by reference back to what happened in the previous parade, what went wrong and what went well, and also the grounds on which we may be being urged by those who are opposed to the parade to not allow it to take place in its proposed form this time round. One of the ways forward we thought would be to set up a compliance and post mortem department within the Parades Commission, and examine how we could operate a basis of examining what happened on the previous occasion, taking proper evidence, which would not be in confidence because it would be a separate issue arising not from a new determination but from a past determination, and therefore that would not have to be confidential. That is what we had in mind.

Q206 Reverend Smyth: I appreciate those are the after-effects. There are those who believe that sometimes the Commission could at least advise those who are organising parades not necessarily of who the objectors are, but of what the objections are, before the Commission takes its decision so that they could answer.

Sir Anthony Holland: We do in fact do that, sir. I can recollect only last week or the week before sending a detailed letter to the solicitors for the ABOD, setting out exactly what the grounds were by the LOCC in relation to the Lower Ormeau Road. We do it all the time. It is in our interests to do it, for a start. The authorised officers, where we do not actually have direct correspondence, operate as our conduit for that very purpose. It makes absolute sense that those who are trying to organise a parade do know what the problems are. They may not be able to address them always. Sometimes there are problems with bands and supporters and so on. That is a separate issue. We try to be as open as we can within the bounds of the issues of confidentiality that we are bound by under the legislation.

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Q207 Mr Clarke: Sir Anthony, last year's marching season was relatively peaceful, but during the course of this inquiry we have had it suggested to us that this year's marching season will be less peaceful. Do you agree with that view, that there may be trouble ahead, and if you do agree, has the Commission taken any action to try to prevent a return to some of the agitation that perhaps we have seen in the past?

Sir Anthony Holland: Last year was a good year, and I know some have said it was in spite of the Commission rather than because of the Commission. I do not want to deal with that, because everybody can make up their own minds. I would not claim it was because of the Commission in any event. I think we help, like a whole raft of other matters have helped, including politicians and the people who deal with affairs generally in Northern Ireland. It is a team solution rather than individual effort. So far as what I think will happen this year, I do not actually subscribe to the view that has been promulgated by a number of people that this year is going to be, for some reason, difficult. The only certainty about Northern Ireland, of course, is that nothing is certain. To that extent, therefore, I do realise that one can never anticipate what will be happening in the immediate future in terms of parading, but we have worked incredibly hard this winter—far harder, in fact, than we do in the summers at the moment—in trying to put together various packages, various meetings, educational packages and so on, because there is no doubt that it is the work we do in the winter that can make the most difference, for instance, in Springfield last year: because we had actually sent people to South Africa, that made a contribution to what was already happening in Springfield. If I were not an optimist, I probably would not be doing this job anyway, but I am actually optimistic, as always, and I do not believe that it will be a particularly bad year. I could be wrong, obviously, and I am not sitting here and saying it will not be, but if it does happen, it will not be because of anything the Commission has not tried to do in the winter.

Q208 Mr Clarke: It has also been suggested to us that the ability to keep the peace is often linked to the quality of the authorised officer working in a particular area, and there have been some concerns that the quality of the work of authorised officers is variable, and that some have been very successful, some have been less successful, and some have seen little success. Does the Commission take any steps to monitor the work and to try to provide a benchmark or training, or to make sure that the work of those authorised officers that is celebrated, the experience and the good practice, is shared amongst those who are not having success?

Sir Anthony Holland: I will make a few comments and then ask Peter Quinn to address that, for reasons that will become apparent. We have actually spent a lot of time on the issue of authorised officers. They are not the same ones that were in place when we first arrived, and Peter will explain to you how that has happened. They are absolutely fundamental to

whatever success we may have and are able to claim, because they work on the ground. I should add that they are not employees; they are actually independent contractors who are contracted to provide what we have to provide by statute, which is to facilitate mediation. Their primary role is not mediation; it is pre-mediation, being a conduit to the Commission and so on. Peter can deal with it in more detail.

Mr Quinn: Our authorised officers receive ongoing training and have done since they were appointed. The original AO team ceased, as our team, just over a year ago, and we went out to tender again. The majority of those who were chosen had been AOs under the original cohort of AOs but there were a number of new ones added. Both cadres have been receiving training on a consistent basis. We employ an outside agency to provide that training, and indeed, we have used an agency from outside the country, where we thought that they might have something to offer. Essentially, they are trained for two purposes. One is to gather information and make that information available in a constructive way to the Commission and the commissioners, and the other is to act in a mediative role—not as formal mediators, but in a mediative role. They do that, and the bulk of the training is in that area rather than in the information collection area. They have problems in the mediation role because they have difficulty in some circumstances in getting people to engage with them but, by and large, they are successful, and people who will not engage directly with the Commission have been engaging with the AOs, and that has contributed massively to the communication between the Commission and the band organisers and the loyal orders and the people who are involved in the parading culture. We would be very happy that our AO team is improving all the time. We recognise that there is a degree of variability because when you have a team of 12 people it is inevitable that not all of them will reach the same standard. We are very happy with the standard of the better ones, and we are trying to improve the standard of the others, and we will, if necessary, go out and recruit again if that becomes necessary in the medium term.

Q209 Mr Clarke: Can I just probe a little bit further? We can provide the best quality training but find that we still may have individuals who are not performing at a level that would be acceptable. In your evaluation and monitoring systems, is there a point at which you would suggest to an authorised officer that he was not making the grade and that it may be in the best interests of the community for him to consider withdrawing and for you to bring other authorised officers into play?

Mr Quinn: Yes, we have had to do that in the past. We have a dedicated member of staff who liaises with the authorised officers on an ongoing basis, and in the past we have had to inform an AO that they were not cutting it, to use the “in” expression. That person is no longer an authorised officer.

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Reverend Magee: Could I just refer to what Mr Clarke asked on the first occasion? I think I would have wanted to slip into that that one of the major players in the progress of parades last year was the Orange Order themselves. I think they played a major role during the last marching season and I think credit must be given to them for it.

Mr Clarke: I think our concerns were that some of the people suggesting to us that this year may be less peaceful have links to the Orange Order. That made us think perhaps things were not as bright as we would want them to be.

Q210 Mr Pound: Our work in this area has led us down some esoteric, philosophical byways, particularly in the area of competing and conflicting rights and freedoms. It has been put to us by some people that the public order issue takes precedence in your determination over the right and freedom to march. Is that a fair comment?

Sir Anthony Holland: I do not think so. Of course, I would say that, wouldn't I? I do not think so, because obviously, first of all, we are not allowed to. We have to take a whole batch of things into consideration. I know for a fact that there are some times when we have made decisions which go against the advice of the police on the public order issue. On quite a few occasions we do that, and it is a calculated risk on our part, because there is a basic right to parade. If we were purely rubber-stamping the police advice, we really would not be doing our job in any way that would be helpful, or indeed give any job satisfaction. Plainly, the advice of the police has degrees of gradation. They may say it could go either way, all the way up to saying it would be a disaster. I think there have been few occasions where we have taken risks at the top end. Thirty per cent of what the police have sent to us as parades that are deemed contentious do actually go ahead without any determination on our part. That is a straightforward case of us saying, despite what the police think of this being a contentious parade, we think it can take place quite safely and we do not make a determination. So I just do not accept that there is this obsession with public order on the part of the Commission, because, as I say, it would give us no benefit to do so, and certainly, it would destroy confidence in the Commission. There may be those who say there is not much confidence in the Commission. I happen to again disagree with that. I think there is almost a grudging acceptance now that we try to get it right—we do not always get it right, but it is not on the grounds that we put public order first and foremost.

Mr Quinn: Could I just add something to what the Chairman said? We take as our starting point the right to assemble under the European Convention on Human Rights. That is why we are called the Parades Commission, because our objective is to allow as many parades as possible that we can have peacefully and for the betterment of society. But the right to assemble is not an unfettered right. There are competing rights. There is the right to live in peace; there is the right to life, and freedom from fear; there

is the right to privacy and a number of other rights. We have to try and do a balancing act between the right to assemble and the right to celebrate culture and identity and religion, and we have to balance that against other things. We also have to take other factors into account, and among the other factors that we take into account are the effect on community relations in the area and more widely, the effect on the wider society, which is very important, because a parade in one area can have an effect that pervades a very much wider area; we also take into account traditionality, which is a requirement; and we take into account the potential for disorder by both paraders and protesters. I would not subscribe to the view that I know has been presented to you here that in the process we support some form of rioters' charter. We do not do that. In fact, if I were trying to prioritise, human rights and the effect on community relations and wider society certainly take a much greater profile in terms of the weighting that we attach to them when we are adjudicating on an application for a parade, but we do not ignore the potential for public disorder, and we know that some people react to that and see us as doing what the police would otherwise have done. That is not our role and that is not what we do.

Mr Osborne: May I add something as well? I again agree with everything that has been said so far, and the importance of those criteria, which are obviously part and parcel of human rights legislation, but the impact on community relations in an area is an extremely important issue to consider. It is a system at the minute that the police are reasonably comfortable with, and obviously we do take their advice seriously, but along with a number of issues that we actively consider. I think it would be a dangerous step to move to a situation where public safety or public order was separated out from that to what has been suggested, and I think the police would not want it either.

Q211 Mr Pound: You are anticipating another question I am going to ask in a minute. Following up what Sir Anthony said, would you accept, sir, that there is a perception that the public order issue takes primacy over the right to assembly? If you deny it, I have nothing to say. If you accept that there is such a perception, how can this be countered?

Sir Anthony Holland: Given the evidence you have received, which, of course, I have read, that perception is plainly there, and I would be a fool to deny it. We can only repeat the message, which we do all the time, and of course, occasionally, people realise that we have actually given a determination which allows a parade. They will realise that we have actually not paid that much attention to the police advice about public order. So in effect the proof of the pudding is what we actually do. I can give you a number of illustrations, if you wish, where we have taken decisions which on the face of it did surprise those people who were allowed to have their parade, sometimes even against their wishes in the end. We

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took the view that we have to make a decision occasionally that does demonstrate that. Furthermore, there is a right to assemble.

Q212 Chairman: When you say you take a decision in order to establish that, is that a good reason for taking a decision?

Sir Anthony Holland: Perhaps it was badly expressed. We want to make it crystal clear, and we have said it on more than one occasion, that the police advice is advice and no more. We can accept all of or not accept all of it, and we do on many occasions not accept it all in the way we arrive at our determination, not only in the route that we allow but in the details of that route. They may say “You should go down this street and not that street” and we will ignore that piece of advice. We will perhaps follow another part of the advice they have given us, but inevitably it must be clear to anyone who studies the parading issue very closely that we cannot possibly follow the advice on all occasions because the police are not always fully happy with some of the decisions we make.

Mr Cousins: I think it is also worth saying that on those occasions, and there are quite a number of them now, where we have gone against police advice, where we have said for example we accepted there was a risk of disorder but the parade is going ahead, the decision has been proved right on every occasion. We as a Commission represent the broad community at large, apart from the fact that we do not have any women members on the Commission; that is not within our gift. But our decisions have been proved right, and of course, the police have the right to go to the Secretary of State if they want to set aside any of our determinations, and I think that has only happened once.

Sir Anthony Holland: It may have been threatened but never happened.

Q213 Chairman: I was going to ask you a philosophical question. In the end, it is a political decision, with a small “p”, is it not? Do you think you are the right people to do that, or do you think that your job should be to look at all the facts, establish all the details and routing and all of this, but in the end, if it is a political decision, and there is a conflict between your wishes or advice and the Chief Constable’s wishes or advice, someone else should make the final decision?

Sir Anthony Holland: I am conscious that I am English, but actually, I have a great affection for Northern Ireland. If I can be philosophical as well for a minute, when I accepted this role, I had no knowledge at all of Northern Ireland. I have gained a lot, and the first thing that I have gained after four years is an intense appreciation of the subtleties of the North Report. It is subtle because it is pragmatic. It does not come down in a way that would have the place infested with lawyers—and I say that as a former lawyer. It would be so easy to have the whole thing taken over by lawyers, which would be to no-one’s advantage. It is also, I think, quite subtle in the way that it takes us to the wire on associating

mediation with arbitration. Any purist lawyer will say to you never mix the two. If there is mediation going on the ultimate arbitrator, the judge, never knows about it because otherwise it can affect the attitude of those involved in the mediation exercise, and it can also affect what they say and how they approach it. We actually get a lot of information from the authorised officers, which takes us almost up to the wire of being contaminated by the mediating process, but because we are not mediating and merely engaging in an exercise of trying to make minds meet in terms of knowledge, information and acting as conduits, we avoid that trap. That is why the North Report is so subtle and why the Act probably works as best it can at the moment. It is not there for ever; it cannot possibly be, but for the moment I think that this Commission, given its experience of four years, is probably getting the best out of what is a difficult situation, and we can probably do so for another year or so. It will sometimes need to be re-examined, but I do not think now is the time, as it happens.

Mr Quinn: Could I add to what our Chairman has said? In the most intractable of all the locations, which is Drumcree and Garvaghy, it would be arrogant of us to say that we have all the answers or that we are the best, as individuals. But could I say that the structure that we operate has been more successful than a number of other mediation attempts. Could I just take you through the attempts? The first one was chaired by Jonathan Powell, whom all of you presumably know. The second one was chaired by Frank Blair from Scottish ACAS, who packed it in after about a month, and proved that the commercial approach which has been advocated by others did not work in this particular location, in this particular dispute. The third one was chaired by Adam Ingram, who proved himself an outstanding negotiator and yet did not get the result. The fourth one was chaired by Brian Currin, a lawyer from South Africa, and it did not deliver anything either. We have just gone through a process where some of the people involved in that dispute went to South Africa, met a number of people, held a number of discussions, and we see that, which is our initiative rather than an initiative in mediation, as having more potential to bear fruit—in fact, it cannot have less because the other four failed—than any of the four previous attempts or indeed than anything else that has happened in that location in a long time.

Mr Osborne: May I add something to that? You asked whether we are the best body of people to be taking these decisions at the moment. At the end of the day, we are people who are representing civil society in Northern Ireland, doing our best under difficult circumstances with difficult issues to reconcile some of the issues that are there. The Commission has not discussed this, but I will express the personal view that ultimately more direct political accountability, which I am taking is part and parcel of your question, is desirable in Northern Ireland, and the accountability through the United Kingdom parliament as there is at the minute. There

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are some other areas where there is more direct political accountability and I think there has been discussion around Scotland. South Africa is another example. In both of those examples, having seen them firsthand, the political involvement is minimal, and actually, the management and administration of the parading decision is taken by officials within the local authorities in both of those examples, but within the accountability framework of the local authorities. So I think there are useful lessons potentially to be learned from areas like that. Maybe Northern Ireland is not quite at that stage, and maybe we all hope it is going to be at that stage some day.

Mr Cousins: I just wanted to make the point that we have been looking at different structures. They may look superficially attractive, but if you gave people in Northern Ireland the choice of picking one set or another, the middle ground disappears, so anything which is of the nature, say, of a tribunal approach, with which I am very familiar—I work in equal opportunities—if you took that approach, you would institutionalise sectarianism rather than resolve it, because people will just choose sides. As was referred to earlier, the fact that we can work across this whole area enables people who are in the most danger, and that is people who come in, in confidence, to disagree with their own side. If we went to an open tribunal type of approach, they would just disappear because there is no way they could come into an open forum and disagree with their own side. They would be physically in danger.

Chairman: Point taken.

Q214 Mr Pound: Continuing the theme of fructification that was introduced by Mr Quinn, Quigley seems to suggest that you actually consider the rights issue first and the public order issue after you have made the initial determination. We have had a lot of discussion about this, because in many ways the centrality of the matter we are discussing has come within the ambit of this area of questioning. What are your thoughts on the Quigley suggestion?

Sir Anthony Holland: It seems a nice, logical suggestion but it would just mean that you would spend a lot of time going all through the procedure and then at the end somebody would say no, on public order grounds. Of course, to go back to your question, Chairman, if I may, just for a minute, the ultimate political input is from the Secretary of State, who can overrule us.

Q215 Chairman: Only if asked.

Sir Anthony Holland: He could technically, I suppose, say “I think on all grounds this is a bad idea.” If we were to suddenly say a parade can take place in—I will choose a neutral point—in Cornwall, where I come from, Camelford or somewhere, that would be overruled as being inappropriate.

Sir John Pringle: Regarding human rights before public order, it is an individual approach, and I personally look at the whole thing at the same time.

I do not think they can be separated, and certainly the Chairman has never said “We will now consider human rights before public order” or the reverse. No system for approach has been laid down, and we all take our own course, and I suspect as a group it is all the rights together with public order. I think we all lump them together.

Mr Pound: I have heard the word “balance” a few times.

Q216 Reverend Smyth: The Chairman did refer to the subtleties of the North Commission and I am not going to take that up, but I agree with him. Can I raise the issue of perception raised by Mr Quinn, especially when he talked about this recent visit to South Africa. It is just a perception some of us had from the paper that the folk who started the problem are actually settled now, that Drumcree has been settled and they were not going to South Africa.

Mr Quinn: That is a view that has been taken by the GRRC. That is not a view that is shared by the Commission, and the Commission certainly do not consider that Garvaghy is a done deal in any direction. We will be considering Garvaghy, as they do every week, but really the big consideration will be the one in July and we will consider it on its merits. We will certainly not be influenced by the fact that there are those who tell us that it is done and dusted and it is no longer an issue, because that is not true.

Mr Osborne: Can I say something on South Africa as well? I know John was also there. I think it was an extremely valuable exercise. I certainly learned an awful lot when I was there, not just about the institutions in South Africa and the conflict resolution processes that the South Africans have found successful. I learned an awful lot from the other participants, and the Orange representatives who were there, for example, made a very significant and very useful contribution to the event. I learned a lot more about the issues that are important to that institution and to those people who were there. I think it shows the value of dialogue and communication like that, which I think we would like to see more of, and hopefully everybody who was there learned more about how the Commission does its business and how the Commission would like to see things progress in the future. Just for the record, I think it was a very useful exercise indeed.

Q217 Mr Bailey: Exploring this issue of mediation and determination, from what you have just said, you would presumably welcome changes which promote a greater degree of dialogue between the interested parties. How best might this be accomplished? You may disagree; I do not know.

Sir Anthony Holland: The essence of what we are about ultimately is determining whether a parade can take place with out conditions or not, and the more you get involved in the mediation processes, the more you tend to contaminate the insularity of the arbitration process. The reason why I say we have gone as far as we can and almost up to the wire, if you like, is the way we use authorised officers. In

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the Quigley Report it is very interesting, because in fact what is proposed there is a number of stages, one of which, of course, is a full-scale facilitation or mediation process which, if it is successful obviously means the end of that particular consideration of a parade. If it is unsuccessful, it is suggested in the Quigley Report that it will be the source of further information given to the rights panel, but of course, as soon as you actually have that as part of the process, it affects the nature of the mediation, because first of all those involved in the mediation will know that their attitude, their responses, how far they were to blame or not to blame, will be part of the account of what happened in the mediative process, or if it is done in the form of a report written by the mediator or the chairman of the facilitation panel, his approach would be tainted by what he encountered during the process. So it is in a way worse for the parties because they do not know what is in that report—they may see it if they are lucky but they may not—and it does not stand up. That is, as I say, why North was so subtle as to realise that trap, and to say what will happen is the authorised officers, through the Parades Commission will be facilitating mediation but not actually doing it.

Mr Cousins: In that sort of process, how do you decide who represents people? It is quite clear that the person or the group that notifies of their intention to parade are defined, but on the residents' side, how would you define residents? If a group came in and went through the process, and another group said "They don't represent us. We don't like this," just in practical terms it could not work, because you could not define who could represent people.

Sir Anthony Holland: We are working on this now. I do think we need to have our authorised officer operation better resourced. We have seen what it can achieve; better resourced, it could probably achieve a lot more. We still have some ideas as to how we want to develop that. We have not put forward these ideas because obviously there have been so many inquiries and references to us that we have tended to say we had better wait and see what happens, but certainly we are here for two more years, and that is one of the high profile jobs on our agenda.

Q218 Chairman: In that regard only, have you applied for more resources?

Sir Anthony Holland: My Secretary can probably tell us.

Mr Elliott: We are working up some ideas now.

Q219 Chairman: You are not having any problem with the Northern Ireland Office about resources?

Sir Anthony Holland: No, I could not pretend that. We have to put a firm programme in, and cost it.

Mr Quinn: Can I come back to Mr Bailey's question on mediation? We view mediation in two ways. First of all, it may be a vehicle that will in itself produce a resolution. We know that will not always happen. We also see it as a vehicle which will lead to engagement, and we have indicated what we mean by engagement. We have gone public on that in two

annual reports. We wrote a letter to a parade organiser, or an adviser to a parade organiser, in which we detailed exactly how we viewed engagement and the different levels of engagement, and indicated very clearly that engagement would be valued by the Commission even where it did not produce a resolution in itself. So we are looking at mediation as having two possible types of outcome. Both of those outcomes ultimately should lead to some form of resolution but neither of them lead to resolution immediately.

Mr Cousins: Just in terms of how we achieve engagement or seek to get to it, one of the things we do is try and think of different or novel ways in which to get people together. That was the reason for the South African trips. I think we can point to the one last year where we took the group from north and west Belfast, protagonists from both sides, a very difficult parading issue, and went to South Africa and partly as a result, over last summer, the White Rock/Springfield Road situation has eased. In fact, we can point directly, in terms of benchmarking, which was mentioned earlier, in that the Chief Constable can look at the security costs over the parading season and they said they were significantly reduced. That is what we were trying in South Africa with the latest trip: finding novel ways of people to come to deal with these very difficult issues in ways and in environments where they feel comfortable.

Q220 Mr Bailey: My next question was basically would you like the power to be directly involved in mediation? I would surmise from the comments that have been made that you would say no to that. Maybe you would like to qualify that. If your power were to be enhanced, what safeguards do you think would be needed to ensure that determinations were not coloured or, in your words, contaminated by the mediation process?

Sir Anthony Holland: As I said earlier, I think greater resources will help us to develop the authorised officer route, because that is the route I see in which we can facilitate mediation. What we cannot do is actually say we are going to try and mediate this particular problem at this point, because to do so would actually make the process challengeable in the courts.

Q221 Mr Tynan: No-one underestimates the difficulties and pressures you face from time to time, especially during the run-up to the parades in Northern Ireland. Quigley suggests that both parades and protests might be notified earlier than at present, to allow more time for focused efforts of mediation. Would you welcome an extended notification period, and if you do, what difference would it make in practical terms?

Sir Anthony Holland: The Commission's view is that early notification does not actually help us at all because, first of all, the situation can change both in terms of the locality and generally across the whole of Northern Ireland. So coming to a preliminary view, as is being suggested, based on an early application would be tricky. You have introduced, I

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think, the idea of actually linking areas and having preliminary views, which was tried by the very first Commission, and certainly it is an area that we want to explore. We still think there is the germ of some good ideas there, and indeed, in the packs that we have handed you, this will be referred to. We are also going to send you, when we have finished today, some other ideas that we have, but we wanted to first of all find out from yourselves whether we had to address that in a particular context, rather than do it today. So we will send you some ideas that we have as to where we can make improvements. But making people apply early, particularly up to a great length of time like five years, looking at it from the outside, personally, I do not think is a good idea.

Q222 Mr Tynan: I understood it was from October to December, and there have been objections to that, but obviously—I do not know whether you would agree—there are pressures, with a short time span as regards taking decisions and mediation. Would the pressure not be reduced if you had a longer period in which to deal with that?

Sir Anthony Holland: It could be reduced, yes.

Mr Osborne: I think, in a way, it is an issue that is slightly distracting from the main point and the main point is that at the moment work goes on to try to resolve issues in the closed season. There perhaps could be more work, and maybe more facilitation. There certainly could be more work done on the ground by those people who are most affected by the parades. There is work that does go on at the moment. I am not sure that when the application goes in will affect that. I certainly would not want people to think there is not work currently happening and has not been happening for a number of years. It has been, largely by people other than in the Parades Commission, because other people are most directly affected by the parades.

Sir Anthony Holland: Of course, I should finally add, the AOs during the winter are giving us very full briefs. I have a pack *that* thick of the perception during the winter arrived at by the AOs of what they think will happen in the summer. I think all the Commission have these packs, and we all refer to them constantly. As far as I am concerned, it is my bible throughout the whole of the summer, seeing what their views were in the winter and how things have developed since then.

Q223 Mr Swire: To use a topical phrase around here, you have shot my fox on my second question, which was about groups of parades. I do want to ask you about proportionality. A number of the parading organisations have maintained that once they have accepted the conditions, in subsequent years there has been no relaxing of the conditions as a result of that, and indeed, the goalposts have been moved sometimes thereafter. What circumstances would lead you to increase the conditions on a parade in spite of paraders' good behaviour, first, and secondly, do you start each year from first principles or are the determinations of earlier years used as a template?

Sir Anthony Holland: I cannot recall offhand whether we have increased conditions or made it more onerous for a parade organiser in a following year. I just cannot think of an instance where we have done that. We obviously know what we decided the previous year.

Q224 Mr Swire: Can I give you an example, which the Ulster Unionist Party raised, which was the Drumcree 7 July parade. They believe that the policing there was disproportionate, given that the smaller weekly processions, which took place with minimal police presence, passed without infringement of the conditions imposed by the Parades Commission.

Sir Anthony Holland: If I can just deal with the Drumcree issue, when we were first appointed, plainly that was the march or parade that had most impact on our thinking, and we did produce the very first determination that we made for the July parade, a great detailed determination, which set out what we saw as the right way forward to resolve this. Thereafter, that was not met very receptively by the parade organiser but each week an application was put in on exactly the same grounds, exactly the same format, that we would then be faced with. I have read in the evidence of others that in fact we have issued 300 determinations unchanged. That again, with respect, is just not true. You would have to read through all 300 determinations to see the differences, but we have from time to time, when situations have changed, altered the wording, there have been ups and downs when we thought there might be changes, and we have certainly indicated, particularly lately, in our determinations that there is a sign of progress. We have to judge each individual notification of a parade on its merits. We must look at each one on its own, and we cannot say "usual decision". It does not work like that. We have to look at each one individually, the individual police report, the individual evidence we have had from the authorised officers, who we call in to ask if they want to add anything to the previous information they have given us. It is not a question of just churning out determinations.

Q225 Chairman: As to moving the goalposts, it is our friend Mr Kelly again, and you say you have seen his evidence.

Sir Anthony Holland: Yes, I have seen all the evidence, yes, sir.

Q226 Chairman: And in his answer to my question 87, he said it was one of his member bands at Maghera which got a determination and that was adhered to and then the next year, the same application, the same parade, the same route, there were further conditions and determinations in that year, and then this last year, the same thing, all the conditions, it ran without incident, there were no complaints, and he says at the end, "We don't know where we are or how to police them".

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Sir Anthony Holland: Putting aside the issue of bands, and I will come to the instances, it is an interesting thing. We can be faced with an application, a notification of a band parade in a particular area and we will then obviously ask the authorised officers what happened the previous year. When we are told what happened in the previous year, we then debate, “Do we actually want to draw attention to it in the form of a letter?”, which is by far the preferred means rather than trying to identify it in a determination because if we do that, and the evidence is perhaps not as firm as we would have wished or we are not sure of something, it becomes actually unattractive conduct, I think, on our part. We try to make sure, therefore, that we do it by letter and if the evidence is pretty overwhelming from what we have received, then yes, we will put in a determination which in fact imposes a greater condition. Bands generally are an area we have always been, and remain, concerned about. There are some bands which actually behave impeccably and are a credit to their organisation. There are some bands which do behave in a way which does not do anyone any credit. We all know that. I think even those who support parading in all its ways do realise that some bands do behave badly. The difficulty from our point of view is that there is no registration system of bands. Even if there was, they can change their format, they can change their make-up and it is a very difficult issue upon which we are currently working with the police to see if we can come to some conclusions.

Mr Quinn: Maghera would be an area I know a bit better than some of the others. The Ulster Bands Association did come into us and, by the way, they came into us after the date on which they said they had had no further contact with us because I chaired the meeting and it was significantly after that; in fact they came into us twice on that particular Maghera band parade. What happened was that there was very poor behaviour by the participants in one year, including entering a shop and attacking an individual within private property. As a result of that, the Commission did lay down more stringent regulations the following year. The community relations position in that area had deteriorated partly as a result of that attack and that also contributed to our changed determination. However, the following year after the parade organiser and the Ulster Bands Association came in and talked to us and gave us commitments and the behaviour was still far from perfect, nevertheless, after the date, we relaxed that and it did not escalate. Therefore, after that one instance in the circumstances in which we did tighten up the regulations, that can be explained on the basis of poor behaviour, but subsequently it was not tightened up and their behaviour did improve and that is the basis on which we decided not to tighten up the regulations.

Chairman: Thank you, that is good to have that on the record.

Q227 Mr Luke: Just building on that answer, what type of actual feedback do you get from improved bands on the ground and is there the facility, on

receipt of that feedback, to discuss with an offending band their actual performance so that can be monitored into the mediation and the determination process in future years?

Mr Quinn: Well, we have monitors certainly at many of the contentious parades. We do not have monitors at all of the parades because that would—

Q228 Mr Luke: Are these independent monitors?

Mr Quinn: Independent monitors, absolutely, independent monitors who provide us with written reports, and we also get police reports, so we get two sources of information, plus we get, which is not quite so independent because they interact with us all the time, we get the reports from the authorised officers, so we get up to three different sources of reports on every contentious parade. The monitoring of the parades by these independent people, when next we deal with them on a parade in that location, we feed back to them what the monitors have said. Now, there has been a request that they get the monitors’ report, but we have a concern about that because it might endanger the safety of the monitors and, therefore, we have not so far given them copies of the reports. We most certainly have sent back to them the fact that bad behaviour was reported to us and it is up to them to decide which of the three sources, whether it was the police or the AOs or the monitors, but sometimes when they come in and talk to us, we actually tell them who it was, not who specifically, but which of the three entities provided us with the information as to the bad behaviour, and we do take that into account. In addition to that, on the basis of the monitors’ reports, the police reports and sometimes reports from our own AOs, we also feed back to the organisers and to the bands, and we have only been doing this for the past two years, in the first year we did not do this, but we feed back to them the information that they have behaved badly and that will be taken into account in the next determination in which they are involved.

Sir Anthony Holland: I should add that when we deal with these determinations, obviously we have hearings and the reason that you will have read somewhere that in fact they have 20 minutes is because there are so many people coming in. If you are dealing, say, with 30 determinations and everybody wants to have half an hour, you can imagine that in fact if you have got five or six parties for each one you will be there all day because they have to be done that day. We, therefore, tend to limit it to 20 minutes for each person who comes in. We hear from local people, we hear from politicians, we hear from the police and from the AOs. Each person has strictly the same time limit so that there is no unfairness given. If we did not have a strict time limit, as I say, we have found that we just would not get through the work.

Mr Osborne: But beyond that we will also meet with people outside of Commission meetings at their request or sometimes our request, going down to

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their area as well and in the evenings as well, if that is what they want, in order to discuss things further in a more informal atmosphere.

Q229 Mr Luke: Is the feedback relayed quite quickly, say, if there is a parade for the next year, and would you try and get hold of that band?

Mr Quinn: It probably is not as quick as we would have liked and we have accelerated it over the last number of months, the second half of last year and the early months of this year when there have been a small number of parades. It has accelerated, but we would accept that it needs to accelerate more and we have now put in a system whereby there will be quite fast feedback to every parade organiser where there is bad behaviour and to every band which has been involved in bad behaviour.

Mr Cousins: We do not put the letters in the form of a conviction, for want of a better word. The letter tends to say to the organiser, "It has been reported to us that this happened. Do you agree?" Then they can come back with an explanation that it was not them, it did not happen and that is fine by us, so we do not form a view just on the different streams of information we are getting. We accept that the organiser has a point of view as well and if they want to communicate with us, then they can do so.

Q230 Mark Tami: At the end of your submission you say that you are arguably more aware than most of where change can best be made to further the resolution of conflict. Can you elaborate a bit more on that and say what changes you would actually like to see and what is your justification for seeking those changes?

Sir Anthony Holland: Well, given the pressure on time, what we were going to do actually is to send you a paper, headed, "Scope for Change". The particular items identified, which is certainly an area which I know is a problem because we do not cover static protests, are: linkage, which we have already touched on briefly where we would actually like to see some change; the facilitation of mediation, and we have talked about that, but I think I need to have it spelled out in great detail because it is such a dangerous subject when you are actually arbitrating about a human right; confidentiality and transparency; the code of conduct; and registration of bands. Those are the main areas where we think there is scope for change where we believe that if various changes are put in place, it would help, but I think it is better if that is put in a written document.

Q231 Mark Tami: Have you discussed this with the Northern Ireland Office and what sort of reaction have you had?

Sir Anthony Holland: No, no, we are independent of the Northern Ireland Office. These are our views, as the Commission, and I want to emphasise that.

Q232 Mark Tami: So you have not put anything forward, as such?

Sir Anthony Holland: One of the things we are obliged to do under the Act is in fact to deal with the Northern Ireland Office about improvements and changes, but frankly, given what is going on all the time with these reviews and interviews and so on and meetings, we have never actually thought it is the right time to stop and pause and do this. We have done one important thing. We thought the 11/1, which is the form which notified the parade, was not as well designed as it could be and we have redesigned it in conjunction with the police. So far as we are concerned, we think that this year this new 11/1 will lead to a great improvement upon the way in which the notifications are made to the Commission and also the way in which it is perceived by those people who have to complete them as being a much more user-friendly form. That sounds quite small, but it is actually quite a major improvement from our point of view.

Q233 Mark Tami: So how do you intend to get these areas out into the wider world?

Sir Anthony Holland: We made the suggestions which I have just identified to you to the Quigley Review and obviously not all were taken on board. Some were and there are some of the things which we have taken from the Quigley Review which we have actually put in place. It is an ongoing process. When we have submitted to you, after this meeting, what our own views are about scope for change, we intend to take those forward in any event because we do feel that they actually are necessary, but then again we may be faced with a situation, as has been the case up to now where of course the Quigley Review consultation process is still going on and the Northern Ireland Affairs Committee is still considering this, where there is a great reluctance actually to anticipate sometimes those kinds of results.

Q234 Chairman: Well, I think it would be very helpful indeed, Sir Anthony, to receive that and I have no doubt that the Committee will wish to give you their views in return as a result of the work that we have done. That brings us to the end of the questions we have for you, so unless you have got anything specific more for us, thank you very much indeed for coming and helping us with our inquiry.

Sir Anthony Holland: In the pack you will also see that I have made a specific statement about an ancillary question which came out of the earlier evidence which I do not want to go into today, but you will see it in your pack and you will realise why I have said it in the way that I have presented it to you.

Chairman: Thank you very much; that will be very useful.

Witnesses: **Mr Robert S Saulters**, Grand Master, **Mr William Ross**, Assistant Grand Master, and **Mr Denis J Watson**, Grand Secretary, The Grand Orange Lodge of Ireland, examined.

Q235 Chairman: Gentlemen, welcome. Perhaps I could say a particularly warm welcome to Mr Ross back to these precincts; it is very nice to see you here, and it is nice to see the other two as well. Thank you for coming to help us with our inquiry. The memorandum you have sent us is strongly critical—I hope that is not too strong a phrase to use—of the Parades Commission because you say that its determinations are inaccurate, inconsistent, and that it has failed in some cases to verify the evidence which has been given to it by those who oppose these parades. Have you raised the concerns that you have raised with us directly with the Commission?

Mr Saulters: Yes. First of all, Mr Chairman and members of the Northern Ireland Affairs Committee, thank you very much indeed for having us. We have raised in letters to the Parades Commission quite a number of them since July last year, and one in particular, which I heard mentioned, about the Whiterock parade at the end of June was comparatively quiet this year. I am afraid I would have to put that down to the good works of Gerry Adams this year because he came out the week before the Whiterock parade and told his followers on the Springfield Road that they would have to be good boys. I believe it was because the elections were coming up and I would lay that at the comparatively quiet year last year. Now, following from that, it was also said that the Whiterock parade was very well organised itself and that is the case. We have had letters from the Parades Commission listing bands who had stopped within the gates, one of them in seven seconds, and not forgetting for this past three years for that particular parade that the music has been stopped on coming out of the gates on the Springfield Road, first of all, three years ago about 100 yards up the road, the second year about 200 yards up the road and last year it was half a mile up the road, so we are gradually being pushed back further and further.

Q236 Chairman: The question I was asking you, Mr Saulters, was whether these are concerns you have raised directly with the Commission and what response have you had?

Mr Saulters: Yes, I have written to them. Actually one of the reasons, and I was coming to it, why my own Lodge was stopped going up on the Twelfth Night was because I was seen in front of a paramilitary band in a photograph which the Chairman had. It took me six letters and almost six months to get the honest answer, and the honest answer was that they did not have the photograph, but they had it on tape. Now, I do not know whether that is right or not. I was invited in to see it on tape, but I do not take tapes because the tape could show me at the front of a parade with maybe a paramilitary flag a way back which I do not inspect before the parade goes off, but they certainly did not have that photograph on which the determination, I believe, was placed on my Lodge on the Twelfth Night.

Q237 Chairman: Over the years, have you seen any improvements because of complaints you have made?

Mr Saulters: No, we have only started writing about our complaints in these past two years. Our Grand Lodge does not allow the Grand Lodge officers to meet with the Parades Commission as we had seen them from the very start as a go-between for the police. Now, the 11/1s were mentioned; we put the 11/1 in and it was only about two years ago that we realised that the police also put an 11/9 in with recommendations for that particular parade. They also have another 11/3 if they think it is going to cause trouble in the community.

Q238 Chairman: You probably heard Sir Anthony tell us that the Commission wrote to you on 6 February last year and that they have not had a reply. Is that the case?

Mr Watson: Mr Chairman, I am not aware of a letter being received at the headquarters of the Grand Lodge office, though I will certainly check our records when we return to the Province on Friday, but we are certainly not aware of correspondence we have received.

Q239 Chairman: Well, I am very glad to have facilitated one exchange between the two of you because if you have not received it, you can ring them up and ask them to send it up, can you not?

Mr Watson: Well, equally there has been correspondence sent to Bedford Street, to their headquarters, to which we have not had the courtesy of a reply.

Q240 Chairman: Can you give a specific occasion when that has happened?

Mr Watson: I have not got it here with me present, but I can certainly make that available to the Committee, if you wish.

Q241 Chairman: The letter which I have just referred to was about suggestions for improving the transparency, perhaps trying to understand why a parade had gone well or badly, and proposing to establish a post mortem procedure to look at it after the event and perhaps improve understanding. Is that something which would attract you as a thought?

Mr Watson: Can I say, Mr Chairman, both as Grand Secretary of the Grand Orange Lodge of Ireland and in my capacity as the County Grand Master of County Armagh, which has Drumcree within my jurisdiction, can I say I am not aware of feedback coming from the Parades Commission. I have learnt something this afternoon, that they respond to parade organisers. Can I also say that the Chairman did say in his comments that they did make a certain number of recommendations in one of the determinations. That is quite correct. I would have to say that Portadown District, LOL-1, have complied with every one of those recommendations in the determinations, but still they find their parade blocked along the road. I have difficulty in

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understanding why the Parades Commission have to take some of our Orangemen from Northern Ireland to South Africa to talk about the parades issue when the other major stakeholder in the situation of the Drumcree problem did not go. I also find it quite remarkable because my information coming back to me would indicate that the Parades Commission could overturn the decision this year and allow a parade down the road simply because Mr McKenna of the Garvaghy Road residents has been into the Commission offices and they have not been happy with the response they have got there and now they are turning around and looking at the Orange position, which I find incredible because the Parades Commission have said that the last 300 determinations they could hold up in the courts. Now, suddenly we may see a change in that in the coming year, and I hope we do see a change and the return of the parade granted to the Portadown brethren.

Q242 Chairman: How do you think we might get the dialogue between those who parade and organise parades and the Commission to be—I was going to say “more constructive”, but perhaps I should just say “constructive”? What do you think is required to get the two sides to talk constructively together?

Mr Ross: I do not think it is a question, Mr Chairman, of getting the two sides, as they are presently constituted, talking. I think what we really need is a completely new system. The North Report is basically saying that the political sides have parade decisions. It seems to me that this has made it worse. We believe that the Quigley Review will make the thing worse still because it tends to offer a far more complex procedure.

Q243 Chairman: So what is your solution?

Mr Ross: We do have a paper which we will be happy to give to the Committee at the end of this session and we would be very happy indeed to come back again if, having studied it, the Committee decided to let us do that. The reality is that all of the attempts that have been made now over many years have been based on the assumption that goodwill existed among terrorist organisations. I think that recent events would prove that terrorist organisations are not in the business of goodwill, whether they are in America, Iraq or anywhere else, or Madrid, for that matter; they intend to get their own way. We see many of the organisations that purport to speak for people in a particular area as simply fronts for those organisations.

Q244 Mr Clarke: I think I would be on safe ground by saying that the Grand Orange Lodge are not great supporters of the Commission and never have been, and I also see that you are not necessarily in favour of Quigley’s recommendations. The Committee does find itself in a strange position in trying to arrive at a viewpoint from the lodges as to what a possible solution may be. Lord Maginnis, when he was in the Commons, as you know, said that he saw the Parades Commission as part of the problem rather than part of the solution, and that

comment was placed within your memorandum. The rest of the memorandum, if I may say, is very one-sided and you suggest that you are astounded that the Parades Commission has singularly failed to recognise the fact that opposition to Orange parades is orchestrated for political purposes by Sinn Féin, and you talk about it being well documented that the campaign has been established by convicted terrorists. Now, these are strong sentiments and you will forgive me if I say that there would seem to be a level of acidity in some of the comments which are placed before us. Could I put the words of Ken Maginnis back to you and ask you if it would be fair for some in Northern Ireland equally to say that the Grand Orange Lodge is part of the problem, not part of the solution?

Mr Ross: I would not accept that for a moment and I have to say that not only did Ken Maginnis express those sentiments whenever I was on the Committee whenever this legislation was passed, but I do recall saying that on one occasion the net effect of this legislation was to place the control of the streets in the hands of the IRA who, in my view, could create 100 Drumcrees any time they wanted to. Could I also say that whenever I listen to what the Parades Commission say, whenever I hear what the Northern Ireland Office says, I remember that those are two bodies of people who have the best interests in the present legislation: the Northern Ireland Office because of course they created it and they will defend it to the death, as the Poll Tax was defended literally to the political death of a Prime Minister; and the Parades Commission of course are there to uphold the law as it presently exists. We believe it is a bad law and, therefore, it should be changed. I have no apologies to make for the views that I have had on these matters and indeed I think that the various efforts that have been made in the past have simply not worked because there are people of ill-will out there who are always going to foment trouble and use any excuse they can to create a friction point and then exploit it, knowing that there are many young men in these parades who are sometimes too easily provoked. May I say also that I think it was evident from what the previous witnesses said that their main problem was with the band parades rather than the Orange institution, but we are not responsible for the band parades and indeed we are not responsible for most of the bands; only a relatively small number of them are actually attached to, or under the control of, the lodges and many of them are hired by lodges on an annual basis. Indeed I understand that the Northern Ireland Office makes the point that the problem has diminished and that there are less problems now than there were in the past. You need to be very careful how you interpret those crude figures because some, indeed many of the processions are in exactly the same locations every year with the same people taking part. Others of them operate on a rota over a period of years and, therefore, you are not necessarily comparing like with like from year to year. Only those who know how the system works can appreciate the vast differences that there can be from year to year and it can be quite considerable. Does that clarify the matter for you?

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Q245 Mr Clarke: I would just add that I am still at a loss to understand. Now, you have said you are going to present us with a paper later on which gives the Order's view of solutions, but the Committee is at a loss at the moment in terms of understanding where the Order is coming from in that it does not support the Commission and it does not support Quigley's recommendations. We do hear a lot from the Order as to what it is against and I am asking you to put forward some positives in terms of how we may move forward in the view of the Order from the Commission if it is not backed by its members?

Mr Saulters: Well, as we see it in the Quigley Report, it will be in four stages. In the first stage, which is mediation, it means that we would have to sit down and talk with Sinn Féin resident groups to get a little bit of paper of good faith to let us go forward to the next proceedings, which would come in as a rights panel for parades and protests, and they would be organising hearings, determinations and so on. If that fails, then we go on to stage three and that is where the bodies in charge come in as the police services for Northern Ireland, and they would assess the situation and make a decision in the interests of the national security. Then the fourth stage comes in and the bodies in charge of that would be the compliance branch of the rights panel for parades and protests. If you go through all of those stages, and it was mentioned earlier about coming in on 1 October to notify of parades, that would be a ridiculous situation to notify of parades on 1 October through to June and July and that would be out of our reach altogether. As far as it all coming through to the courts is concerned, that is going to cost a lot of money. We are a voluntary organisation. We do not charge the protesters anything because they can always get legal aid, so it would cost us a lot of money to bring that through to the courts, and at the end of the day it is in the police's hands anyway, so we cannot see the Quigley Report helping in any way.

Q246 Reverend Smyth: To put it into context, would it not be true to say that historically when this issue began of protests, the Orange did actually meet the residents and residents would attend a local parade (a) at the weekend, or (b) when they did meet, they could not actually deliver at a public meeting?

Mr Saulters: Yes, it all began in 1992 in the Maze Prison whenever the IRA were arranging these stoppages. In 1995 the first stoppage came and I myself, as a County Grand Master at that time, and my county treasurer met with Sinn Féin and we met for two years going between Sinn Féin, mediation and the police. On the second day we had an agreement. This was about 9/10 July of that particular year, 1995. By seven o'clock that night, everything was thrown out because the Sinn Féin representatives had gone back to their local community centre and the heavy squad came in with baseball bats and it was all off. That was in 1995, and we did talk to them and had the agreement, but, as I say, it was at seven o'clock that night.

Q247 Reverend Smyth: Then I come up to date because I understand in your response that your characterisation places a strong emphasis on traditionality and distinguishes traditional parades from political ones. Do you accept that for some individuals a traditional parade may be perceived as having a political dimension even if its origins are not historical and were not designed to provoke any dissent or resentment?

Mr Saulters: Our parades are not designed for any resentment at all. Politically it can become a political stepping stone, but we would consider ourselves as a religious organisation and we try to keep it that way.

Mr Ross: There are of course other parades, some memorial parades, and quite a number of them take part throughout the country. Of course, by and large, the church parades are all religious. May I say in passing, Mr Chairman, that I have noticed recently that complaints are arising locally about church services being disrupted by parades going past in the street. There are not all that many services at the time parades take place anyway. In my own church I have often had nationalist parades going past on a Sunday up to 17 March or 15 August, and I have to say that the walls of the church are pretty thick and you barely hear them even when the church is silent and the minister is praying, so if we are singing a hymn with the organ playing, you hear nothing, so I think that is just a red herring. Of course then we have the celebrations on 12 July and basically that is it. We do have a few where they are unfurling banners and things like that which we always normally celebrate and there is a strong religious element in them and many church services of course are attended by bands and Orangemen throughout the year, the vast majority in fact are.

Q248 Reverend Smyth: I was happy enough that you did not say that when the preacher was preaching you heard nothing!

Mr Ross: Well, sometimes; it depends on the preacher!

Mr Pound: Present company excepted!

Chairman: I just want to interject here because I have been remiss in that I should have put on the record publicly what everybody in this room knows, and that is that the Reverend Martin Smyth did declare an interest at the beginning of this inquiry as a former Grand Master of the Grand Orange Lodge, so it is on the record.

Reverend Smyth: And I did not want to press the Parades Commission as to one of the reasons about the subtlety of the North Report because the interesting thing is that the three gentlemen on that all came from very strong religious positions within churches, all had sectarian positions, and they actually acknowledged they were a sectarian body, which is one of the reasons why there was such dissent from the very beginning.

Q249 Chairman: That has been said and it is on the record.

Mr Ross: Perhaps I may make one further comment with regard to church services. There is quite a large element of good manners still left in Northern

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Ireland and when Orange parades are aware of a death in a house, regardless of the religious denomination or none, the bands would be asked to stop playing on passing that house if there was a parade. We have in the past held back to allow funerals to go past, and I think we ran into a wedding one day and, as I recall, it was not a Protestant wedding. Again good manners take over and people quite simply behave properly in such a situation to allow folk to get on with either their celebration or their misery, as the case may be.

Q250 Chairman: What—at a wedding! Is that one side of the family or the other!

Mr Ross: I meant depending on whether it was a wedding or a funeral.

Chairman: I think we knew what you meant.

Q251 Mr Bailey: Can we just explore the issue of mediation. Quigley suggests that there should be a much stronger focus on mediation. Do you support this view?

Mr Saulters: Well, our experience of mediation in 1996/97 was that we did meet week in and week out from May to July, two years running, and the mediation team at that time were telling us that they were down here (indicating) and we had to get the others up level. It never did happen and we never could get the mediation working between the two.

Q252 Mr Bailey: Notwithstanding your past difficulties, do you support the view that they should be?

Mr Saulters: Well, certainly I would give it a try. Whether it would work nowadays or not, I would not know. We are making a campaign at the moment of meeting people where they have their ideas that we should not be having a parade to a church service, for instance. We have invited them all out to a cultural evening, that is happening this week, and we will see how that goes. It may be the best way forward, to invite them in to join with us.

Q253 Mr Bailey: You have partly anticipated my follow-up question which was how far you have sought a dialogue with the community groups and others to tackle misconceptions about parades, so have you anything to add to what you have just said?

Mr Saulters: Well, just that in one village alone, which is 100% a different denomination from us, every household has received an invitation to this cultural evening and, from what I gather, it should be quite acceptable to a number of them and we are hoping to go down that road and come together.

Q254 Mr Tynan: In your written submission one of the many complaints of the Commission is that its decisions are taken in secret, whereas common with the concept of open and transparent government, parades and Commission meetings should be held open to the press and the public. Now, you have heard the concerns expressed by the Commission today that that would open up an avenue where individuals could be subject to enormous pressure and would refuse to give any information or

testimony. Where you want transparency and openness, how would you avoid intimidation of someone who wished to make a submission to the Commission?

Mr Saulters: I think it was transparency between the Commission and themselves. I would not go so far as to bring in the general public.

Q255 Mr Tynan: But you say for the opinions of the members of the public, it would be beneficial for the public to be aware of its working, so you indicated that it should be open to the press and the public, in your submission.

Mr Watson: It would be no different from a witness going into court to provide evidence in a court case and this has been part of the problem with the Parades Commission over the last three or four years. I was quite surprised to hear the Chairman say that there is feedback given to parade organisers because if there is feedback given, it certainly has not been given back within my jurisdiction in County Armagh that I am aware of. Part of the problem is that the deliberations are entirely within their own four walls and there is no one privy to that. We do not know who is going in and making submissions. We know that we, as the Grand Orange Lodge of Ireland, are not making submissions, though individual Orangemen may be going in in some other capacity. If the Parades Commission have nothing to hide, there should be no reason why their hearings could not be held in public.

Q256 Mr Tynan: Surely it is not a question of the Parades Commission having something to hide, but individuals giving evidence to the Parades Commission who may be vulnerable to pressure from other organisations. Surely that would be the problem if they were open and not held in secret?

Mr Ross: Well, the problem of course is that when we do not know what the evidence is, there is no way of questioning or correcting it. That evidence might be allegations and malicious allegations at that. It would also depend on who that individual is. As I have indicated earlier, terrorist organisations are not in the business of being nice to those whom they oppose and some of the allegations could be simply malicious. Unless we know who is making the allegations, unless we know the nature of those allegations and unless we are able to ask questions about them and correct misconceptions, there is no way in which this problem can ever be resolved because I feel that very often the allegations which are made are simply ill-founded. I live in a very nationalist area and there are Orange parades in that area, and some of them are in Protestant parts of the country, some of them are in areas which are nearly totally Roman Catholic and for a considerable number of years there has been no trouble at all, but I see no reason why the IRA should not switch it on tomorrow, if they wished.

Q257 Mr Tynan: I understand you wish to have them held in an open and transparent way, but the question of how you protect individuals who may

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wish to give evidence to the Commission is really the issue as regards the safety of those individuals. How would you go about that?

Mr Ross: Well, let's be clear, Mr Chairman: if there is someone out to do damage to an individual in that terrorist organisation, as over the last 35/36 years, they will find a way of doing it. I think you, sir, more than anybody else will be well aware of the dangers under which I have lived and the precautions which had to be taken with my safety throughout those years and of the nature of terrorism. At the end of the day terrorism and violence and subversion in the community can only be overcome by citizens being prepared to stand up. I am sorry, but that is the bottom line. I stood up and I am not the only one; many other people have and some of them paid with their lives. The reality is that there will be people probably frightened to do that, but, at the very least, if they are not prepared to come out openly and be questioned, then they could be questioned in camera and the information which they provide could also be made clear to those who are organising the procession. Of course we also believe that there are many people who are involved in this affair from one end of the country to the other, as I said earlier, who are acting out of malice, trying to stir up hatred and trouble rather than trying to resolve it and they can switch it on and off. I think everyone in this Committee is not so innocent as not to believe what I say.

Mr Saulters: We are still main targets now even though we are not going into the Parades Commission, so it would not make any difference. I had a visit from the police two months ago because my name came up on a computer on another subject from one of the computers which was hijacked around west Belfast, so we are being targeted at any rate, so I do not think we would worry about that too much in Northern Ireland.

Mr Ross: Mention has already been made of the two police forms, the 11/9 and the 11/3. Parade organisers do not see them. I do not think that the honourable Member would be suggesting that the police would be afraid to make available the information which is in their possession. They, after all, do take risks, that is what they are paid to do, and we could see what they have to say.

Q258 Mr Tynan: So you would have no concerns for the safety of individuals if the process was opened up to transparency, the press, the media and anyone who wanted to attend?

Mr Ross: Freedom, sir, is never cheap.

Q259 Mr Tynan: That is not the question I am asking. I am asking you whether you would have any concerns?

Mr Ross: Of course I do have a concern about the safety of individuals and I have indicated that, at the very least, the gist of what they have to say could be made available to us, but I have lived with similar dangers to those which you are indicating for very many years. Perhaps I am more careless of my own welfare than some might be, perhaps I live in an area, you might think, where dangers do not exist, but

they do exist and I am aware that there are people who could come into danger and pressure, but I do not think it is as great a danger as some people are trying to make it out to be.

Q260 Mr Tynan: Okay, I do not think I should follow that any further. Do you support Quigley's recommendation that parades and any related protests should be notified much earlier in order that there is substantial time to resolve the problems?

Mr Ross: There are two difficulties in regard to it. One is that some parades are arranged at rather shorter notice than Quigley is setting out. He is asking for October the year before. The normal rota parades could be notified and I do not think there is any great problem with that, but there is another difficulty in that if there are people intending to make mischief, all that it is actually doing is providing them with a longer period of notice and I think that that should be borne in mind as well, so it is a two-edged weapon. The police do know perfectly well from year to year what parades are going to take place and where and, particularly as far as the Orange Order is concerned, there is no difficulty in making that information available for the major parades, but there are many minor ones which are not that easy. They are voluntary organisations with a relatively small number of people involved, and I think it is placing quite a burden on them for no gain.

Q261 Mr Tynan: Your view on Quigley is what?

Mr Ross: I object to Quigley. I think Quigley overall will make it worse and in that position I think the balance would certainly be against it. We think 28 days is more than long enough. In fact we think three weeks is quite sufficient for most parades.

Q262 Mr Swire: Your memorandum places strong emphasis upon the role of the police in the management of the parades. Should the PSNI, in your opinion, be required to be more open in their assessment of the public order concerns relating to parades?

Mr Ross: Yes, I do not see why not. At the end of the day of course, any legislation which arises from Quigley will have to comply with the European Convention of Human Rights and I do not think that this Committee or the Government should lose sight of that and the probability of legal challenge if it does not. The police formerly were in charge of parades all the way down the line and, on occasion, Orange parades in the 1970s and the 1980s, I believe, not least in Belfast last year, did alter their routes on the advice of the police. I am sure everyone in this Committee remembers the war memorial day and the November bombing in Enniskillen. What people tend to forget is that on the same day there was a bomb trap prepared for a smaller parade a few miles away, a parade at a similar war memorial, which was being led by the Girls and the Boys Brigade. Fortunately, that bomb did not explode. The police were not aware of that and it was just God's mercy that nothing happened, but there have been occasions when the police have come to parade organisers with clear information and said, "Look,

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for this reason, we think you should change”, have convinced the organisers, and they have changed their routes at sometimes little cost personally.

Q263 Mr Swire: Do you recognise the problems for the PSNI in their being involved in the decision-making on public orders and having to enforce those decisions? Do you recognise that as a problem for them?

Mr Ross: Yes, of course there is a problem for the police if there are people who are intent on raising trouble. We also have a great difficulty with the fact that both the Parades Commission and the police are involved at different stages.

Mr Swire: That is not the point, I am sorry. I think the point is the predicament of the PSNI in being seen as an enforcer and judge and jury on the parades.

Q264 Chairman: Judge and executioner!

Mr Ross: Well, to some extent they already are under the 1988 Act, I think it is. They are already in that position. A policeman’s lot is never an easy one because I have many relations in the police and some experience of what they have been through. Yes, there are problems for the police and there are problems for the police in this country as well and this city as well with parades. Quite frankly, I do not think it matters, in a sense, whether it is the police who make the decision or some other body. If it is going to be made solely on public order, then the police would have to form an opinion on that, but, by and large, under the European Convention it is not made on the issue of public order, but it is made

on the human rights legislation and, quite frankly, that does set down a number of very definite absolutes, despite what some folk are trying to say.

Q265 Mr Luke: On the recommendations of Quigley, he makes a few on the enforcement of conditions upon parades. I take it then that you do not accept any of the recommendations of Quigley on the enforcement of conditions placed upon parades? He has made recommendations where they could be toughened up.

Mr Ross: Well, it depends on exactly what is meant by that. He is saying that the people who are running parades, as I recall, would be responsible for every jot and toot. It is impossible for that to happen because you do not know what is going to blow up just in your face, and things can go wrong. The organisers of a parade can do the best they can, but something can still go wrong. You can have a petrol bomb thrown, you can have a stone thrown, you can have a crowd of louts come out of a pub and start throwing bottles and that does happen, but I do not think that your parade organisers then can be held responsible for the immediate reaction of young men in those circumstances, so there are difficulties. I am not sure whether that is the particular issue you are getting at, but perhaps one of my colleagues would like to take it up.

Q266 Chairman: If this forms part of your memorandum to us, I think it would be more helpful if we could actually read it in the cold light of day and consider it rather than go through it at length now.

Mr Saulters: It is.

Chairman: That is absolutely fine. Well, gentlemen, thank you very much indeed for coming and helping us with our inquiry.

Monday 26 April 2004

Members present:

Mr Michael Mates, in the Chair

Mr Adrian Bailey
Mr Roy Beggs
Mr Tony Clarke
Mr Stephen Hepburn
Mr Iain Luke

Mr Stephen Pound
The Reverend Martin Smyth
Mr Hugo Swire
Mark Tami
Mr Bill Tynan

Witnesses: **Assistant Chief Constable Duncan McCausland, Chief Superintendent Seamus Hamill, and Inspector Amanda Cooke**, Police Service of Northern Ireland, examined.

Q267 Chairman: Good afternoon to the three of you. I can hardly see you from this distance. We are usually a little more intimate in our committee rooms. Thank you very much for coming to help us in our inquiry into the Parades Commission. What is your relationship like with the Parades Commission?

Assistant Chief Constable McCausland: Thank you, Chairman. If I could introduce my two colleagues: Chief Superintendent Hamill, who is currently in charge of the Operations Department, and Inspector Amanda Cooke, who is our permanent liaison officer with the Parades Commission. I am the Assistant Chief Constable for, as it is now, urban region, or Belfast as it was before. Since the inception of the Parades Commission the Police Service of Northern Ireland has appointed a full-time liaison inspector, and currently it is Amanda who is dealing with the Parades Commission. That officer is responsible for providing the Commission with what we would describe as a quick link between the districts and the Parades Commission and for obtaining and checking all of the correspondence in relation to contentious parades. We have built up a very professional working relationship and we hope we are able to iron out any or all issues or any problems that potentially come about, and there have not been that many. The Commission have dealt very professionally with the police, treating all of our correspondence with confidentiality, and this trust we feel has been very important and has allowed us on many occasions to share sensitive information, including, I would say, Chairman, intelligence where required. The Commission are very aware of the operational difficulties and will often go through various different scenarios with the police before issuing a final determination. District commanders have a very good working relationship both with the Commission and their staff. Once a year for the past three years, a joint Police/Parades Commission seminar has been held where views and ideas have been shared. We feel this is a very important opportunity to build on the relationship and the useful contacts we have. For example, Chairman, this year it will be 6 May when we will carry out the seminar.

Q268 Chairman: Thank you. How successful do you think they have been in performing their function?

Assistant Chief Constable McCausland: It would be our view that overall we feel the Commission are performing a very worthwhile task. Going back to pre-Commission days, the police had to both make the decision and decide in effect whether the parade took place and police out the event. The work of authorised officers on the ground is really the most important feature of the Commission, we feel, and they can often gather information which would be more difficult for the police to have access to. We would recommend that the number of authorised officers should be increased and that they should be perhaps working more continuously in an area, not only in the run-up to a parade. We feel that building up that contact and that relationship with the community is very important. The codes of conduct which the Commission have produced provide a very strict set of guidelines for parade organisers and participants. The code is not contained in legislation and we would like to see, if possible, that it could be reflected in something like the Highway Code. We would suggest new legislation to give standing to the codes which would back up the creation of a compliance branch to deal with breaches.

Q269 Chairman: Sometimes the Commission have told us that they reject advice which you provide in relation to the public order implications of a parade. How does this affect your relationship with them?

Assistant Chief Constable McCausland: Chairman, obviously if they do reject the advice, which they are quite open to do, we have the right, as you know, to appeal to the Secretary of State if we feel that the determination is going to create major difficulties. If our advice is rejected we have been able to reopen negotiations and discuss it in detail with them. We have always taken the line that we will police the determination but, as you aware, in terms of the legislation we do have the right up to 24 hours before to decide on public order grounds if the parade will or will not take place. At this moment in time we have not had to exercise that right and on all the occasions, and I look at my colleagues, we have policed the determinations as given.

Q270 Chairman: Have you ever had to go to the Secretary of State?

Assistant Chief Constable McCausland: I am not aware. No, I do not think we have, Chairman.

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and Inspector Amanda Cooke

Q271 Chairman: The last time this Committee reported on parades we noted that protocols had been put in place to promote better co-ordination and understanding between the police and the Commission. Are those protocols still in place?

Assistant Chief Constable McCausland: Yes, very much so.

Q272 Chairman: What sort of effect have they had?

Assistant Chief Constable McCausland: With your permission, I would like, if possible, to ask the inspector who deals with the protocols if she could specifically answer that question.

Q273 Chairman: Please let any of your team feel free to answer the question which is in their area of expertise.

Inspector Cooke: Chairman, the protocols are there and they are basically how we deal on a day-to-day basis with the Commission. They set out the forms that are to be used, the contact between outside police officers comes through myself and goes to the Commission and certain evidence is then looked for by the Commission. Everything is contained within those protocols and sets out clearly what everyone has to do at each stage of the parade process.

Q274 Mr Swire: How effective has the Commission been in making decisions on public order? What difference does it make to the PSNI not having to have that responsibility any more?

Assistant Chief Constable McCausland: I think it has been critically important not to have that responsibility any more. We are not seen to be judge and, to a certain extent, the person who carries through the result. I do not want to use the word executioner, but the person who basically decides and then has to police it out. There is a separate body now that makes the decision and I think that has been very important. The Commission can reflect not just on the public order aspect but all other aspects of community impact in terms of making a decision and I think that is important, to be able to balance all of those before coming to a final conclusion as to the issue of a determination. It is important to realise that in terms of the actual number of parades we have had in Northern Ireland, if you take over the last three years, in 2001 we had 3,400 of which only 170 determinations were issued, reflecting 2002 we had 3,300 of which only 160 determinations were issued and last year 3,270 parades of which 130 determinations were issued. I think that is a statement in itself that the determinations as such are like a last stage when negotiation has failed. In many instances we are able, and have been able, with the Parades Commission to negotiate a successful agreement where determinations have not been needed. I would suggest that would reflect the reduction in the public order problems that have been there as a result of the Parades Commission being there and in the police policing their decisions.

Q275 Mr Swire: In paragraph 30 of your memorandum it says that you are concerned about Sir George Quigley's proposals in relation to public order—that is corroborated by a number of witnesses—and that you would be reluctant to reclaim any responsibility for either making or enforcing public order decisions. What do you think would be the main consequences if responsibility was restored to PSNI?

Assistant Chief Constable McCausland: At the moment Sir George proposes, if you are specifically referring to the creation of the rights panel, in our opinion dividing out the application of Article 11 of the Human Rights Act in so much as under Article 11(1), the rights panel would make a decision based on that but ignore Article 11(2) in terms of the aspects of public order. We feel that it is very important that everything is taken into account. To specifically come to your point about how would it place us in difficulty, again we would be coming back to the point which I made earlier that not only would we be deciding in relation to the policing of the parade but we would be deciding after the rights panel had made its decision based on public order and the rights panel would not have made that decision with that information. We feel it contradicts the current position and restores us back to where we were in 1998 when the police, in effect, made the primary decision.

Q276 Mr Swire: I would like to turn now, if I may, to the marching season. There have been various reports from the Chief Constable and others that this year's marching season may not be as quiet as last year. Can you explain or give the Committee some indication of the sort of signals that you have picked up which suggest that this might be the case. If this is the case, what steps are you taking to deal with this possibility?

Assistant Chief Constable McCausland: I think the present political vacuum, which unfortunately we are experiencing, creates a potential and opportunity for those factions in the community wanting to disrupt it. However, we have no indication that the parades season will be any more contentious than the previous year, bearing in mind that this vacuum does exist. There is an unease within the community fostered by this vacuum and it is this which provides an opportunity for disorder to occur if people want disorder to occur. I can say categorically—and I have said it here and I have said it, also, to the policing board and the Chief Constable has reiterated this—at present we have no specific information or consultation that would say there is a threat of disorder during the forthcoming marching season. However, as you would appreciate, we continue to plan and prepare for whatever consequences may come about. Again, I would emphasise that the vacuum which is there creates the potential that if people wish to fill that vacuum with public disorder they can but we are working extensively with various aspects of the community to ensure that as successful a marching season as there was last year takes place this year.

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Q277 Mark Tami: In your evidence you talk about the cost of policing the parades and you describe those costs as massive. Could you quantify what massive means?

Assistant Chief Constable McCausland: Yes, Chairman. I have figures before me which I can put in writing to the Committee if you so wish but I will read them out in general now. We are looking at the marching seasons for 2001–02, 2002–03 and 2003–04. The headline figures would be, for 2001–02, around 22.5 million, for 2002–03 it would be 28.3 million—I would draw some reluctance in quoting that figure because there are other aspects built into that in relation to public order which occurred around the Holy Cross dispute—and then 2003–04 it dropped to just over 18 million. The headline figures I have given to you, I am more than happy to put in writing the specific public order figures so that Members of the Committee can peruse them at their leisure.

Q278 Mark Tami: You talk also about the possibility of cost recovery. Could you perhaps elaborate on how you might go about that or what method may be used?

Assistant Chief Constable McCausland: We would be very keen potentially to explore the issue of cost recovery but we feel the cost of policing parades could be reduced significantly by the presence of more trained marshals without even going into the issue of cost recovery. This may well justify making the provision of trained marshals, we feel, a condition of parade applications and would allow, also, parade organisations to be aware and organisers to be aware of the issue of health and safety requirements that could be included in relation to the training of marshals. As I emphasised before, a person organising a parade must be conscious of the responsibilities of bringing large numbers of people together. The numbers of marshals then required, therefore, would be proportionate to the size of each parade. In effect I think one of the best ways that we could suggest to reduce the necessary overheads in terms of policing would be potentially introducing trained marshals and making it part of the requirement to have said when you are organising a parade.

Q279 Mark Tami: That is obviously reducing cost but it is not recovery cost. Do you have any proposals in actually recovering the cost rather than just reducing the cost?

Assistant Chief Constable McCausland: I would relate potentially the effect of trained marshals in Northern Ireland in relation to the policing of football. A few years ago there was a heavy commitment and an extremely large cost to the police in policing football matches across Northern Ireland. With the introduction of trained marshals we have virtually been removed from that role which has led to a significant saving from that. However, if we use the football example, and you look at the rest of the country, there has been use of cost analysis and being able to go to various football

organisations and have a proportion of it paid back. That issue could be explored with organisers but I think the balance in Northern Ireland, a slightly different balance in relation to parades, has to be realised, that there is a public order policing element which as police officers we have to judge. What I would not want to be getting into would be negotiating with parade organisers as to how many police officers we would provide against such a cost because there is the public order and the public responsibility aspect.

Q280 Mark Tami: I think in football matches you also just charge the home team, do you not? There could be some arguments about exactly who that may or may not be. With those proposals, particularly on marshalling, have you spoken to the Northern Ireland Office about that and, if so, what has been their response to your proposals?

Assistant Chief Constable McCausland: I think in terms of the actual aspect of trained marshals, we have put into our submission the need for trained marshals. We have emphasised, also, the issue of trained marshals, I think it is reflected in the codes of practice that are being issued to organisers, the issue of trained marshals. It is an aspect that really in terms of a developing approach we have pushed very strongly to the Northern Ireland Office, that we would be keen to explore this and emphasise it, and it is not just in this area of parades, it has been used in a number of other areas very successfully.

Q281 Mr Clarke: Conduct of parades obviously varies. In evidence that has been presented to us one of the criticisms is of bands sometimes that attach themselves to parades or were not expected or seem unable or unwilling to listen to the conditions that have been set down on a parade. Do you share the concerns which have been raised to us about the conduct of individual bands within parades?

Assistant Chief Constable McCausland: Yes, Chairman. In the vast majority of cases the issue of bad behaviour is associated in terms of parading around the control of bands and their followers. These bodies organising parades are generally very good at controlling their members and dealing with any misconduct, that is the actual parade organisers themselves and the bodies parading. Bands which have behaved particularly badly and come to the notice of the police and the Parades Commission in some instances have been disbanded, although the problem is individual members are then free to join other bands. Identifying an officer of a band has proved particularly difficult and as a consequence has led to difficulties when trying to identify people for prosecutions. Operationally it is extremely difficult for police to take immediate action, as I hope the Committee would appreciate, during the progress of a parade against identified bad behaviour, in particular the bands. Our tactic has been to gather the evidence and to pursue alleged offenders after events have passed. It is during these subsequent inquiries that identifying specific individuals who have responsibility for the bands

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has proved difficult, and that is the point I made earlier. We would welcome a registration scheme for band members. It would need to be set in legislation and could be linked to the proposals Sir George made in relation to the compliance branch. It would deal with breaches of the codes of conduct and have a system of fining or gathering other penalties for certain breaches. The marching orders also need to be more careful about the bands they employ to accompany them on their parades and when a person signs their name as parade organiser they must be aware of the responsibility they are undertaking. In some instances, especially in band parades, for example, the most junior member of the band is given the responsibility of completing the application form and submitting it to the police. This junior member may not be, in effect, the real organiser but would be the person subject to any subsequent investigation, and that is why we would be keen on some form of registration scheme for the bands to both help police the parade but also help the organisers in deciding which bands they would select to parade with them.

Q282 Chairman: You go along entirely with Quigley recommendation?

Assistant Chief Constable McCausland: In relation to that, when we talk about a registration scheme, the band, for example, would be registered under its name and title, we would clearly know who the person in charge is and the band leader must be identified. We would be saying that the band leader is the person who would be held responsible for the behaviour of the band or for identifying others if required. The band leader must keep a register of the individuals who are members of the band and this register must be kept up to date and could be examined internally by the compliance branch of the Commission. We feel a system of penalty points or fines could be imposed by the compliance branch for breaches of the code of conduct and that would help organisers when deciding which band they wanted to select.

Q283 Mr Clarke: Just to be absolutely clear, we have just been discussing penalty points and fines. Are you supporting a scheme whereby if a registered band continued to cause disruption that registration would be removed?

Assistant Chief Constable McCausland: Yes, Chairman.

Q284 Chairman: All of this requires more legislation, does it not?

Assistant Chief Constable McCausland: Regrettably so, Chairman, yes.

Chairman: Has any other Member got any supplementary questions?

Q285 Mr Beggs: Would you agree that those bands that cause offence in one way or another are very much a small minority, probably less than 5%, and that the real difficulty arises when organisers of parades decide to exclude a particular band because it had brought into disrepute the organisation that had previously invited it to participate, that it is too easy for a band to drop its name and for the individuals previously associated with it to reform and resume under another name and that is the issue that has got to be addressed?

Assistant Chief Constable McCausland: We would totally agree with that. As I said earlier, it is far too easy. Mr Beggs is right, band members can move between bands very simply. The bands can change their name and there is difficulty in relation to tracing a band that causes a problem. What we can have is a band which was a problem band at one parade in effect reforming under a different name and reappearing, and it can do this, and the individuals in effect are very difficult to trace. That is why we propose a registration scheme.

Q286 Chairman: Thank you very much indeed, Mr McCausland. You may have had a brief appearance in front of us but it has been very useful and we have got a lot on the record that we needed to. We are very grateful to you for coming.

Assistant Chief Constable McCausland: Thank you, Chairman.

Witnesses: **Mr Ian Pearson**, a Member of the House, Minister of State, **Mr David Watkins**, Senior Director, Policing and Security, and **Mr Mark McGuckin**, Head of Security Policy and Operations Division, Northern Ireland Office, examined.

Q287 Chairman: Good afternoon, Minister, gentlemen. Thank you very much for coming again in a different hat from last time, I think, to help us with our inquiry into parades.

Mr Pearson: That is right, yes.

Q288 Chairman: We have had some mixed views in the evidence that we have taken, which you have no doubt seen. Some think that the Commission should be wound up and we should go for the Quigley proposals; some think the Quigley proposals would be less than helpful; others just want the Commission overhauled; others think they need

more powers. We have had a very, very wide range of views. I wonder if you could help us with what the Government's view is, or have you not yet reached one?

Mr Pearson: Good afternoon. Can I begin by introducing my colleagues, who I am sure are quite familiar to you. On my right is David Watkins, who is the Director of Policing and Security, and on my left is Mark McGuckin, who is the Head of Security Policy and Operations Division. As you will be aware, I took over ministerial responsibility for security matters, which includes the Parades Commission, shortly before Easter. Let me say in direct response to your question that the

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Government currently does not have a settled view as far as Quigley and implementation of the Quigley proposals is concerned. I think it is fair to say that there has been a diverse range of views right across the community as to the merits of the Quigley recommendations. Certainly I would be very interested to hear of the Select Committee's deliberations and its report into Quigley. My intention would be to look at the situation following this year's marching season and then to come forward with proposals for consultation in the autumn.

Q289 Chairman: Some people have said to us that last year's "good" marching season was exceptional and is unlikely to be repeated this year. Has that been reported to you. Have you taken a view about that? Is there anything you feel you need to do in advance of it to try to head off any trouble there might be?

Mr Pearson: Last year was the quietest marching season for something like six years. I understand that in some quarters there are suggestions that it might not be so quiet this year, but there is nothing in the intelligence to suggest any malevolent intent. My understanding is that DCU commanders are not picking up any indications that things are going to be bad. As is the case with these things, it is always difficult to separate comments made by those who simply wonder whether this year could be as quiet as last year or those who might be making some sort of implicit threat. Certainly we are optimistic that it will be as relatively quiet as it was last year but we are not letting our guard down and certainly want to assure the Committee that security forces will have the necessary resources and will have done all the planning and training to meet any public order challenge should it come, and of course we all hope that it will not.

Q290 Mr Pound: Good afternoon, Minister. You said that you were going to wait and see what happens after 12 July. Do you have any date or possible indication as to when a decision might be taken?

Mr Pearson: As I said, I think we would want to be coming up with proposals in the autumn. I am happy to discuss the merits of Quigley. He does provide a challenge. There are a number of radical proposals there and we would certainly want to hear what the Select Committee has to say. We have found it very helpful to hear from some of the organisations that have been submitting evidence to you because, to my mind, there had not been a clear indication of the views of the Orange Order until very, very recently indeed.

Q291 Mr Pound: What rang alarm bells with me, and I am sure it is completely unjust and totally unfair of me to mention it, was when you start talking about radical proposals on the one hand and talking about extending consultation on the other, I wonder whether there might be a linkage. Quigley has said he had no problem in contacting the key stakeholders, there has been a fairly extensive area of

consultation. Do you anticipate another round of consultation post this marching season or is this a different area of consultation? To be frank, it seems to me that we have been almost consulted out Quigley, there has been no end to the people who have been consulted.

Mr Pearson: Certainly I take the point about consultation. A lot of people in Northern Ireland feel that if there is one thing they are not short of, it is consultation.

Q292 Mr Pound: Absolutely.

Mr Pearson: There are certain rules which we need to follow obviously, however. If the Government is going to come up with proposals for reform I think it is important that we consult on those proposals. It would be a normal and established part of the process here in Northern Ireland that we did just that. Certainly my intention would be to come up with a set of proposals in the autumn which we would then consult on.

Q293 Mr Pound: I am genuinely not trying to hold you to a date because I know I would not get away with it, but are you actually talking about a new consultation with new consultees or new stakeholders, or repeat consultation with the existing body of consultees?

Mr Pearson: Let me try and be as clear as possible on this. What I am saying is that if there is going to be change then we need to come up with proposals, and those proposals will have to be consulted on, particularly if they are going to require any form of legislative change, which some of the Quigley proposals clearly do. As a result of that we would follow the normal process of consulting with a wide range of organisations and individuals. Clearly the major people who have an interest in this would all have to be consulted as part of that process. The normal way these things would happen is we would publish a document which would be sent to all the relevant organisations and generally there would be a three month consultation period on the proposals before taking firm steps thereafter.

Q294 Mr Pound: I would say you have form in this Committee as being an excellent adherer to timetables, and you have been publicly and privately praised for that, which is why to hear you say that is reassuring. Can I ask one final very brief question. Has there been a meeting now between the Northern Ireland Office and the Commission to discuss potential areas of improvement?

Mr Pearson: Can I ask David to answer that.

Mr Watkins: There is continuing dialogue between officials and the officials of the Commission and if the Commission want to raise issues of that or any other kind with us they can in that environment. Also, we did have a meeting with them in January or February where we discussed the working of the Commission but in very broad terms. We tend to allow them to make the running with us, as it were, because there is a fine point between talking about

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generalities and then getting into individual issues where we do not want in any way to be seen to compromise their independence.

Q295 Mr Pound: So there have been a series of meetings but there has not been a specific improvements headed meeting, has there?

Mr Watkins: Unless my memory serves me wrongly that is so.

Chairman: I think the point of the question is—

Mr Pound: —should there be?

Q296 Chairman: —the Parades Commission told us that under the 1998 Act they are obliged to liaise with you about areas of improvements but they tell us they have not yet done so because they are being subjected to all these reviews. Is that a misunderstanding as to what a meeting is or what liaison is or talking about improvements? Do you agree with that statement of theirs that while they are obliged to under the Act they have not yet done so?

Mr Pearson: If that is the Parade Commission's view then I am sure it is correct.

Q297 Chairman: I am not trying to put you on the spot because you are new but Mr Watkins was saying "Yes, there have been lots of meetings". What is the difference between you being available to them and them carrying out their obligations under the 1998 Act to liaise with you?

Mr Watkins: None save that the obligation is on them to raise matters with us. In response to Mr Pound, we have not had a meeting billed an *Improvements Monitoring Meeting* or anything of that kind. What we have is sufficient interaction with them on a working level and from time to time with the Chairman and the secretary at which they may, if they wish, raise matters of procedure. They have not formally done so to my knowledge in recent months at any rate.

Mr McGuckin: If I may just add to that. An example of ongoing work along with the Commission where changes do occur was a review that we did with them collectively along with the police in relation to the 11/1 form which is used as part of the procedures. That form was amended and updated. I think that illustrates the value of the continuing engagement between the Department and the Commission.

Q298 Mr Beggs: Sir George Quigley recommends that express reference be made to Article 11 of the European Convention on Human Rights in the Public Processions (Northern Ireland) Act 1998. Is there a need for the 1998 Act to include reference to Article 11 when the Parades Commission, as a public authority, is already subject to the Human Rights Act 1998 and to the European Convention on Human Rights? Or, if there is not a need, is it desirable?

Mr Pearson: My understanding of the situation is that everything is subject to conformation with the Human Rights Act. The Parades Commission themselves pay particular close attention to Article 11 of the Act. I am aware, certainly, that other organisations have raised legitimate concerns as to

whether other Convention provisions, in particular Article 8, in respect to privacy, should be given prominence as well. Certainly at the moment the Parades Commission makes decisions in the round, it does not just look at Article 11, it looks at other factors as well when coming to a judgment. That was one of the things that clearly Quigley took issue with and we will have to consider as part of our response in the autumn.

Q299 Mr Beggs: Have you considered whether the 1998 Act should also refer to other articles of the Convention?

Mr Pearson: What I can say on this is that we are still in a process of considering our response to Quigley overall so we are not in a situation where we have got firm proposals that, as I said earlier, we will consult on. We do hope to be in a situation in the autumn when we have firm proposals and that would consider whether it would be appropriate to amend legislation at that point in time.

Q300 Mr Beggs: The Human Rights Commission suggested that if further provisions were to be added to Article 11 these should also focus on other issues, including an obligation to tolerate the expression of opposing views and cultures. Do you think this would be a useful addition?

Mr Pearson: I think that is what happens at the moment when you look at the way the Parades Commission make their decisions. Article 11 itself is not just to be read one way, it is about the right to protest but there is also a right to march as well. I think both of those are covered as part of Article 11 and as part of the processes by which the Parades Commission currently judge whether a parade should go ahead or whether it should have restrictions placed upon it.

Q301 Mr Beggs: I think the Human Rights Commission has argued that if further provisions are to be added to those in Article 11 they should be more directly focused on two issues, namely an obligation to tolerate the expression of opposing views and cultures and, secondly, an obligation to refrain from any form of provocation or harassment. Would that strengthen legislation?

Mr Pearson: I am aware, certainly, that those are their views. I think there is a discussion that needs to be had on the whole language of rights and whether we should be moving to a system which is based entirely on rights and, if so, which rights or whether the way that we really resolve the situation is moving beyond rights. Certainly I think there are other factors which need to be considered other than just a legalistic interpretation of whether somebody has a right to do something or not.

Mr Beggs: I welcome the Minister's response. I too would like to see more emphasis on responsibility at least equally with that of rights.

Chairman: Noted.

Q302 Mr Bailey: Can we move on to the issue of public order. We have had a number of concerns expressed in relation to Quigley's recommendations

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to give the police power to implement decisions on public order. What assessment has the Government made of this recommendation?

Mr Pearson: I must admit I am very wary of this recommendation. Even if you accept Quigley's argument that a rights panel should not allow public order issues to form part of their consideration, I think obliging the police to make the decision would not be appropriate. In a matter as contentious as parades, there might well be a problem with a single body, such as the Police Service Northern Ireland, having responsibility for making a decision and then having to enforce it. That was very much the view of the North report, which is one of the reasons why we had this separation with the establishment of the Parades Commission and the police having a responsibility for implementing their decisions but not taking the decisions themselves. Certainly I am aware that there have been some very strong reservations expressed by a range of organisations about this particular recommendation in the Quigley report and, as I say, I am certainly wary of it myself.

Q303 Mr Bailey: A third option, which does not appear to have been considered by Quigley, is whether to give the power to the Secretary of State. Have you considered that?

Mr Pearson: With a caveat of saying that we do not have a settled policy at the moment and will be responding with proposals in the autumn, let me just give you some observations. My view would be that by far the best way to tackle the issue of parades is to have local solutions to the problem and that should be the objective. I think trying to do things at a Secretary of State level would create problems in its own right. I do not believe that the Secretary of State should be routinely involved in making decisions on parades. I think that is correctly a matter for a separate body, currently the Parades Commission. Every indication from what I have seen is that over the last number of years they have been doing a very good job. I think those factors need to be borne in mind when we are looking at the Quigley report recommendations.

Q304 Mr Bailey: Thank you. That seems to be a fairly definitive approach. Can I just follow on from that. Earlier you made the comment in response to the conjecture that this year's marching season, the next marching season, could be more problematic by saying that you did not think it would. What steps have been taken by the Commission to, shall we say, pre-empt any problems in the next marching season?

Mr Pearson: Let me be clear in what I said. I said that we do not have any intelligence which indicates that this year's marching season is likely to be more difficult than last. Obviously you need to ask the Parades Commission themselves in terms of what steps they are taking. Clearly their authorised officers are involved in dialogue on a regular basis in areas where they anticipate that there are likely to be potential problems in the coming months, so they

have in place the established body of work to try to ensure that they take early action where there are likely to be potential difficulties.

Q305 Mr Luke: Minister, transparency has been an issue which has been referred to quite often in this inquiry. Indeed, in the Committee's previous report on parades in the 2000–01 session, it was recommended that "the Government and the Commission consider urgently whether the Commission's procedures need to be improved by greater transparency" especially before the determination stage and, if that was necessary, "to put the necessary steps in hand" to improve this. Has there been any detailed consideration of this on the part of the Department and the Parades Commission?

Mr Pearson: My understanding is that since the Select Committee's report there have been some changes and that the Parades Commission now produces more information than it did previously concerning its decisions. I accept and understand the frustration of some groups, particularly parade organisers, on the issue of transparency. This is a difficult issue because on the one hand we need to maintain a degree of confidentiality because of the likelihood of intimidation but in itself we would like to see decisions being transparent, that is commonly accepted as a good thing to do. The issue of whether we have got the balance right, I think it is something that we need to keep looking at and that is something that will be part of our considerations that we will be wanting to make over the coming months.

Q306 Mr Luke: The Commission in its evidence also indicated that they see the benefit of a compliance and post mortem department for the marching season and also, where necessary, for determination in future seasons that the band could be allowed to be given some idea of what objections had been placed before the Commission. Taking the steps that obviously confidentiality was retained, do you see the benefit of this?

Mr Pearson: Quite simply, yes.

Q307 Mr Tynan: The Parades Commission have argued that existing arrangements for mediation and for determination work very well, but some of the witnesses that we have spoken to say there should be a greater focus on mediation. Have you considered whether the Commission's powers in relation to mediation should be enhanced or not?

Mr McGuckin: First of all, let me say that the Quigley report proposes, as you know, a parades facilitation agency which will be designed to build mutual trust and confidence by promoting mediation. That is obviously something that we would need to consider and it is very much an interesting proposal. I am aware that currently in the way that it operates, the Parades Commission's authorised officers do get involved in some mediation but they are not principally mediators themselves. I do think it is a real issue about whether more local mediation would be useful. That is something that we would be very pleased to talk to

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the Parades Commission about, particularly if they have any proposals that they want to suggest to Government in that regard. If I could just say something about the level of mediation. I think maybe a principle of localism is important here. By far the best way of tackling the problems that inevitably do arise during the marching season is if things are done locally. If they get elevated to a higher level and we bring in some well respected person from wherever, I think there is more likelihood that the parties are less prepared to compromise and you do not get the outcome that everybody would want to see. My instinct here would be to ensure that things are done at as local a level as possible as often as possible.

Q308 Mr Tynan: The point is at this point you have not made an assessment of whether we should move to mediation on the basis of splitting it from the determination, you are currently looking at the situation but you have not come to a firm conclusion?

Mr Pearson: I think it is fair to say we have not come to a firm conclusion on the Quigley proposals for a parades facilitation agency and a separate rights panel. Given the relatively peaceful marching season we had last year and given the track record of the Parades Commission over recent years, we need to be careful that we do not suddenly drop a system that by and large has worked reasonably well in favour of something that is untried and untested. We need, I think, after this year's marching season, to sit down and look very closely again at the Quigley recommendations and I am sure your report and your consideration of the Quigley proposals will be very useful when we undertake that exercise.

Q309 Mr Swire: It seems that the authorised officers have a critical role to play in the parades and a number of our witnesses have suggested that the standard of all of them, of course, varies and there is a need for them to be better resourced. Sir Anthony Holland, when we took evidence, referring to the Parades Commission said we still have ideas as to how we want to develop that. What are your ideas on this?

Mr Pearson: As somebody who took over responsibility for this just before Easter certainly I would want to listen to those who are directly involved and have expertise in this matter. I am very well aware that the practice in the whole area of authorised officers is very much still evolving. Certainly I would like to pay tribute to the work of the authorised officers. I know the Commission sets great store by the work that they do and, indeed, they say that they are absolutely fundamental to the success of the Parades Commission; I believe that to be the case. So what I am really saying in response is I would be very interested to hear any firm proposals that Sir Anthony Holland wants to put to me about how authorised officers should work in the future and, indeed, any proposals which will be put forward in due course which deal with the issue of mediation and increasing the availability of mediation in disputes.

Q310 Mr Clarke: Minister, on the subject of engagement, witnesses have had differing views as to how useful engagement is. Some say that it is simply going through the motions, some have said that it is a box-ticking exercise and that you have to be seen to be going through the engagement and in doing so there is no real intent. What would your view be on engagement and how successful it has been?

Mr Pearson: I believe strongly that engagement is a good thing. It is an important and useful way in which you can get cross community consensus and achieve, I think, better decisions. Certainly it would be far better if the Loyal Orders were to engage with the regulatory machinery. I know that the Parades Commission sees engagement with the Orange Order as one of its most pressing issues and certainly it would be far better if the Orange Order did engage directly with the Parades Commission. It is good to talk and I think the more engagement that you do have, the better prospect you have of being able to have less potential difficulties when it comes to parades.

Q311 Mr Clarke: Certainly the Orange Order, or one of those groups, did share with us their concerns over the engagement process, not just in terms of whether or not it was a box-ticking exercise but also they were concerned that in arriving at a decision there was not enough transparency of the evidence given to local community engagement as to what was said and how much that weighted their decision. Would you agree with their view?

Mr Pearson: I do not think I would agree particularly with their view in the sense that it is very difficult not to participate and then say "Well, okay, we are not participating because you will not take our views fully into account". I think the important thing is to participate so your views can be taken into account and that is really what I would like to see and what I believe the Parades Commission would like to see. Clearly when it comes to producing decisions, as we discussed previously, there might be more that can be done in terms of making sure that those decisions are as transparent as possible but within the bounds of needing to ensure proper confidentiality where that is needed and, indeed, requested.

Q312 Mr Clarke: Whilst accepting what you said earlier about the desirability of the Orange Order engaging with the Parades Commission, would you accept that there is a level of confidence which needs to be raised with the Unionist community in general in respect of their perception of engagement and their willingness to accept the current system as being transparent?

Mr Pearson: I agree there must be a problem with the Orange Order's perception of the Parades Commission because they feel as if there is a problem there and we obviously need to address it if that is the way they feel. I still do have to say that the best way of solving disputed parades is through local accommodation and that means engagement. I would like to think that the Orange Order, when they continue with their reflections on this, will see

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the benefits of engagement and that will be reflected in the decisions which are taken by the Parades Commission. That will be a matter for them ultimately to decide whether they want to co-operate or not.

Q313 Reverend Smyth: Apologies for being late. Has the Government made any assessment of the practical implications of extending the notification period?

Mr Pearson: Sorry, extending the notification period?

Q314 Reverend Smyth: Correct.

Mr Pearson: As I explained at the outset, the Government does not have a settled view on the Quigley report and its recommendations. We do plan to consider it and to develop proposals and consult on them in the autumn. Certainly I am aware that there is quite a lot of opposition from the Orange Order and, indeed, from other parading organisations to Quigley's recommendations of notification by October of the previous year. It is something that we will need to consider when we come up with firm proposals. We need to be clear what benefits there are, if any, to be derived from notifying something that far in advance. Quigley suggests that it gives far more time for effective mediation. Whether it does need to be that sufficiently far in advance I think is a matter of logistic debate.

Q315 Chairman: I do not think Rev Smith was asking your opinion but asking if there are practical consequences of that position, which I would hope that at least officials have looked at because there is no use agreeing or disagreeing with something without having gone into what the ramifications are. There are two points of view that have been put to us. One is that it would give the Commission more time to take a measured view, because so many of them have to be taken at the last minute because of the bulge of marches in July, but there are serious practical implications. Has the Office not been looking at them?

Mr Pearson: Certainly officials have been looking at the practical implications of moving to Quigley's proposals with regard to this and, indeed, the other recommendations in the report.

Q316 Chairman: It would be very helpful to hear what the practical considerations are. Perhaps one of your officials could just fill us in.

Mr Pearson: Let me say something to start with, Chairman. Most parades are now long established in the calendar, so it is not as if we are starting from a blank sheet of paper and we are going to see a lot of new parades that have never happened before and are suddenly going to be served notice of a very short period before they actually take place. With all the major contentious parades, generally there is sufficient information already available so that people can actually work on the ground to find acceptable local solutions. Clearly if you are coming across a new situation and a last minute notification,

that gives practical difficulties and certainly there is a case for looking at this. The parading organisations themselves see 28 days as a long enough period for mediation or anything else to actually take place for agreement. We have to bear in mind as well that the vast majority of parades are not controversial, they are not restricted. Out of the something like 3,300 parades last year, there were only restrictions taking place in 120 cases. You need to bear those factors in mind before moving to a rigid system of substantially lengthy early notification.

Q317 Chairman: That is all understood, but at the same time what we are trying to get the feel of is Sir George Quigley makes a serious suggestion of major changes, it will be longer to mediate, longer to negotiate, but there are practical implications which are quite severe and I would respectfully say if the Office has not been looking at these they have not been doing their job for you. I am not expecting you to know the answer to this because we understand you have only just taken up the reins. Has no work been done on this?

Mr Pearson: I would just reiterate one of the things that I said. My officials have been looking at this area as, indeed, they have been looking at all the other areas of the Quigley recommendations. We are not in a position where we have proposals, as a Government, to change.

Q318 Chairman: I have been very careful not to ask you for proposals or your opinions, but what are the practical implications of a change such as this? What would be the effect? Surely that is something that officials could tell us about, is it not?

Mr Watkins: Chairman, I think the practical implications flow quite directly from the model one envisages. If you choose the Quigley model then, as you said in your introduction to the question, you need to work right back allowing time for the Chief Constable, allowing time for the rights panel, allowing time for the facilitation agency. I think that is the logic of Quigley: if you see a lengthy pre-process then obviously you have to have early notifications. If, on the other hand, for example, and I am merely positing this as an example, you had a similar process to the current one but with some greater emphasis on mediation then you might not need to have six months' advance notice, you might equally argue that there was a case for some increase in the 28 days. The time flows from the model within which you wish to work. There are, indeed, practical implications and cost is one. The longer you have, the more bodies you have, the more expensive the process becomes. It goes to transparency. If you have a quasi-legal tribunal of a transparent kind you need more time for that and that would equally impact on costs. There are two other practical implications. One is that longer time might avoid the accumulation of difficult decisions, or potentially difficult decisions that the Commission has to make around June or July. That is one very clear practical point but another one flows from what the Chairman of the Commission said to you in his evidence, and this is a point which will be uppermost

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in the Chief Constable's mind, I imagine, that circumstances surrounding one particular parade can change in a matter of weeks, if not days, before that parade. We can all imagine what they are. I am sure we can all recall marches where actually it would have been extremely difficult to take an irrevocable decision more than X days before the event. That is a very practical point in terms of a commission of any kind, a body of any kind, making a decision more than X days before the event. There is quite an argument for X not being too high a number. Equally, there are efficiency grounds for making it more than it is at the minute. It flows very directly from the model that ministers choose to adopt.

Q319 Reverend Smyth: May I say that practical consideration was helpful. 28 days was partly introduced at an earlier stage to make sure that the police were not involved in extra overtime because they had more time to actually plan the schedules. Practical consideration should not include, in my

judgment, not only the Parades Commission viewpoint and the establishment viewpoint but even the parade organisations. I am thinking, for example, of the Ulster Bands' submission that parading bands usually go off from October to December and there are no plans until after that, so if you go for a date in October it is out. Secondly, you will be aware of the evidence before us from the Community Relations Council that such a long period might actually preclude the opportunity for people moving in a more satisfactory direction. Those are two practical considerations that I trust the Department will also bear in mind.

Mr Pearson: Yes. I am not sure that was a question. I am happy to take on board those points that were mentioned.

Q320 Chairman: I think it was probably a wish. Minister, thank you very much for coming. Those are all the questions that we have for you. We will reflect on your answers and, as you know, report not too long from now. Thank you very much indeed.

Mr Pearson: Thank you.

Written evidence

APPENDIX 1

Memorandum submitted by Sir George Quigley

1. Since my views are set out fully in the Report published a year ago, it may be that the best way I can assist the Committee is to draw attention to aspects which I believe are particularly important.

MY APPROACH

2. I regarded the promotion of respect for the rights of all as the fundamental issue, since it was asserted to me on all sides that it was rights that were at the heart of disputes. There was also common ground in the concern that the marching issue should be handled in a way that is open, transparent, accountable, free from political interference, demonstrably fair, and recognises the rights of all. This concern gelled with the statement, which I quoted in the Report, of South Africa Supreme Court Justice Albie Sachs that “justice is not only in the end result; it is also in the process”.

3. I took as my compass the following words by the theologian Jürgen Moltmann:

“I am free and feel myself to be truly free when I am respected and recognised by others and when I for my part respect and recognise them. Then the other person is no longer the limitation of my freedom; he is an expression of it”.

THE CONTEXT FOR CONSIDERATION OF THE PARADES ISSUE

4. Chapters 7, 8 and 9 deal respectively with the historical issues; with each side’s contemporary perspectives; and with a vision of a future which can provide a new context for dealing with the parades issue as well as with others where inherited adversarial positions make resolution difficult. I regard these Chapters as critically important for an understanding of the Report.

Historical issues

5. Neither of the great streams of Irish history which emerged over the past 200 years had a vision of an inclusive society. Relations between those streams were characterised, at best, by a state of latent hostility, punctuated by periods of communal disturbance, often when Orange (or more rarely Nationalist) processions provided the casus belli. It is easy to see why many from each tradition view contemporary issues through the prism of their own tradition’s experience of the other.

6. Both traditions need to try harder to see all the historical actors as players caught up in the complicated choreography of tragic conflict. Unless they make a serious attempt to explore together what they have no choice but to regard as a shared heritage, issues such as parades will continue to fester. Orangeism (whilst priding itself on its Britishness) is, as much as Republicanism, a variety of Irishness.

7. When many of those who have no affinity with Orangeism see it in procession, they see history on the march. Therein lies a challenge for Orangeism. Parades disputes will become much easier to resolve if “history on the march” is replaced by an institution which has drawn on its value system to create a contemporary Orangeism. Otherwise it will be difficult to achieve the goal of parading as a civic endeavour which enjoys a degree of consensus with those affected by it.

Contemporary perspectives

8. On the Unionist/Protestant side there is a new feeling of powerlessness. The quest for ways of exerting influence to replace the loss of dominance is proving elusive. For the other side, the ability to claim space as one’s own and resist unwanted intrusion symbolises a long overdue shift in the balance of power. Each community has to explain itself better to the other and make a better effort to understand the other. Neither can be done in the absence of patient and tolerant interaction.

9. Only thus can we remedy the paucity of social capital which bridges the cleavages and generates broader identities and sympathies. It is not, however, easy to create the social filaments in a society characterised by so much segregation in housing, work, education and sport.

A vision for the future

10. In pursuing the goal of a plural society there is a risk of achieving no more than cultural co-habitation—at best, benign apartheid—without the interaction or exchange (the inter-culturalisation) which might make difference fruitful. We are unlikely to get far on the issue of contentious parades (or other manifestations of a badly fractured society) without a vision of an inclusive, open, tolerant, compassionate society whose members have the self-confidence to embrace diversity and thrive on difference.

THE IMPLICATIONS

11. Deals may be brokered season by season on contentious parades in an effort to avoid violence at the flashpoints but the fault lines in our society which such incidents exemplify will be only half-buried. Apprehension that the next season will revert to type will remain. Even a sustained period of remission would not necessarily hold out more promise of permanent resolution than have similar periods of respite in the past.

12. Northern Ireland is engaged in a massive change programme, of which the parades project forms an important part. Evidence of progress is eagerly sought and people can contemplate with well-justified satisfaction our relatively peaceful summer. But I believe many of those within local communities who worked hard for that relative calm would be the first to say that the fault lines still remain; the social capital deficit is still acute; the load-bearing beams are still fragile.

13. The scores on two measures in the University of Ulster's well-established Public Attitudes Survey should remove any temptation to complacency. Over time, the proportion of Catholics who agree with the statement "my cultural tradition is always the underdog" has decreased exactly in line with the increase in the proportion of Protestants who agree with the statement. Another measure tests respondents on the statement "I am confident that my own cultural tradition is protected in Northern Ireland these days". Seventy per cent of Catholics agree with that, compared with only a third of Protestants. Those results, demonstrating declining Protestant confidence in their position in the post-Good Friday Agreement era, are as much a matter for concern as they would be if the statistics were reversed.

14. The parades problem will only be permanently resolved by those on opposite sides of the debate embarking on a journey of mutual understanding. The point was neatly captured in the following words of someone from outside the Orange tradition which I quote in the Report:

"Why is it that we feel so much outsiders to each other's culture . . . ? Part of the answer lies in our need for respect and security. Both cultures need to feel respected. All of us need security, for our cultures as well as our lives. When we feel we are not respected, or when we feel threatened, then we need to express our culture all the more strongly. and the other side then feel all the more threatened . . . We need to talk in order to understand what it is that all of us really need".

MAIN RECOMMENDATIONS

15. Against this background, I was led naturally to my two main Recommendations.

16. The first was that the primary focus (with this being made clear on the face of new legislation) should be on the creation of a well-structured, properly resourced and professional function to defuse community tensions, improve relationships and promote local long-term solutions—in other words, to achieve settlement without judgement. The function (to be discharged by a Parades Facilitation Agency set up under statute) could deploy a diverse and flexible panoply of problem-solving techniques, including expert consultancy.

17. My second recommendation was that, where settlement proved impossible and as a last resort a decision had to be taken on a conflict of rights, this should be done by a statutory Rights Panel explicitly within the framework to hand in the European Convention on Human Rights and through a process which conforms with natural justice. The Convention is now incorporated in the domestic law of the United Kingdom and, it has been well said, offers a means of enhancing principled accountability by decision-makers. I drew attention to the judgment in a Privy Council case in 2001 where Lord Steyn said: "The framers of the Convention recognised that it was not only morally right to promote the observance of human rights but that it was also the best way of achieving pluralistic and just societies in which all can peaceably go about their lives".

18. As was recognised during the Parliamentary proceedings on the Public Processions (Northern Ireland) Act 1998, functions of the kind described in paragraphs 16 and 17 cannot be discharged by the same body without compromising the integrity of both functions.

PROMOTING ACCEPTANCE OF A CULTURE OF RIGHTS

19. The European Convention on Human Rights makes clear (Article 11) that the right to freedom of assembly (which includes parades) is a right to freedom of peaceful assembly and that the right may be restricted for the protection of the rights and freedom of others. The key decision for the Rights Panel in respect of a parade which it was anticipated would be peaceful would be whether such restriction needed to be imposed. The Report recommends (as was agreed in evidence from both sides of the parades debate) that all forms of protest should be subject to the same regulatory regime as parades.

20. In the context of an exclusively rights-based regulatory regime, and particularly as the rights culture was better understood and became more deeply embedded, situations which posed a threat to public safety would be less likely and would certainly lack any justification. Where, nonetheless, such a threat existed, it would be for the police to take such action as they deemed appropriate in the public interest, acting (as they are obliged to do) within the framework of the European Convention on Human Rights.

OTHER RECOMMENDATIONS

21. The ten key features of the regulatory regime, which would flow logically from my two main recommendations, are summarised simply in Chapter 22. These envisage:

- much earlier notification of parades in order to allow, well ahead of the marching season, for the more active, in-depth problem-solving process which I recommend. Experience demonstrates the efficacy of a timely process, professionally conducted;
- the possibility of settlements having a currency of up to five years, to encourage a shift from annual crisis management;
- more rigorous codes of conduct for both those parading (including bands) and those protesting;
- strict monitoring of compliance, with implications for any parade or protest planned for the future.

CONCLUSION

22. I urged readers of the Report to look at it as a whole and see whether it provides a fair, transparent framework within which there can be developed a very important dimension of what has to be a genuine rights culture in Northern Ireland. I believe that, in its totality, it does so.

7 October 2003

APPENDIX 2

Supplementary memorandum submitted by Sir George Quigley

REPORT'S PROPOSALS REGARDING POLICING

1. Judging by some media coverage and reported comments, there is considerable misunderstanding about the impact of my proposals for the role of the police.

2. To recap, the Report distinguishes two questions regarding parades. First, can the right to freedom of peaceful assembly be exercised without giving rise to the need for some restriction in order that the rights and freedom of others may be protected? Second, where a right is recognised by the Panel, are there public safety etc considerations which require that the right be restricted?

3. The Report further argues that the examination of each of these two questions calls for a different competency. The first question, which the Report regards as basic, since it deals with potential conflict of rights issues between parties, is a matter for the proposed new Rights Panel. Public safety etc issues are for the police.

4. The North Committee recognised that the police did not have the competence to deal with non-public order issues but then gave the decision-making power not only on these issues but also on public order issues to a single body, the Parades Commission. Public order was cited by the Commission in a recent year as a criterion for its decisions in 89% of cases and poor community relations (often described in decisions as creating the potential for public disorder) in 94% of cases. The question of whether a peaceful parade would adversely affect the rights and freedom of others is rarely directly addressed. It has therefore been easy for those unsympathetic to the Commission to characterise it as a Law and Order Commission, which was precisely what North wanted to avoid.

5. Interestingly, North, followed by the 1998 Act establishing the Commission, left with the police all issues regarding protest meetings (as distinct from protest marches) the nature of which can be a very sensitive aspect of some parading situations.

6. My proposals place the relevant functions in respect of both parades and protests with those competent to deal with them: conflict of rights with the Rights Panel and public safety etc with the police, who would be obliged to see the Panel's decision implemented unless they had to impose a restriction on public safety etc grounds.

7. Before reaching my Recommendation on this division of functions, I set out fully the reasons why I preferred it to the alternative of preserving the current arrangements (with all aspects handled by a single body) and I explained precisely what the import of my Recommendation was.

8. There has, nonetheless, been confusion and misunderstanding, typified by the comment of the Policing Board for Northern Ireland that what I propose would place the decision-making power back with the police. This misses the point and is an inaccurate and misleading characterisation of my Recommendation. The Report makes clear (p 233) that the police would be involved in the implementation, not the making, of the decision and would not therefore have the dual role which was regarded as an unsatisfactory feature of the pre-Parades Commission situation.

9. It has been argued in favour of the status quo that the police must be in a position of neutrality and that the approval of parades cannot be devolved to the police. I support both propositions and my proposal breaches neither.

10. Under present arrangements, the police have a covert input to the information on which the Commission takes its decision. The decision may or may not reflect police advice but the police are obliged to implement the decision unless the Chief Constable has recourse to the Secretary of State under Section 9 of the 1998 Act.

11. Under my proposals, the police, as now, would implement the decision of the decision-making body, which for the future would be the Rights Panel. They would have no input to the Panel because they have no competence on the conflict of rights issues with which the Panel would be exclusively concerned, just as the Panel would have no special competence on public safety etc issues.

12. There should be a presumption that a right recognised by the Panel would be protected. I cite authority for that proposition at pages 225–7 of the Report, which also indicates circumstances in which it might not be possible for the police, on public safety etc grounds, to protect the right, which would then have to be restricted on those grounds by the police.

13. As the Report makes clear, a culture of rights (which embraces the rights both of those who parade and of those who protest) is meaningless unless underpinned by the rule of law and a network of mutual obligation. Our support for the notion of a culture of rights cannot be confined only to those occasions when, in a conflict of rights situation, it delivers what we want. The proposals in the Report, building in as they do a statutory opportunity for objections to be registered and a carefully structured, transparent 2-stage process for dealing with those objections (focusing primarily on obtaining settlement through facilitation), should create a context which progressively nurtures on all sides respect for the culture of rights.

14. As the Chief Constable has said, the PSNI is ideally placed to give an objective risk assessment in regard to parades. If, having made such an assessment, the police concluded that they could not in any particular case protect the decision by the Rights Panel, they would (like any other Police Service throughout the world) impose such restrictions on a parade as they deemed necessary on public safety etc grounds. This would not affect the existence of the right recognised by the Panel but it would curtail its exercise. They can of course do this at present under section 10 of the 1998 Act which confirms the common law powers of a constable to take action to deal with or prevent a breach of the peace.

15. Under my proposals, the police would be publicly accountable. This chimes well with the current emphasis on the need for accountability in the new policing era.

16. Any policy issues regarding the policing of parades (eg relating to priorities, given other pressing demands on the PSNI budget) could be dealt with by the cross-community Policing Board. According to recent media reports, the Board will be reviewing the police's handling of flashpoint parades as part of a general audit of strategy, planning and handling of public events. The Northern Ireland Affairs Select Committee's current inquiry will presumably cover the issue of the overall cost of policing parades. It was clear from what I was told by the police during my Review that in some cases the unit costs (ie total costs in respect of a contentious parade, expressed as cost per person parading) are much higher than would be deduced from the figure of £20,000 cited in the Parades Commission's 5th Annual Report as covering the policing necessary for a parade of 500 in an interface area on a Saturday evening.

17. It has been suggested that my proposals would increase the likelihood that those out to make trouble would try to get at the police and set them up, leading to confrontation. This can happen now when police have to implement an unpopular decision of the Parades Commission. It is difficult to understand why it should be any more likely to happen if the police were implementing a Rights Panel decision into which (unlike Commission decisions) they would have had no input. Logically, the likelihood should be diminished.

18. Under my proposals, the Secretary of State, in circumstances where the police were disposed to see the decision of the Rights Panel implemented, would have a reserve power to re-route a parade where he decided that this was necessary in the interests of national security or public safety or for the prevention of disorder or crime. This residual power should only have to be used in the most exceptional of circumstances.

19. The Report emphasises the vital point that neither the police nor the Secretary of State would be able to legitimise a parade which the Rights Panel had ruled would infringe the rights and freedom of others.

20. Since public order decisions have to be taken close to the event, to continue having conflict of rights and public safety etc issues dealt with by a single body would entail continuing to cram the decision-making process into a short period of time, thereby making it difficult to have the much more carefully structured process, conforming to the canons of natural justice, for which the Report argues. On my proposals, the Rights Panel could make its decision well ahead of the event and, indeed, for a period longer than that marching season, leaving it to the police to take an informed view on the public safety etc situation closer to implementation.

21. We have entered what is intended to be a new era for policing. Unless PSNI carves out a new identity for itself, and is prepared to take the decisions which it properly falls to an accountable police service to take, it will not succeed. It will gain increasing respect, acceptability and community confidence not by evading the difficult decisions but by the professional way it takes them and brings others along with it in taking and implementing them in conformity with human rights standards. The police, like all the other players, have to be compliant with the European Convention on Human Rights.

27 January 2004

APPENDIX 3

Memorandum submitted by The Parades Commission

The Commission notes that while this inquiry is into the Commission and the Public Processions (Northern Ireland) Act 1998, it takes as its starting point the review by Sir George Quigley as published in September 2002. Sir George will have benefited from earlier reviews, including that by the NIAC—as he has indicated in his report. Political processes must ultimately decide on the merits or otherwise of Sir George's report and the Commission would prefer to focus on the operation of the Act at present rather than focus too much on how a different model might speculatively work. The Commission considers that the Act, as it is operated at the moment, is working well. It further considers that the present Commission model could be more effective still given a sustained period of time without any review ongoing.

The Commission co-operated fully with Sir George during his review. He met the entire Commission as a body. He met the Chairman on three separate occasions and also had meetings with each Commissioner individually. He met senior officers of the Secretariat and had two meetings with our authorised officers. Besides these engagements the Commission supported his work with the provision of briefing papers, statistics, publications and other material at his request. From the very outset the Commission both welcomed and supported the review, as clearly the Commission has a special interest (and responsibility) in promoting a resolution of parading disputes and the deeper conflict around parades.

Of course, this shared interest does not mean that the Commission shares Sir George's "vision for the future" in terms of the arrangements that he suggested to better the situation around parades. In the foreword to his report Sir George expresses his confidence that "... given an open and cooperative relationship between those on either side of the parades dispute" and the acceptance of his proposed regulatory process, the situation could be progressively transformed. Sir George goes on to state that his proposals "... are predicated on such a relationship" existing. Sadly, such a relationship patently does not exist. This must have implications for the relevance of implementing his proposals at this time. If there were an open and cooperative relationship between those on either side of the parades dispute, the Commission would be the first body to recognise the redundancy of many of the roles it now performs. Indeed, it is part of the Commission's stated vision to work towards an end where that relationship exists. The Commission continues to strive towards creating the conditions where that can be a reality.

One example of a recent initiative might add substance to this. This year the Commission organised a learning venture involving people close to conflict around parades from both main communities in Belfast. This initiative, which was delivered in South Africa, was extremely productive in terms of outcomes on the street. But just as importantly, it educated a range of individuals who play an important community role about the work of the Commission. These people continue to meet and have proven a valuable resource in themselves, particularly in suggesting ways to promote greater understanding and tolerance amongst those who parade and protest. In doing this, they themselves display remarkable degrees of both qualities. This is but one indication of a growing realisation that the parading dispute will not be advanced by public disorder or by bringing argument down to the level of street confrontation. In recent years the Commission has witnessed what it believes is a general acceptance of its remit as a framework for the resolution of parading disputes.

The Commission does not seek to give a complete recommendation-by-recommendation response to the "Quigley review" in the context of this letter. Rather, the Commission would wish to raise again with the Committee some key issues raised during the earlier review, but about which it has now had the benefit of added experience and, hopefully also some added wisdom. Specifically it would like to make some points

about combining arbitration and mediation; about the role of the authorised officers; about transparency, confidentiality and the principles of natural justice; and about the acceptability of the Parades Commission model in 2003.

The Commission is not convinced that a separation of its current functions is a desirable aim. It is aware that, in other jurisdictions, similar multiple roles are combined without difficulty or clamour for separation. Examples include the Commission for Conciliation Mediation and Arbitration in South Africa and, closer to home, ACAS. Both the Commission and its team of self-employed professional mediators have found the current arrangements most useful in dealing with protagonists. Parade organisers who were slowest to engage with the Commission model and the concept of engagement itself are increasingly aware that they may have more to lose than gain from complete separation of the mediation function from the arbitration function. The existing model provides adequate separation for all practical purposes and there is no good managerial reason for separating them further.

The authorised officers are increasingly recognised and used as an invaluable resource by paraders and protestors in a great many locations throughout Northern Ireland. They maintain an important distance from the decision-making work of the Commission itself and this is understood by all. But they have an enhanced credibility by virtue of the fact that they are contracted to the Parades Commission and because this relationship allows them open access to the Commission and the Secretariat. Fluid communication channels means that they can feed information into and out of the Commission in such a way as to enhance the likelihood of local accommodation or to clarify issues so as to negate the requirement for the Commission to make a determination. This relationship has enabled authorised officers to build much stronger relationships with parade organisers, police, residents representatives, politicians and others than if they were operating totally independently of the Commission. They now have better access than anyone else to all the key players in most parading situations. A great many problems are resolved on the ground as a result of the quiet behind the scenes work of the authorised officers.

Society owes authorised officers a debt for working in difficult and sometimes even dangerous situations. The reality of this struck home all too seriously, even in this relatively quiet year, when in July the Commission and those working for it, again faced death threats. The Commission is committed to further developing and enhancing the sophistication of the authorised officer operation as a most valuable tool in managing parading problems. It has recently introduced new concepts in the promotion of conflict resolution and human rights to authorised officers. The Commission is convinced that through the work of its authorised officers, under the present relationship, there is a real possibility of reducing further the conflict around parades.

A point made during the last inquiry by the NIAC and raised again by Sir George Quigley in his review related to the transparency and openness of the Commission's process and my stated view to the NIAC that this was not wholly compatible with the principles of natural justice. Of course, as the operation of the Public Processions (Northern Ireland) Act 1998 remains unchanged, so too does my view. I still consider that the process is imperfect in a theoretical sense in terms of the rules of natural justice, specifically the principle of *audi alteram partem* (hearing the other side).

Having said that, with four years experience in Northern Ireland, I am increasingly of the view that it is almost impossible to imagine a process that is more compatible with natural justice and also workable in the particular context of parading issues in Northern Ireland. Many people, particularly ordinary people, who bring their concerns about parades or about protests about parades, to the attention of the Commission simply would not do so in a situation where they had the parade organiser or a group of protestors, looking on. The one aspect of the *audi alteram partem* principle that must be left out is the right to examine and cross-examine witnesses in an adversarial way. At this juncture any change in the current approach to deliberations would not only increase the adversarial nature of contact between protagonists as they appear before the Commission, but would also risk increasing the adversarial nature of the conflict more widely.

The Committee will know and, in the light of recent attacks on members of Policing Boards, appreciate that there are real, physical dangers in raising one's head above the parapet on some issues. This is even more likely to be the case where the view seeking expression runs contrary to the views of more extreme elements within one's own community. The further point must be made that many in the parading conflict would not wish to be forced into direct dialogue in this way. Arguably without confidentiality only the most robust or vociferous would be left to provide the Commission with their views. The Commission values having an input from other, sometimes quieter, voices and for that reason would wish to continue to guarantee confidentiality.

Nevertheless the Commission has made efforts to ensure that transparency is promoted and that the principles of natural justice are otherwise followed. The central charge is that the Commission's adherence to confidentiality infringes natural justice. This is not wholly true and the NIAC will be aware of many forms of hearings which must maintain a degree of confidentiality but which are otherwise just and open. In the context of parades, anyone can know the substance of the case "against him or her" so to speak. The Commission tells organisers, for example, the gist of all information and advice that it has received, although at times, understandably keeping the precise details of sources confidential. The organiser is then able to challenge or contradict any of this material and/or provide additional information to the Commission, to inform better its decision-making. The process is wholly compatible with a respect for human rights. Indeed, the single biggest impediment to transparency and the principle of *audi alteram partem* is not the

Commission's process, but the continuing and sustained failure of many parade organisers to engage. There is an opportunity for them to come along to the Commission and to further their right to natural justice through participation—to speak freely and be heard, with all that that entails.

Given the annual nature of most contentious parades, the Commission has written to Grand Lodge with proposals for a further way in which transparency could be improved. It has not had a reply (although it receives other correspondence from Grand Lodge from time to time). In the light of its experience the Commission would seek to develop transparency in relation to a “post mortem” of parades. It would be possible to give feedback to parade organisers after parades, summarising the main issues drawn to the Commission's attention. This would provide an excellent opportunity for parade organisers to address these issues, or challenge allegations, well in advance of the next parading season or event.

At times, of course, there is inevitable dissatisfaction with outcomes at particular locations, and at times, some will be genuinely angry and others will wish to play to the gallery by statement or gesture. However, the change over the life of this Commission has been marked. This year alone stands out as one in which parades throughout Northern Ireland have taken place in one of the most peaceful environments experienced, possibly in the last decade. Communication with the Commission and with others about parades, particularly through the authorised officers conduit, has made an immense difference, particularly in the nipping of new parading problems in the bud.

The Commission is of the opinion that, as the model set up by North is finally gaining acceptance in practice (even though the rhetoric may linger further behind), it is not time to change it for something more revolutionary, especially something premised on conditions which do not as yet exist.

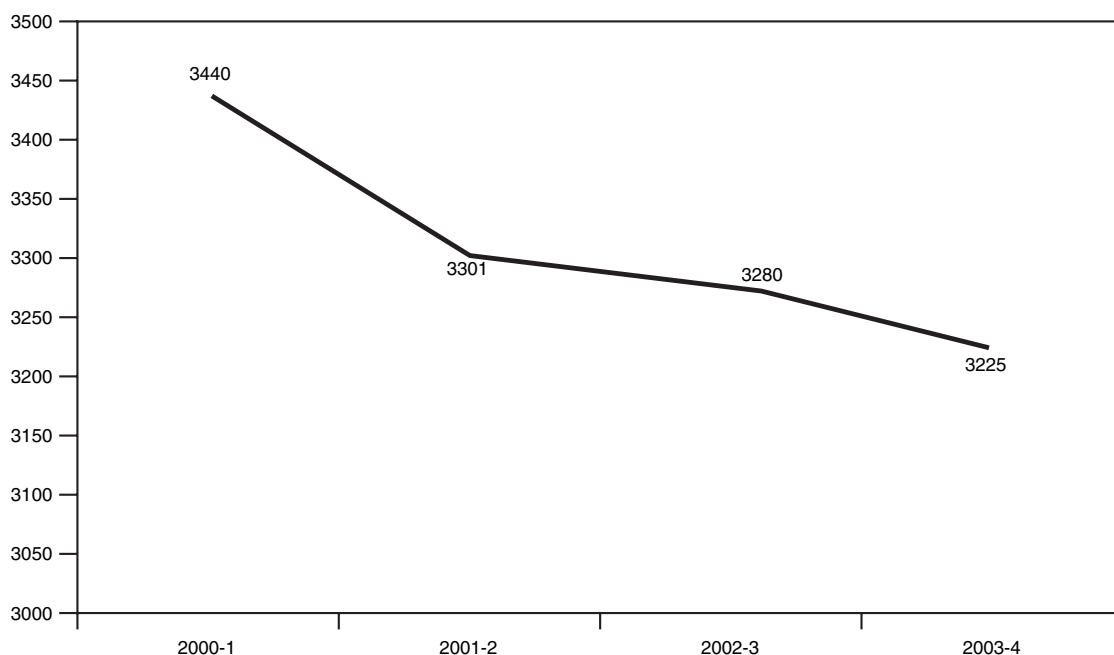
This does not mean the Commission advocates “no change”. The Commission, through its work, is arguably more aware than most of where change can best be made to further the resolution of conflict. Some proposed changes which the Commission favours, such as changes to the 11/1 notification form will require amendments to existing legislation. Others will require new partnerships and new strategic direction in order to channel resources most effectively and efficiently towards the resolution of parading and related problems. Capacity building among authorised officers, involving a partnership with the Centre for Conflict Resolution in Cape Town provides a recent example of this.

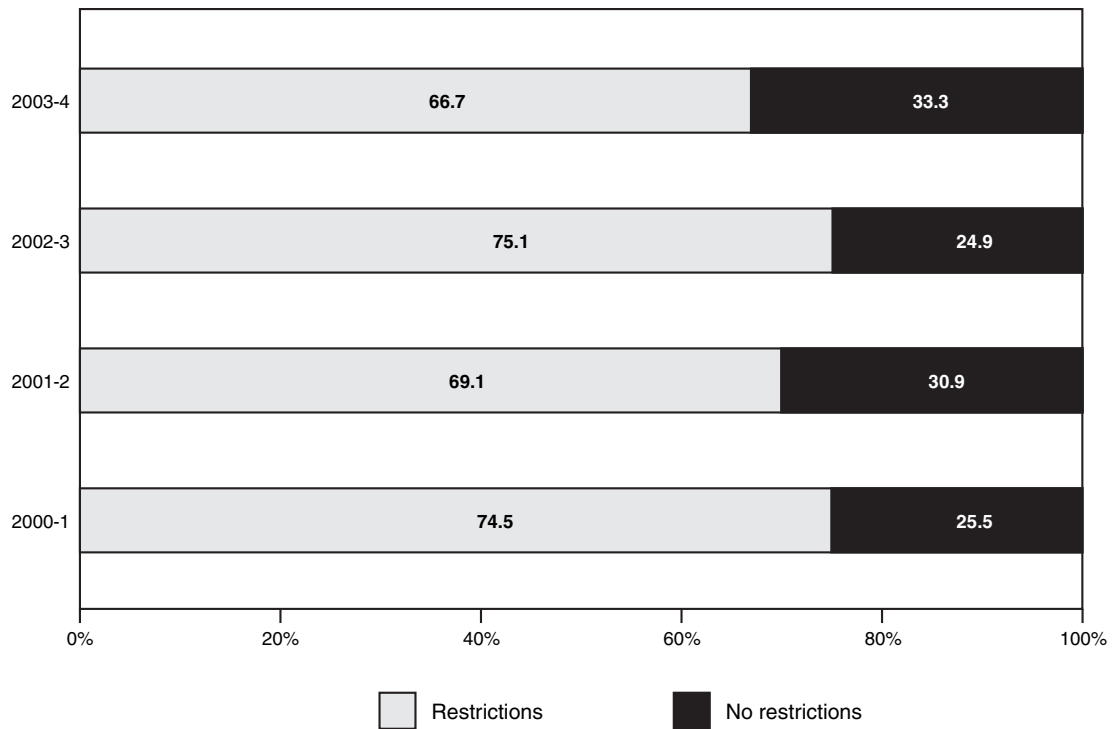
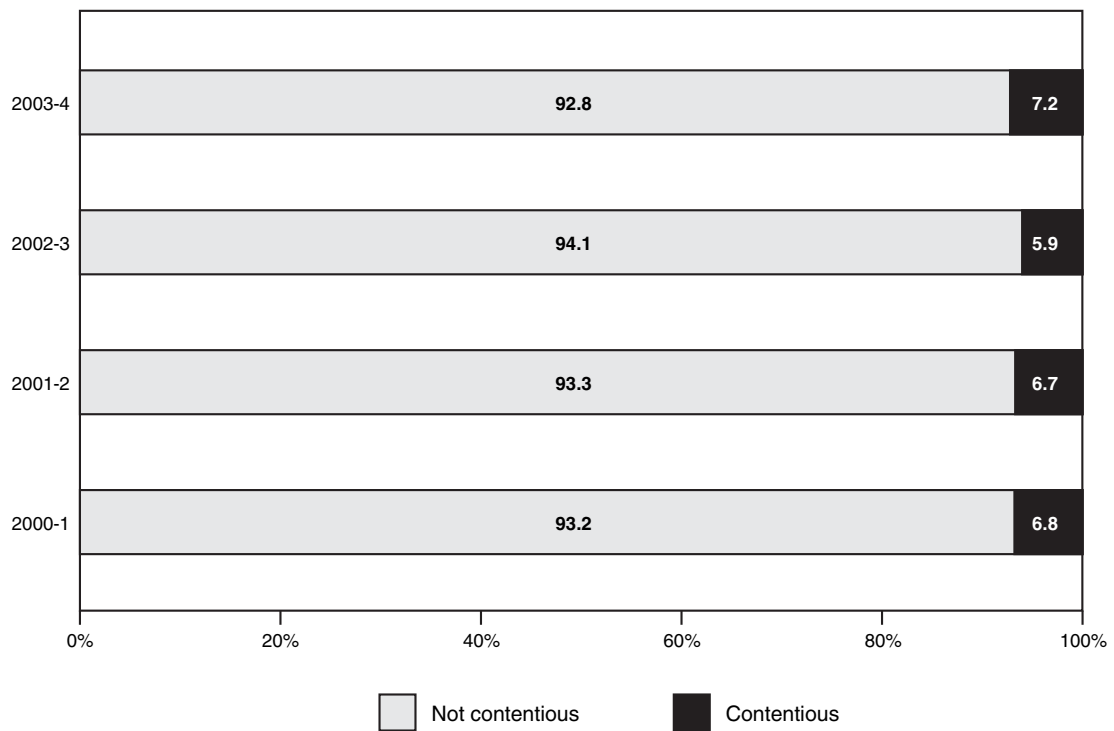
27 October 2003

APPENDIX 4

Supplementary memorandum submitted by the Parades Commission

Parades 2000 - 2004



Contentious Parades 2000 - 2004**Parades 2000 - 2004**

TRANSPARENCY

1. The Commission has often been criticised for its lack of openness and lack of transparency. Arguably these criticisms may once have been more valid than they are now. Certain changes have evolved over time, which makes the Commission's practices particularly open, especially given the sensitive nature of its work.

2. In a number of engagements in the past, the Commission found it necessary to emphasise the confidentiality of the information it received. In doing this the Commission drew attention to Rule 3.3. of its Procedural Rules which set out clearly that the Commission must treat all evidence it receives confidentially and that such evidence and information will be used only by the Commission and its staff. This gave the impression, and wrongly, that the Commission would not communicate any aspects of that information to concerned parties. It seemed as if the Commission had set its face against a fundamental element of a fair trial—the right to know the evidence or charges against one.

3. In fact this was not the case. There are several good reasons to maintain confidentiality. Such a guarantee encourages people to come forward and share their views frankly and honestly. There is a clear security dimension here. One cannot overlook the fact that people, if they are identified or associated with certain views, would feel that their personal safety had been compromised. It is likely that only those offering more extreme views or those in the public view already, would be robust enough to want to be associated personally with their information or evidence. This would be unlikely to promote the language of compromise or tolerance.

4. Sir George Quigley has stated that parties have no opportunity "... to challenge any statement which may be made by the other side". He also has stated that no one tells the Loyal Orders that there has been a breach of a determination. This is inaccurate. The Commission writes to organisers and tells them of any allegations which it has received in respect of their individual parades, regardless of the source of this information. The Commission is careful to point out that these are allegations and that it seeks to be as well informed as possible as to actual events. Therefore, the Commission invites the organiser in each case to respond to quite detailed and specific "charges" made. In addition, there is always the opportunity to come in and discuss the matter further with the Commission or its officers.

5. The Commission accepts that it is important to be open and disclose as much information to protagonists as possible. This acceptance that organisers have a right to know the case being made against them does not always mean that there is a need to attribute remarks to specific individuals, especially where to do so may endanger those individuals or cause them fear and anxiety.

6. The Commission encourages participants in parading disputes to engage directly or even indirectly with one another rather than the Commission acting as a voice between them, relaying its understandings of both. This allows more open communication not filtered by the Commission or anyone else. This will help to ensure greater transparency. It also will help to promote the open relationship Sir George talked about—not to stand in the way of it.

ENGAGEMENT

The Parades Commission is sometimes asked what constitutes "engagement", or "meaningful dialogue" and how the Commission would assess it. The Commission is on record as stating that its preference is for face-to-face dialogue. Members recognise that other forms of dialogue should not be ignored, but should be given whatever recognition they would deserve in specific circumstances.

In its 1999–2000 annual report, the Commission stated "Engagement by either party represents a real attempt to address the legitimate concerns of others, and a preparedness to accommodate those concerns, where it is within their power to do so." In its 2000–01 report, the Commission provided an updated version of what each party could be expected to do, during an engagement, namely:

- enter the process with no predetermined outcomes;
- listen to and try to understand the other's concerns;
- show respect to the other, by taking their concerns seriously;
- be willing to communicate their own legitimate concerns clearly;
- focus on issues that are capable of being addressed by the parties concerned;
- demonstrate a commitment to resolving the problem and addressing legitimate concerns, preferably within a target timetable;
- be represented by people with the authority to speak for the protagonists; and
- demonstrate a willingness to consider some form of third party intervention, such as mediation, if direct dialogue is not possible.

Clearly the above points are designed to demonstrate that meaningful dialogue has to be much more than what the Commission sometimes refers to as a "boxticking exercise". The aim has to be to understand and reassure local people who have concerns about parading.

Form 11/1 (New version)

Notice of Intention to Organise a Public Procession

Section 6 of the Public Processions (Northern Ireland) Act 1998

Organising body

Location of Parade
(ie town)

Date of Parade

Notes for organisers

- This notice must be completed by the organiser of a public procession¹. Your refusal or failure to complete all relevant sections of this notification form may mean that you have not satisfied the statutory requirement for advance notice. The Parades Commission may refuse to accept an incomplete form.

Warning

Any person who organises or takes part in a public procession shall be guilty of an offence if:

- the requirements as to notice have not been satisfied;
- the parade is held on a date, at a time or along a route which differs from those specified in this notice

- You should read the Parades Commission's booklet 'A Code of Conduct', and ensure that marshals are also familiar with it, as **failure to comply with the Code will be taken into account by the Commission in consideration of any future notice**. Copies may be obtained from your local police station or from the Parades Commission (028 9089 5900).
- The parade organiser must ensure that all participants, and in particular the marshals, have been informed before the start of the parade of any conditions imposed by the Parades Commission.
- This notice must be submitted to a member of the police not below the rank of sergeant, at the police station nearest to the proposed starting place of the procession. It must be submitted **not less than 28 days** before the date of the procession or if that is not reasonably practicable, as soon as is reasonably practicable to do so.
- If notification is less than the required 28 days, you must complete the section below.

Reason for delay

- Please complete in CAPITALS and in black ink.
- If there is not enough room in any section, please continue on a separate sheet.

¹ This notice is not required in respect of funeral processions or processions held by the Salvation Army along a route customarily followed by them

Part 1 - Organiser's details

Organising body			
Name of person organising parade			
Home address			
Telephone no.	home	work	mobile

Part 2 - Procession details

General information (If you intend to parade out to a location and then parade back from there, fully or even partly along your outward route, then you must give details of both the outward and return routes and the timings etc. as set out below)

<i>Outward parade</i>	Date:				
	Assembly:	Time	am/pm	Place:	
	Dispersal:	Time	am/pm	Place:	
	Purpose:				
<i>Return parade</i>	Assembly:	Time	am/pm	Place:	
	Dispersal:	Time	am/pm	Place:	
Anticipated number of participants (including band members)				Number of bands	
Will there be a street collection with the procession? (Note: if "Yes", a separate application to the police is required)				Yes	No
Will uniform/regalia be worn?				Yes	No
Will banners/flags be carried?				Yes	No
In this regard, the attention of organisers and marshals is particularly drawn to paragraphs B, F and G of Appendix A to the Code of Conduct					
If the purpose of the procession is to attend a religious service/public meeting, please provide the following details:					
Location of service/meeting					
Starting time	am/pm		Finishing time	am/pm	

Part 2 - Procession details (cont'd)

Proposed route (name all streets in order)

In addition, you may wish to include a map outlining the procession route

Outward journey : starting time am/pm

1		13	
2		14	
3		15	
4		16	
5		17	
6		18	
7		19	
8		20	
9		21	
10		22	
11		23	
12		24	

Return journey : starting time am/pm

1		13	
2		14	
3		15	
4		16	
5		17	
6		18	
7		19	
8		20	
9		21	
10		22	
11		23	
12		24	

Is more than one circuit of the route proposed? Yes No

Part 2 - Procession details (cont'd)

Organiser's control arrangements

The booklet 'A Code of Conduct' has been prepared as a source of advice for those organising parades and marches for any purpose in public places. It is designed to assist organisers by providing both a checklist and reminder of the points they will need to cover and the issues they will need to address in planning, and on the day.

How many marshals will be in attendance? Please give their names (this information must be provided).

1	_____	5	_____	9	_____
2	_____	6	_____	10	_____
3	_____	7	_____	11	_____
4	_____	8	_____	12	_____

Have they had formal training? Yes ☐ No ☐

If "Yes", please give details

What form of identification will be worn by marshals?

Mobile telephone ☐ Radio ☐ Verbal ☐ Other ☐

If "Other" please specify

What method of communication will there be between:

Organisers/marshals and police? Mobile telephone ☐ Radio ☐ Verbal ☐ Other ☐

Organisers/marshals and other emergency services? Mobile telephone ☐ Radio ☐ Verbal ☐ Other ☐

If "Other" please specify

Part 3 - Details of accompanying bands

Only bands listed below will be permitted to take part in this procession. (Please include any name by which the band was known in the last 12 months)

[illegible]

Part 4 - Details of further destinations

(To be completed where it is intended that the procession members/bands will travel collectively to a further destination)

Will the procession be travelling to another town or place?

Yes

☐

No

☐

If "Yes", please give the following details:

Destination

Time of
departure

am/pm

Place of
departure

What method of transport will be used?

Bus

☐

Car

☐

Train

☐

Towns on route to destination:

Intermediate stops:

Time of arrival

am/pm

Arrival point

After arrival, do you intend to parade?

Yes

☐

No

☐

If "Yes", please note that if you are the organiser of a procession at a different location, a separate notice must be handed to the police at that location in respect of each procession.

What is the intended return route?

Final destination

Time of arrival at final destination

am/pm

Declaration and signature of the organiser

I confirm that I have read and understood the booklet 'A Code of Conduct' and that I am aware of my responsibilities as a parade organiser. I confirm that the information I have given is correct to the best of my knowledge.

Signed

Date

Part 5 - For Police use

(To be completed by Police Officer not below rank of sergeant)

Notice handed in by:

Name

Address

Telephone no

Notice received on:

Date

Time

 am/pm

(i) Checklist:

- All sections of form complete? Yes ☐ No ☐
- If "No", I have advised the organiser/person notifying the parade that a form containing inadequate or insufficient details may not satisfy the statutory requirement for advance notice, in which case it will not be accepted by the Parades Commission; and that persons organising or taking part in a parade for which the statutory requirement for notice has not been satisfied may be guilty of an offence.
- I have offered the organiser/person notifying the parade a copy of the Parades Commission's statutory documents: A Code of Conduct; Procedural Rules; and Guidelines.

Name

Rank

Number

Station

Date faxed to Parades Commission

Part 6 - For Parades Commission use

Received and checked by:

(initials)

Date

Data input by:

(initials)

Date

RISK ANALYSIS OF MAIN RECOMMENDATIONS OF QUIGLEY

1. There is a need to place higher on society's agenda a response to the range of broader contextual issues which affect, and are affected by, parading. Risk rating: Medium. There is no doubt that if a creative and thoughtful societal debate on parading could be developed it could contribute to drawing more moderate voices into the parading debate and this can only be helpful. But many of the issues which go to the heart of the parading conflict involve quite sophisticated legal points about human rights in relation to the right of assembly, the right to a parade as an assembly, and the right to a specific route as part of that parade. Raising the profile of parading again could also be a means of raising the temperature surrounding issues about parading which are never far below the surface at the best of times. The Parades Commission has taken a degree of satisfaction with the way in which parading issues have departed the news headlines over the last two years. There is no doubt that this has contributed significantly to the lowering of the levels of contention at many of the most difficult parading locations. It is arguable that raising the profile of the subject among a wider audience plays into the hands of those (in both traditions) who can easily become obsessed with the subject.

2. The search for local accommodation, which is an imperative, should be reinforced through the establishment, within the regulatory machinery and directly managed by it, of a Facilitation function, headed by a Chief Facilitation Officer who would be supported by a local, probably part-time, facilitation network. Risk rating: High. There is no doubt that demand for the kinds of services currently provided by the Authorised Officers will continue to grow as more and more parade organisers begin to engage with the machinery surrounding the regulation of parading. The key to mediated engagement is finding mechanisms that are acceptable to all sides in any particular parading dispute. Given the ease with which protagonists to parading disputes can become offended by those who are involved in the mediation or the promotion of mediation, it is important that a diversity of options remain available for those wishing to find a way forward through mediated dialogue. The Facilitation Function may reduce the flexibility required on this issue, particularly if one protagonist loses confidence in it. If one party does engage with such a body, the opposing party may not, thereby replicating, but in reverse, what is the current position faced by the Commission, given the fact that, at the moment, some in the loyal orders steadfastly refuse to engage with it. In addition, the existence of a specific Agency may act as a magnet for minor complaints, and transform molehills into mountains. The requirement for the Chief Officer to produce a Report to the Panel creates considerable inflexibility and establishes a document about each parading situation that could be the subject of considerable contention. Quite fundamentally, the Report permeates the "non-permeable" wall proposed by Sir George between the Facilitation Agency and the Panel. This is much more than an academic point. It may be better to have no report at all than to have a document that triggers the Panel into action on more occasions than may be wise.

3. It should be made plain on the face of the legislation that the object of the Facilitation function is to build mutual trust and confidence by promoting mediation as the primary mechanism for resolving disputes. Risk rating: Low. It may well be that Sir George considers that the present Commission did not make the objective of mediation sufficiently clear and that if the protagonists begin to discuss the issues, resolution is around the corner. There is no doubt, in the context of Drumcree two years ago, that the Commission wanted to replace the concept of disorder as the best means to achieve a parade and replace it with dialogue. This simple message (suitable for those standing at the back of the Orange Hall) was arguably vital in reducing the contention around the parading dispute in Drumcree and, indeed, elsewhere. As the levels of contention have eased, it has become easier to point in a more sophisticated way to the purpose of dialogue as being the building of mutual trust and confidence, that reduces the human rights impact of parades. Nevertheless, it remains the case that there are those within the loyal orders who do not consider their opponents in the residents' groups to be people with whom mutual trust and confidence can ever be achieved. They would certainly still be slow to negotiate with residents' groups—even if they agreed to communicate with them.

4. The parties would not be precluded from agreeing between themselves alternative arrangements for settling their differences but the Chief Facilitation Officer would have to be satisfied that, whether using his own services or by other means, effective steps were being taken to seek resolution of a dispute. Risk rating: High. It is not clear how this significantly differs from current arrangements, other than that a single individual, the Chief Facilitation Officer, would be responsible for preparing a report to the adjudicating body, thereby formalising the mediation process. The risk in this particular proposal is also the challenge presented to the Chief Facilitation Officer in terms of retaining his credibility on a sustained basis among all parties and at all locations in the preparation of his reports. It is conceivable that the turnover of Chief Facilitation Officers could be quite high.

5. The facilitation stage be characterised by good faith efforts to resolve the issues involved. Risk rating: None. This is an aspiration and deserves no risk rating, though it could easily be argued that since it is not likely to be quickly achieved, the assumption is a high-risk one. Sir George has considerably under-estimated the issues at stake in relation to mediation and dialogue about parades. Engagement will not quickly resolve all parading problems in the way that was possible in Londonderry, particularly if the loyal orders continue to see the parade route as an absolute route not to be negotiated and whilst a nationalist parade in strongly loyalist areas would remain problematic.

6. Agreements reached at the facilitation stage should be committed to paper to avoid misunderstanding and should be formally registered so that they have the same force as a determination. Risk rating: Medium. This is common practice already. There have however been occasions over the past few years when some agreements were successful because they were not written down, so it would be essential to retain some flexibility on this.

7. In line with Article 11(1) of the European Convention on Human Rights (ECHR), the Public Processions (Northern Ireland) Act 1998 should be amended to affirm that everyone has the right to freedom of peaceful assembly, defined to include peaceful procession. Risk rating: Low. There is no great difficulty with this recommendation, though we may wish to take a legal opinion. It does nothing to resolve the outstanding issue of the right to a particular route.

8. In line with Article 11(2) of the ECHR, S8(6) of the 1998 Act should be replaced by a provision that such a restriction shall be placed on the exercise of the right of freedom of peaceful assembly as are necessary in a democratic society (i) for the protection of the rights and freedoms of others or for the protection of health or morals or (ii) in the interests of national security or public safety or for the prevention of disorder or crime. Risk rating: High. It could be argued that the ECHR standing alone is unduly simplistic in the context of parading in a divided society like Northern Ireland, with the subliminal (and not so subliminal) messages that it sends. Removal of the criterion about relationships in the community may, in the end, prove largely to be disadvantageous to parading organisations as well as to local communities. The purist human rights approach advocated in the Panel may either find that in most circumstances the parading route is seen not to be particularly relevant to the right of assembly and is therefore easily restricted, in which case far more parades than at present would be restricted (residents groups may have to become imaginative in devising traffic problems!), or it may find that the right to the parade is a higher priority in most cases and nearly all parades would be allowed (subject to the police determination). In those circumstances one can only imagine the impact that such development would have on relationships between the two main parts of the community in Northern Ireland. The current mixed model in Ardoyne for example, (with “wins” and “losses” for both sides) might well become much more difficult to maintain. “Relationships in the community” provides considerable room for manoeuvre in assuaging perceptions of unfairness, which so often play into disorder at a later stage. Essentially a “one size fits all” approach to human rights flies in the face of the judicial approach adopted by the Strasbourg Court which by its decisions over the years has given a firm basis to the concept of a margin of appreciation being left in the hands of States in order to take specific account of local problems. This, so that the blunt instrument of human rights, absolutely enforced, can be tempered to encourage progress in such contentious issues.

9. New Guidelines should be prepared setting out primarily the factors to be taken into account at the Determination stage in assessing the extent to which a planned parade would affect the rights and freedoms of others under any Article of the ECHR or any other international agreement to which the United Kingdom is a party or under the general law. Risk rating: High. The risk associated with this particular proposal relates primarily to the exclusion of the disorder criterion from the thinking of the Determining Body. It is not easy to see how this would be possible in practice. The police would have to repeat the work of the Panel, but taking public order and police safety into account. The Panel might well quickly become perceived, in a final analysis, if not sooner, as an ineffective white elephant.

10. Where good faith efforts will not produce the settlement at the facilitation stage, the Determining Body should arrange a hearing. Risk rating: High. The recommendation itself is not different from current procedures. But the detailed description of it in the body of the report makes it difficult to imagine how a process could be devised which is more poisonous to the prospect of satisfactory resolution of parading problems, and one which is so likely to exclude the moderate, reasonable interests from coming forward when it is those interests that any system should be most at pains to encourage and nurture.

11. Proceedings should be as informal and user-friendly and procedures as simple as possible. Risk rating: High. This kind of procedure will be “meat and drink” for hardliners. The stated aim of “creating an atmosphere giving all parties confidence in their ability to participate in the process and with them leaving the procedures feeling that they have had a fair opportunity to put their case” is difficult to imagine in practice. The proceedings are more likely to be infested with lawyers, acrimonious and time-consuming. It could, and probably would, become a procedural nightmare. It is also possible that some parties will have better access to lawyers than others, giving them an advantage. Finally, if at the end of it all, having secured, at some cost, in terms of money and time, a good result, it is easy to imagine the reaction of fury if the police, on the grounds of public order, render the decision nugatory.

12. Determinations should make clear the conclusions reached on each of the Guideline factors in light of the evidence from parade organisers, those registering objections and any other interested party. Risk rating: Medium. The main difficulty here is that the Guideline factors are distorted in relation to the FCHR by the exclusion of the disorder factor beyond “evidence of intention to organise a parade which will be peaceful”. Finally identifying in any determination what was the decisive evidence either way could, and probably would, place those to whom it could be attributed, in physical danger.

13. Where frequency of parades is at issue, the parading interests should have an opportunity to arrange their own priorities (including the priority to be given to traditional parades). Risk rating: Medium. There are a number of problems with this, notably the possibility of a real difficulty for parading organisations managing even to agree amongst themselves which parades should not go ahead (given their assertion that

the right to parade cannot be negotiated). More fundamentally, it is difficult to square the assertion that more traditional parades should have priority with dropping the traditionality criterion on the grounds that it is not compatible with equality provisions. It is probable that parading organisations would fail to agree in this area.

14. The Determining Body should be empowered, at its discretion, to make rulings for periods of up to five years, subject to review if there is any material change of circumstances. Risk rating: Low. The scope for review is important given the timescales involved.

15. Determinations should be binding and alleged breaches should be reported to a Compliance Branch within the Determining Body and promptly brought to the attention of parade organisers and investigated. Risk rating: Low. This is a good idea requiring an investment in the resources available to the determining body.

16. Organisers of parades should notify their intention to parade no later than 1 October each year for the following season but, where this would allow a period of less than six months before the date of the parade, the notice should be required to be submitted no less than six months prior to that date. Risk rating: Medium. The risk in this recommendation is not that it is not desirable, but that it may not be realistic for a great many parades organisers. The Commission already deals with a substantial number of late notifications with a 28-day notification period. There would have to be, at the very least, a facility for many parades to be notified late. It is possible that this recommendation would be considered by the courts to be unreasonable, though that would not preclude, say, organisers of traditional parades from voluntarily agreeing to notify early so that the process could commence in good time.

17. Those objecting to a parade should be offered the opportunity formally to register their objections within one month of an intention to parade being notified. Risk rating: High. This proposal fails to take account of objections that may arise closer to the time of a parade, for example, due to sectarian attacks in an area or a problematic parade earlier in the season. The deadline for protest notification needs to be related to the date of the parade rather than the notification date to deal satisfactorily with many genuine protests that may arise.

18. Copies of all objections should be made available to the organisers of the procession. Risk rating: High. This proposal would cause strong objections from people fearful for the safety of their property or persons.

19. The right peacefully to protest, like the right peacefully to process, should be affirmed in the 1998 Act and should be subject to similar restrictions. Risk rating: Medium. This power would signal greater balance in those areas where protests are perceived by some to be carefully organised, but it brings with it the incentive towards more protests that are organised by specific groups.

20. Protest meetings should be brought within the scope of the Determining Body, as protest processions currently are. Risk rating: Medium. As at 19.

21. Guidelines should be prepared indicating the factors which the Determining Body would take into account in determining whether restrictions should be placed on a protest. Risk rating: Low. Guidelines would be necessary in these circumstances.

22. Notice of any protest parade or meeting should be lodged within 14 days of the issue of a Determination. Risk rating: High. This proposal would not be feasible for protests that arise from circumstances closer to the time of a parade. The period required for protest notifications should be related to the date of the parade, not the date of determination. A five-year determination would require five years' notice of protest!

23. Breaches of Determinations in respect of protests should be reported and investigated in accordance with the arrangements where parade Determinations are breached. Risk rating: Low. This would seem appropriate, given the arrangements proposed.

24. To promote public civility between the two traditions, Public Processions legislation should provide that, in the exercise of their right to freedom of peaceful assembly, all have a right to have their honour respected and their dignity recognised and must themselves respect the honour and recognise the dignity of others. Risk rating: None. This seems appropriate.

25. The Code of Conduct, which has been produced by the Commission, should be revised in consultation with all the relevant interests to require that: (a) the organiser of a parade should be clearly identified and should be a senior officer of the parading organisation; (b) the organiser prepares a risk assessment for each parade; (c) all marshals receive training so that within three years it can be made a Code requirement that all parade marshals have at least basic training; (d) parade organisers discuss with the police where marshals' responsibilities end and those of the police begin; (e) no parading organisation employs bands with paramilitary trappings; (f) no item of clothing is worn or any article worn, carried or displayed in such a way or in such circumstances as to arouse reasonable suspicion that a person is a member or supporter of a proscribed organisation; (g) parade organisers arrange for adequate toilet facilities; and (h) parade organisers encourage those accompanying parades to desist from unruly behaviour. Risk rating: Medium. The Code of Conduct could indeed be revised, but some of the changes proposed may not prove

to be helpful. It seems unfair to force an organisation to use a senior officer as parade organiser, if someone more professional were available. Risk assessments may be asking too much of many parade organisers and may simply be wholly unrealistic in many situations. Other suggestions would benefit from a police view.

26. There should be a separate Code of Conduct for bands and there should be a requirement for bands which fail to subscribe to it or to an approved Code or are guilty of non-observance to be registered under a Government registration scheme. Risk rating: Medium. Police advice would be valuable in assessing the registration issue. The role recommended for the Orange Order may no longer be within its capabilities in terms of control of the bands' issue. Bands are a part of many parades that do not involve the Orange Order and the rules should be the same for all—including nationalist bands.

27. Legislation should be introduced to make it an offence for a person knowingly to allow alcohol to be carried on to a public service vehicle if he is the operator or the person to whom it is hired. Risk rating: Medium. A matter for police advice, but initial soundings from police contacts are not positive about this proposal.

28. A Parades Facilitation Agency should be established which would have general oversight of parades but no responsibility for Determinations or Compliance. The Agency should: (a) provide a Facilitation function; (b) prepare Guidelines, Procedural Rules and Codes of Conduct; (c) appoint parade monitors; (d) undertake an education role; and (e) prepare an Annual Report to be laid before both Parliament and the Northern Ireland Assembly. Risk rating: Medium. The title "Parades Facilitation Agency" is likely to prove a negative feature for many nationalists many of whom may wish to see less parading overall. The idea of a cross-community Board involving protagonists to the parading dispute may be ahead of its time, given the lack of trust between the two main parts of the community on the issue of parading. On the other hand the implication of greater resources for mediation and education may be timely. Again a flexible model is best—one that can respond to an increasing desire for engagement.

29. The Agency should pursue an active Education role, including support (or encouraging support by other agencies) for "single identity" initiatives where the Agency has a direct interest in development work contributing to greater mutual understanding. Risk rating: Low. The only risk is that the investment might be wasted if parading organisations engage inadequately or not at all.

30. A separate independent Rights Panel should be established to be the Determining Body in respect of Parades and Protests, charged with deciding whether restrictions should be placed on the exercise of the right to freedom of peaceful assembly for the protection of the rights and freedoms of others or for the protection of health or morals. The panel should: (a) comprise a Chairman with legal qualifications who is appointed by the Lord Chancellor and two other members drawn from a list of suitable persons; (b) have a Compliance Branch to monitor adherence to Determinations; (c) produce an Annual Report; and (d) be enabled to contribute to the legal costs of parties taking cases that raise points of general importance in regard to clarifying the application to parades or protests of Human Rights law. Risk rating: High. Fault lines run throughout this recommendation. The panel would have no responsibility for considering disorder issues, which are returned to the police in isolation from other factors. Yet these issues impact on each other in a complex way. The likelihood of disorder feeds through into issues, for example of police safety, which feeds through into the kind of police operation required, which in turn can have a significant impact on freedom of movement for local people. The Panel seems well placed for duels between the two main traditions that would leave other interests standing on the sidelines. It seems well placed to attract only the political activists and the hardliners, institutionalising the sectarian dimension. It is a recipe for excluding totally the voices of moderation. The complete isolation and consequent crystallisation of the disorder issue will focus the debate once again on the relative weight of disorder from each tradition. This is also an inflexible model, because of the requirement to separate out each aspect of the debate. It will neither provide for the occasional Loyal Order parade through nationalist areas, nor for the occasional restriction to show balance and hence reduce tensions in the community. In terms of the operation of the Panel, Sir George considers that the openness of the procedure would address the natural justice question. But the discretion proposed by Sir George in relation to confidentiality recreates essentially the same situation. Having three people decide on the rights involved seems to suggest a model with two locals—one from each main tradition—and an independent outside Chair. This places a huge pressure on the two locals who might be seen as "representing" their community in the decision-making process. The small numbers involved may well make it less attractive for people of standing to become involved. There will probably be a need for a second Chair, in case of illness or other unavoidable absence. The issue of how and which individuals are picked for the Panel could become a matter of contention (unfair "panel picking"). A Chair will always have his own favoured panel members. More available individuals would build up a stronger stock of knowledge than others, which may disadvantage some parades. Each case must take one to two hours, which would represent a considerable investment of time and resources, particularly if the number of contentious locations continues to grow, as seems likely in the new absolutist ambience.

Overall, this proposal has the potential to set back the clock by about six years, particularly if extreme elements focus on the central role of disorder in the final decision.

31. The police should determine whether any restriction needs to be placed on the exercise of the right to freedom of peaceful assembly in the interests of national security or public safety or for the prevention of disorder or crime. Risk rating: High. The police will have their own views on this. It places the police in a difficult position, because they will be asked to assess only one aspect of Human Rights law, when in reality

all factors interact. Sir George makes no reference to the safety of police officers and the decisions that have to be made to protect those officers that may in turn play into other human rights restrictions (eg sealing off an area). It is difficult to see how in practice the police will not in effect have to repeat the consideration of the other human rights criteria involved, thus duplicating the work of the Panel. Protagonists may quickly decide that the Panel is a white elephant, with the real power having been restored to the police. It is arguable that a cross-community body is better placed than the police to decide on occasions when a parade should go ahead in the face of likely disorder (though leaving the police a decision-making role in extreme circumstances as at present).

32. Monitors should be under an obligation to bring to the attention of the Determining Body any aspects of the policing of an event which merit review. Risk rating: None. No difficulties with this. A compliance function should pick up this issue.

33. The law should be vigorously enforced in respect of offences and Codes of Conduct should draw attention to the law concerning processions and protests and to other relevant legislation. Risk rating: Medium. Any risks associated with this issue will be matters for the police. The Commission likes to see tight enforcement in respect of parades, but a zero tolerance approach in present circumstances could potentially have unintended consequences.

34. The staff of the Parades Facilitation Agency and the Rights Panel for Parades and Protests should be within the jurisdiction of the Ombudsman. Risk rating: Medium. No case nor any rationale is made for this proposal. Lacking any rationale, the Commission felt unable to comment with any degree of assistance, save a remark that it would be seen as yet another way of seeking to challenge the operation of the bodies involved. It could be counter-productive in day-to-day practice.

GAPS

In addition to the above reservations, the Commission would have additional concerns about some areas that would benefit from further consideration. These include, most significantly,

- Design of parade notification forms (related to the possibility of a more overt declaration of the responsibilities of a parade organiser).
- Identification of parades for further consideration by the Commission (currently called “contentious” parades).
- A holistic, thought-through response to the challenge of bands and band parades—covering bad behaviour and sectarianism by bands, the culture of late band parades, the low levels of musicianship and high levels of alcohol consumption and associated social and environmental problems.
- Need for fuller assessment of the “traditionality” criterion, with a view to taking into account the symbolic significance or cultural importance of a parade, as well as “grandfathering” parades.
- Need for fuller assessment of the importance of the “relationships in the community” criterion.
- Handling of “ordinary” parades.
- Responsibility for banning parades (for example in circumstances of high parade frequency).
- Lack of distinction between the right (to parade) and the route (of the parade).

31 March 2004

APPENDIX 5

Memorandum submitted by the Northern Ireland Office

INTRODUCTION

1. The Committee requested, in preparation for its inquiry into the Parades Commission and the Public Processions Act 1998, a memorandum from the Northern Ireland Office (NIO) on the parades issue.

Background

2. The Independent Review of Parades and Marches 1997 (the North Review) was established in August 1996 to review arrangements for handling public processions and open-air public meetings and associated public order issues in Northern Ireland. The review took place against the backdrop of the serious disputes which had arisen over a number of parades, including those at Drumcree, Newtownbutler and the Ormeau Road in Belfast, and which had resulted in widespread public disorder and the exacerbation of community

tensions. Policing this disorder had placed significant demands on police and army resources (for example, policing Drumcree alone cost an estimated £22.5 million over the three years 1997–2000):¹ but the costs were not, of course, only financial—the economic, social, human and political impact was also significant.

3. The North Report made 43 recommendations, the principal one being the establishment of a third-party mechanism to reach conclusions in relation to disputed parades. This took the form of the Parades Commission, which would operate independently of the Government and the police. The Government accepted and implemented the main North recommendations.

Operation of the Parades Commission

4. The Public Processions (NI) Act 1998 established the Parades Commission and set out its statutory functions. These are to promote and facilitate mediation, and to make determinations on contentious marches. In making determinations, the Commission has to take into account a number of specified factors that go beyond public order alone and address the effect on the wider community.

5. The Commission has pursued its statutory duty to promote and facilitate mediation as a means of resolving disputes, working with those on both sides of the disagreement. An internal NIO review carried out in 1999 concluded that the Commission's duty to encourage local agreement wherever possible had contributed greatly to the improved atmosphere in the previous two marching seasons.² It also recommended that the Commission do more to heighten awareness of mediation, including its own network of local authorised officers. The Commission has taken that work forward; its Annual Report for 2002–03 comments, "The work of the authorised Officers has really matured during the year to the extent that their ability to work on the ground in difficult areas and to provide valuable insights to the Commission on the state of community relations and the prospects for progress has assumed ever-increasing importance."³

6. The level of disorder associated with parades has gradually reduced. The marching season of 2003 has been the quietest in recent years; parades have mainly passed off peacefully with only minor incidents occurring at a small number of locations. In each of the past three years, disorder occurred at less than 1% of parades.⁴ The number of contentious parades has steadily decreased, as the following table demonstrates.⁵

	<i>Number of parades notified</i>	<i>Number of contentious parades</i>	<i>Number upon which route restriction placed</i> ⁶
April 98–March 99	3,211	203	119
April 99–March 00	3,403	297	152
April 00–March 01	3,440	235	130
April 01–March 02	3,301	220	152
April 02–March 03	3,280	191	137

QUIGLEY REPORT

7. The commitment to carry out the "Quigley review" emerged from the Weston Park talks. The relevant extract from the Governments' joint statement of 1 August 2001 is as follows:

In order to help create greater consensus on the parades issue and a less contentious environment in which the new police service will operate, the British Government will review the operation of the Parades Commission and the legislation under which it was established. The Government believes the Parades Commission has had four successful years of operation against a difficult background. But this review, which will take place in consultation with the parties and others with an interest including the Irish Government, will consider whether there are any changes which could promote further public confidence on all sides, respect for the rights of all and the peaceful resolution of disputes on parades. Any legislative changes would take effect after summer 2002.

8. Sir George Quigley, who was appointed to carry out the review, submitted his report to the Secretary of State on 27 September 2002.⁷ The Government is very grateful to him for the work he has done. He suggested a number of changes to the way in which parades would be regulated. His proposals were, in summary, that two new bodies—the Parades Facilitation Agency and the Rights Panel for Parades and Protests—should replace the Parades Commission. Where disputes over parades arose, the protagonists

¹ Paragraph 62 of the Second Report from the Northern Ireland Affairs Committee, *The Parades Commission*, Session 2000–01, printed 28 March 2001.

² Paragraphs 69–71 of the Second Report from the Northern Ireland Affairs Committee, *The Parades Commission*, Session 2000–01, printed 28 March 2001.

³ Source: 5th Annual Report, 2002–03, laid in Parliament 8 September 2003.

⁴ Source: PSNI website.

⁵ Source: Parades Commission Annual Reports.

⁶ In each year, approximately one third of parades subject to route restrictions relate to Drumcree.

⁷ The full report may be downloaded from the NIO website, www.nio.gov.uk.

would first try to reach agreement, using the Facilitation Agency to mediate as necessary. If no agreement was reached, the dispute would pass to the Rights Panel, who would balance the right of freedom of peaceful assembly against the rights and freedoms of others and issue a Determination. The police would then decide if any further restrictions should be placed on the parade on public order grounds. The main features of the proposed system are summarised at Annex A.

9. The report was issued for public consultation on 7 November 2002. Representations were made to the Government that, due to the complexity of Sir George's report and the radical nature of some of his proposals, many organisations would benefit from extra time to come to a clear view on his recommendations. The Secretary of State therefore decided to allow an extended period of public consultation, concluding at the end of April 2003. Further representations were made requesting an additional extension, which the Secretary of State agreed to consider. To date there have been 30 responses to the public consultation exercise, though some key stakeholder groups have yet to submit their views. The Government believes it would be inappropriate to make decisions on the way forward without those views. It looks forward also to hearing the views of the Committee.

CURRENT POSITION

10. In considering the proposals put forward by Sir George, a key consideration for the Government will be the extent to which any change to current arrangements would contribute to an improvement in the situation surrounding parades. Amongst the issues that arise are:

(a) *Local accommodation, Mediation and Rights*

The Government believes that the best outcome in relation to any contentious parade is local agreement reached through dialogue, understanding, negotiation and compromise. In this regard it notes the continuing efforts of the Commission (including the developing role of its authorised officers), and of community leaders, to resolve issues at a local level. Its view remains that the ECHR rights engaged in the parades issue are not absolute; that competing rights need to be balanced; and the rights of all are best enjoyed in an atmosphere of mutual tolerance and respect. One area for discussion in considering the kind of model suggested by Sir George, therefore, is how efforts to reach a solution through mediation and a rights-based approach would mesh together, and in particular whether the proposed determination process (particularly were it to develop an adversarial or legalistic character), would help or hinder the prospects for successful mediation.

(b) *Transparency of Procedures*

Transparency can contribute to securing public confidence. The Government recognises that difficult decisions have to be made in balancing the desire to make procedures as open as possible with the need to ensure the confidentiality of the advice and information submitted to the Commission. The Commission is already aware of the issues involved and is striving to bring greater transparency into its methods.⁸ Another issue for discussion is how best this might be done, either as part of existing arrangements or within the Quigley model.

(c) *The role of the police in the decision-making process*

Prior to the establishment of the Parades Commission the police made the decision on whether or not a parade should go ahead as proposed, based on public order criteria. They frequently, therefore, found themselves placed in the invidious position of deciding what restrictions needed to be placed on a parade and then policing it. The establishment of the Parades Commission, and the passing of the decision-making function to it, meant that the police could focus solely on ensuring the maintenance of public order at the parade. Sir George suggests that the Rights Panel, in considering whether any restriction should be placed on the right to freedom of peaceful assembly, should take into account those factors impacting on the rights of others, and on the risk to public health or morals, but that responsibility for decisions on any restrictions to be imposed in the interests of national security or the prevention of disorder or crime should revert to the police. A key assessment for the Government, as part of its overall consideration, will be the extent to which any new arrangements would assist the police in their task of protecting public safety and upholding the law.

(d) *Ensuring that determinations take into account all relevant factors*

In the absence of local agreement, there must be a mechanism for resolving disputes. Currently, the Parades Commission carries out that function by issuing determinations. The Commission's most recent Annual Report sets out Common Principles, which describe in a general way the approach taken by the Commission. The Principles include factors such as positive efforts to reach agreement made by both parade

⁸ See Annual Report 2002–03, page 8.

organisers and residents' groups; the conduct of the parade; and the threat of public disorder, which is not automatically the only or overriding factor. Through taking a wide range of factors into consideration, the Commission believes it is able to come to a view that is based on all the relevant evidence. The extent to which revised arrangements would permit all the relevant factors to be considered in a coherent and holistic way is another key issue to be addressed.

IMPLEMENTATION

11. The Government has not yet reached a view on the Quigley recommendations. It is not yet possible, therefore, to determine what legislative or administrative provision would have to be made to implement any changes.

CONCLUSION

12. The situation regarding parades has greatly improved since the widespread public disorder witnessed in the late 1990s, though there is much still to be done. The Government believes that the Parades Commission's efforts to encourage local accommodation wherever possible has played an important role. Nevertheless the Commission recognises the need to review continuously its practices and structures to ensure that these continue to meet the needs of those with whom it works; its Annual Report for 2002–03, for example, outlines the efforts it is making to make its procedures as transparent as possible and address the issue of human rights. The Government will wish to consider carefully whether more radical change at this point would be helpful in achieving greater consensus around parades. It looks forward to receiving the Committee's views on the issue, once its deliberations have been completed.

13 October 2003

Annex A

SIR GEORGE QUIGLEY'S PROPOSALS

The main features of the system: proposed by Sir George Quigley are:

(a) Parade organisers would be required to submit notice of all their proposed parades for the following season no later than 1 October and, for parades falling before 1 April, no less than six months before the proposed date of the parade. Objections would have to be registered within one month of notification and copied to the organiser. Protest parades or meetings would have to be notified within 14 days of the issue of a determination.

(b) All notifications would be submitted to the newly established Parades Facilitation Agency. This would provide a professional facilitation function; prepare the necessary guidelines, procedural rules and code of conduct; appoint monitors, undertake an educational role, and report to Parliament and the Assembly. The Agency would offer a mediative function, but parties might make alternative arrangements, which the Agency would monitor. If agreement was reached it would be documented and have the same force as a determination. Otherwise, the Agency would report to the Rights Panel on the extent to which the parties had acted in good faith towards each other and in a manner designed to resolve the issues involved.

(c) The Rights Panel would be the determining body in respect of parades and protests. It would comprise a legally qualified Chair appointed by the Lord Chancellor, and two other members. Where it received a report from the Facilitation Agency it would arrange a hearing. Based on Article 11 of the ECHR, the legislation would affirm that everyone had the right to freedom of peaceful assembly, defined to include peaceful procession and peaceful protest. The Panel would consider whether restrictions needed to be placed on the exercise of that right for the protection of the rights and freedoms of others or for the protection of public health or morals (again, drawing on Article 11), and issue a determination.

(d) The Panel would be able to consider the frequency of parades in any particular area and to make rulings for periods of up to five years, at its discretion and subject to review in any material change of circumstances. Determinations would make clear the conclusion reached on each of the guideline factors in light of the evidence from organisers, objectors and any other interested parties.

(e) It would then be for the police to determine whether any restriction needed to be placed on the right to freedom of peaceful assembly in the interests of national security or for the prevention of disorder or crime.

(f) The Panel would have a Compliance Branch to monitor adherence to determinations. Where breaches occurred, these would be promptly brought to the attention of the organiser and investigated. The Panel would produce an annual report, and be able to contribute to the costs of parties taking cases that raised points of general importance in regard to clarifying the application of Human Rights law to parades or protests.

APPENDIX 6

Memorandum submitted by the Department of the Director of Public Prosecutions

I refer to your letter to James Scholes dated 3 September.

The Director has asked me to reply.

The Director notes that the inquiry conducted by the Northern Ireland Affairs Committee will be into the Parades Commission and Public Prosecutions (Northern Ireland) Act 1998. You write that it will take as its starting point the report of the review conducted by Sir George Quigley published in September 2002.

The Director notes that the Northern Ireland Affairs Committee's primary concerns will be to examine the response by Government and other interested parties to the Quigley Review; the case for implementing key recommendations of the Quigley Review; and, the legislative (or other) steps necessary to implement such recommendations, if appropriate.

The Director has considered the Quigley Review, and, in particular Chapter 27 concerning Offences.

The Director agrees with Sir George's observations at Chapter 27.10 where he writes that he doubts if much would be achieved by the creation of further offences in the context of parades. He accepts that it is important that those guilty of any of the wide range of existing offences should be identified and prosecuted.

He also agrees, as Sir George states at Chapter 27.11, that the guidance in the Commission's Code of Conduct for those participating in a procession and those participating in lawful protests against a procession should draw attention to the law concerning processions and protests and to other relevant legislation. Accordingly, the Director is in agreement with Chapter 30 paragraph 33 of the main recommendations.

15 September 2003

APPENDIX 7

Supplementary memorandum submitted by the Committee on the Administration of Justice

Two issues arose in the discussion which we felt we may not have done sufficient justice and we are submitting this short note accordingly.

Firstly, the role of the police. CAJ would endorse very much the position being put forward by the PSNI that it would be a retrograde step to return the decision making process around marches to the police. While Sir George Quigley says that he is proposing no such thing, it is CAJ's belief that if public safety considerations are considered subsequent to other rights considerations, and if the police are seen as the primary decision makers in the area of public safety (which will undoubtedly become the case), the general public will assume that the police have the final decision making authority for or against particular parades. This would in our view be quite retrograde for a number of reasons. It places the police back in the invidious position of being "judge, jury and executioner" as they were before the passage of the current legislation; it implies that the police have a primary contribution to make on public safety grounds, but lesser responsibilities for other human rights obligations which—as a public body subject to the Human Rights Act—is incorrect; and it places the police at the heart of a deeply contentious and often highly politicised debate which is certainly not in the long term interest of good policing.

Secondly, on the proposal to make an explicit reference to article 11 of the ECHR in domestic legislation. Apart from objecting to the parsing of article 112 into distinct elements, CAJ is opposed to any privileged status being given to article 11 on the face of the legislation. While Democratic Dialogue, and apparently the NI Human Rights Commission in earlier testimony, suggested in the hearings that article 11 incorporates all other relevant rights by virtue of its reference to respecting other rights, this could as easily be said of articles 8, 9 or 10, all of which have been called upon by different parties to the dispute.

CAJ believes that it is unhelpful to accept that there is a conflict of rights and then imply, albeit perhaps unintentionally, that one right (article 11 and the freedom of assembly) has more significance than any of the others that people might rely upon in their arguments with the Parades Commission, or in subsequent judicial reviews (right to privacy, freedom of religious belief, freedom of expression etc). Therefore, CAJ would support mentioning all the relevant ECHR articles (and there are quite a number), or none of them, though we believe that the latter option is the more appropriate one. All public bodies are already bound by the Human Rights Act, and repetition in ordinary legislation does not necessarily make the rights any more protected.

9 March 2004

APPENDIX 8

Supplementary memorandum submitted by the Grand Orange Lodge of Ireland

The Orange Order is the largest organisation in Northern Ireland and Europe to exercise the right to freedom of peaceful assembly in a number of annual events. Any legislation regulating the exercise of this freedom particularly affects the Orange Order and the way it carries out its activities. In this submission the Orange Order will outline (1) the background to the enforcement of the Public Processions (Northern Ireland) Act 1998; (2) the flaws of the Public Processions (NI) Act 1998; (3) the reasons for opposing the proposals put forward in the Quigley Report which would further undermine the right to freedom of peaceful assembly; and finally (4) the recommendations for the implementation of a proper authorisation process which would promote the right to freedom of peaceful assembly for everyone in Northern Ireland.

1. THE BACKGROUND TO THE ENFORCEMENT OF THE PUBLIC PROCESSIONS (NORTHERN IRELAND) ACT 1998

For the past 30 years the Republican Movement has made great efforts to destabilise the unionist community and destroy the institutions of Northern Ireland in order to force the Province into becoming a part of the Irish Republic. To reach their goal of bringing about constitutional change in Northern Ireland, the Republican Movement devised a strategy which included the following stages:

- (a) Create friction point with the Protestant section of the community and use the friction in order to justify opposition and attacks against the Protestant section of the community;
- (b) Provoke the Protestant section of the community with unlawful attacks in order to trigger retaliation;
- (c) Pose as victims and make a well-publicised public protest to gain national and international sympathy once the Protestant section of the community has reacted in some way;
- (d) Use the media to vilify the Protestant section of the community and seek changes in the law in order to procure political advances for Irish Nationalism/Republicanism.

The strategy described above has been applied to different aspects of social and political life in Northern Ireland with the purpose of destroying the basis of what is a democratic society, ie a society in which different groups of people holding different opinions, traditions and beliefs can have a peaceful co-existence.

Since the beginning of the 1990s the Republican Movement has applied this strategy outlined above to the peaceful public processions organised by the Orange Order.

The United Kingdom Government has unfortunately given way to pressure from the Republican Movement. As a result, on the basis of the North Report, the Public Processions (NI) Act 1998 was passed. This Act, we submit has seriously undermined the right to freedom of peaceful assembly in Northern Ireland, particularly for the members of the Orange Order.

2. THE FLAWS OF THE PUBLIC PROCESSIONS (NORTHERN IRELAND) ACT 1998

The flaws of the Public Processions (NI) Act 1998 need to be analysed (A) in relation to the process leading to restrictions being applied to a public procession and a related protest meeting, and (B) in relation to the basis on which decisions are made to impose restrictions on a public procession.

(A) Flaws in relation to the process leading to restrictions being applied to a public procession and a related protest meeting

It must be noted that one public authority deals with a procession while another deals with the related protest meeting, although both are notified to take place at the same time. The Parades Commission has no power whatsoever to impose conditions on the related protest meeting, but can only impose conditions on the public procession. Although the PSNI has no power to impose conditions on the public procession, it has the power to do so concerning the related protest meeting, under the Public Order (NI) Order 1987.

The fact that two authorities make decisions separately is a source of difficulty. The process has been set up so as to deal first with a public procession, which has been duly notified. On the basis of information received, in particular from the PSNI and the Commission's authorised officers, the Parades Commission may decide to issue a determination imposing conditions on the public procession. Only after conditions have been imposed by the Parades Commission on the public procession will the PSNI consider imposing conditions on the related protest meeting. However, once conditions have been imposed on a public procession by the Parades Commission, they are often such as to ensure that the PSNI does not need to impose any conditions on the related protest meeting. In other words the demands of the protestors have been largely met. The decision-making process is therefore severely imbalanced in favour of those who organise a related protest meeting, to the detriment of those who organise a peaceful public procession.

The root of the problem leading to conditions being imposed on the public procession is usually to be found with residents' groups, many of whom are influenced or led by terrorist organisations (Diagram 1). The Public Processions Act 1998 gave residents' groups extensive opportunities to interfere with the

decision-making process concerning public processions. Any threat of violence is reported by the PSNI, who will advise the Parades Commission on the kind of conditions to be imposed on a public procession. In pursuance of this advice given by the PSNI, the Parades Commission imposes conditions on the public procession.

The process created by the Public Processions Act 1998 undermines the fundamental freedom of peaceful assembly of those who wish to exercise their right peacefully and favours those who by violence and intimidation aim at destroying the exercise of that right by others.

Such a process also encourages a climate of hypocrisy within the public authorities and has seriously undermined public confidence in the Parades Commission and the PSNI. Since risk assessments are carried out by the PSNI, its advice to the Parades Commission is of primary importance. Because, while the PSNI is secretly giving advice to the Parades Commission requesting conditions on a public procession, it claims at the same time that it is not responsible for the decision made by the Parades Commission.

In a democratic society, a sound decision-making process should not put public authorities in such a position and bring discredit upon them. Moreover, sound legislation should not be a means by which terrorist organisations are empowered to destroy fundamental freedoms.

(B) The flaws in relation to the basis on which decisions are made to impose restrictions on a public procession

Although the Public Processions Act 1998 gives the Parades Commission no power to force the organisers of the peaceful procession to engage in negotiations with objectors, the Parades Commission has persistently insisted that they do so. Engagement in negotiation has been presented as the only way to solve the problem and allow the public procession to take place.

However, it must be emphasised that in a democratic society, within the framework of the European Convention on Human Rights (ECHR), local residents do not have the right to veto a public procession on public roads by refusing to give their consent. In international law there are no legal grounds for demanding negotiation before allowing a peaceful public procession to take place. The Orange Order cannot therefore be obliged to seek consent from objectors in order to be able to exercise their right to freedom of peaceful assembly.

Moreover, in a democratic society, those who abide by the rules of democracy have the right to exercise and enjoy the right to freedom of peaceful assembly, should not be forced to engage in negotiating their right with residents' groups which are often perceived to be either influenced by or led by a terrorist organisation. It is right for those who respect democracy and abide by the rule of law to refuse to engage in discussion with those who use violence or the threat of violence to destroy the rights of others, in this case the right to freedom of peaceful assembly of the members of the Orange Order.

Nevertheless, the Orange Order does communicate with local residents and indeed with the population at large, as well as with designated public authorities, in order to explain the nature, and purpose of the public processions they organise.

Public order is however a matter for the public authorities to deal with. When confronted with residents' groups which use violence or threatened violence to oppose peaceful public processions, positive action is required by the public authorities and domestic law should guarantee that such action is taken. The PSNI or the Parades Commission cannot walk away from their responsibilities and expect the Orange Order to deal with this issue.

It should be recalled that in the context of a democratic society, those who disagree with the opinions, traditions and religion of others have the right to express their disapprobation through peaceful means, by way of peaceful counter-protest.

The main problem with the North Report, whose proposals were introduced in the Public Processions Act 1998, is that the very serious problem of terrorist-influenced/led residents' groups (Diagram 1) has been completely overlooked or ignored. Consequently, the Parades Commission does not take into account this very serious issue but goes beyond the powers given to it in the Public Processions Act 1998, since it demands engagement in negotiations on those who have the right to process peacefully.

Under the present legislation the decision-making process by which conditions are to be applied to public processions and related protest meetings, and the basis on which decisions are made to impose conditions on public processions, are fundamentally flawed. Far from resolving any problems, the Public Processions (NI) Act 1998 has resulted in an increase of so-called "contentious parades" from 22, at the beginning of the 1990s, to 220 in 2002. The whole system needs to be rethought and replaced using fundamental principles as a basis.

3. THE QUIGLEY REPORT'S PROPOSALS WOULD FURTHER UNDERMINE THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

The proposals made by Sir George Quigley in his report entitled “Review of the Parades Commission and Public Processions (Northern Ireland) Act 1998”, if implemented in new legislation, would aggravate the situation in Northern Ireland and reduce even further the right to freedom of peaceful assembly. Although Sir Quigley acknowledges:

“I cannot avoid the conclusion that any attempt to prohibit parades solely on the basis that those who lived on, or in proximity to the relevant routes wished this to be done, for what they believed to be compelling reasons, would be regarded in breach of the Human Rights Act 1998 and the ECHR which it incorporates”,⁹

his proposals unfortunately would result in what he intended to avoid.

(A) The principles upon which the new proposals are made are contrary to those which underpin the right to freedom of peaceful assembly, (B) the burdensome authorisation process constitutes an unjustified and disproportionate restriction on the right to freedom of peaceful assembly, and (C) the complexity of the system would lead to a surge of decisions open to legal challenge.

(A) The principles used in the Quigley Report are contrary to those underpinning the Right to Freedom of Peaceful Assembly

The Quigley Report proposals are based on principles which do not comply with a sound interpretation of the right to freedom of peaceful assembly.

The report reinforces the demand for mediation which would have to take place between those who organise a public procession and those who oppose them before the right to freedom of peaceful assembly could be exercised under the control of the Parades Facilitation Agency.¹⁰ A long period of at least six months, starting on 1 October of each year,¹¹ would be dedicated to a compulsory mediation stage. Procession organisers would be expected to engage in mediation. In the eventuality of an agreement not being reached, the procession organisers would only be allowed to have their case examined at the next stage by the Rights Panel for Parades and Protests if they are provided with a “Report from the Chief Facilitation Officer” certifying that the organiser of the parade had acted in good faith.¹²

Compulsory mediation runs contrary to the very concept of the right to freedom of peaceful assembly. In a democracy, no-one should have to engage in mediation in order to be permitted to exercise his/her rights. The right to freedom of peaceful assembly cannot be subordinated to any form of negotiation which gives protesters a right of veto.

The report proposes the creation of a new body: the Rights Panel for Parades and Protests,¹³ which would render determinations on the right to freedom of peaceful assembly and the rights and freedoms of others. Those who organise a public procession would have to argue their case against the objectors before this panel, similar to a court, in order to defend their right to freedom of peaceful assembly.¹⁴ The Rights Panel for Parades and Protests would make its decision and would have the power to impose restrictions on the proposed public procession.

Article 11§1 of the European Convention states that “everyone has the right to freedom of peaceful assembly”. This right is already recognised and proclaimed and therefore belongs to any citizen who intends to exercise it peacefully.¹⁵ No-one should be put in a position whereby he has to defend a right which has already been granted to him. Such a requirement is in contradiction with the right to freedom of peaceful assembly.

After a determination has been rendered, if the objectors decide to notify a procession-related protest, the report suggests that the police be entrusted with the duty of assessing the situation and issuing a decision in the interests of national security or public safety, or for the prevention of disorder or crime. The police would have the responsibility of imposing restrictions on the public procession, mainly on the grounds of public safety or prevention of disorder.¹⁶

⁹ Review of the Parades Commission and the Public Processions (Northern Ireland) Act 1998, Report by Sir George Quigley 2002, p 124 para 11.14.

¹⁰ Idem p 242 para 21.20.

¹¹ Idem p 216 para 17.3.

¹² Idem p 169 para 14.22(vi).

¹³ Idem p 238 para 21.1.

¹⁴ Idem p 206 para 16.27.

¹⁵ ECmHR: Christian Against Racism And Facism against United Kingdom, Decision 16 July 1980, (Application No 8440/78).

¹⁶ Review of the Parades Commission and the Public Processions (Northern Ireland) Act 1998, Report by Sir George Quigley 2002, p 230 para 20.13(ii) and p 231 para 20.14.

In a democratic society, the right to freedom of peaceful assembly should not be allowed to be thwarted by those who use violence or the threat of violence. Under the Quigley proposals, the objectors would become the protesters when the police come to assess the situation in the matter of public order. The police would eventually impose restrictions on the peaceful public procession (as suggested in the Report), rather than prohibit the violent related-protest.

The right to freedom of peaceful assembly only exists for those who exercise it and intend to exercise it peacefully. The duty of the State authorities is clearly to suppress violent protest and take positive measures to protect the right to peaceful assembly of those who process peacefully.¹⁷

The principles which underpin the right to freedom of peaceful assembly are that the right to freedom of peaceful assembly is guaranteed to everyone, without prior negotiation or proceedings, and should be protected by the State authorities against violent protesters.

(B) The burdensome authorisation process constitutes an unjustified and disproportionate restriction on the Right to Freedom of Peaceful Assembly (Diagram 2)

The authorisation process for exercising the right to freedom of peaceful assembly would be made up of four stages, which would last for a period of at least a year.

Notification of public processions for the following year would have to be made before 1 October of each year. The organisers would have to go through the mediation stage under the auspices of the Parades Facilitation Agency, which would last for several months, then provided a Report from the Chief Facilitation Officer (certifying that the organiser of the parade had acted in good faith) had been delivered, the stage of proceedings before the Rights Panel for Parades and Protests would follow. Once the Rights Panel for Parades and Protests has issued its determination, the police would still be able to impose new restrictions on the grounds of prevention of disorder. After the public procession has taken place, the Compliance Branch of the Rights Panel for Parades and Protests would be able to issue warnings or impose sanctions on public procession organisers.¹⁸

Such a burdensome process imposed on peaceful citizens wishing to exercise their right to freedom of peaceful assembly is exorbitant and unjustified, especially as the root of the problem is not dealt with and not even mentioned. The major problem regarding public processions in Northern Ireland lies with the residents groups, led or influenced by terrorists. Any public authority should be able to take into account the totality of the circumstances surrounding the event so as to make a proper decision in relation to peaceful public processions or the related protest meetings. It would have the power to verify the nature of the procession and the protest and apply appropriate measures to both if the circumstances require them.

The heavy burden of the complex authorisation process suggested by Sir George Quigley can only be interpreted as an illegitimate restriction imposed on the right to freedom of peaceful assembly, in breach of the ECHR.

(C) The complexity of the system proposed in the Quigley Report would lead to decisions open to legal challenge

The complexity of the system proposed by Sir George Quigley would lead to the issue of four different types of decisions for each public procession.

At the end of the first stage of mediation, if agreement is not reached between procession organisers and objectors, a Report certifying that the organiser of the parade had acted in good faith would either be granted or refused to the organisers by the Chief Facilitation Officer. If this Report is refused, the organiser should be allowed to contest and challenge it. If such a Report granting the procession is delivered to the procession organisers, objectors could seek to oppose this decision. Thus whatever decision is made by the Parades Facilitation Agency, it may well lead to challenge and review.

At the end of the second stage, the Rights Panel for Parades and Protests would have the power to render a determination imposing restrictions on the public procession on the grounds of the rights and freedoms of others. This decision would be open to judicial review on behalf of processions organisers. If no restrictions are imposed on the public processions, the objectors would have the opportunity to request a judicial review of this decision. In addition an appeal could also be lodged which would have the potential to delay the final decision concerning the public procession yet further.

The third stage will be concluded by a decision made by the police on the grounds of national security or public safety or for the prevention of disorder or crime. Under the threat of violence initiated and carried out by protesters, the police may well decide to impose further restrictions on the public procession. This decision could be reviewed by the Secretary of State¹⁹ and would also be open to judicial review.

¹⁷ ECtHR: *Plattform "Ärzte Für das Leben" v Austria* 21 June 1988, Series A, No 139, para 32.

¹⁸ Review of the Parades Commission and the Public Processions (Northern Ireland) Act 1998, Report by Sir George Quigley 2002, p 218–219 para 18.3.

¹⁹ Review of the Parades Commission and the Public Processions (Northern Ireland) Act 1998, Report by Sir George Quigley 2002, p 231, para 20.13 (ii).

Finally, the Compliance Branch of the Rights Panel for Parades and Protests would also impose sanctions on public procession organisers. Such decisions would undoubtedly also be open to judicial review.

In practice, the Quigley proposals would lead to a plethora of decisions, hierarchical and judicial reviews, which would result in making the exercise of the right to freedom of peaceful assembly virtually impossible. The time and cost involved in such a process would deter any organisation from even trying to exercise their rights and freedoms. However, it would be a perfect instrument for terrorist-related residents groups to thwart the right to freedom of peaceful assembly of law-abiding citizens, in breach of the ECHR. In addition an individual who objected could get legal aid.

The Quigley proposals are based on fundamentally flawed foundations, which run counter to the concept of freedom of peaceful assembly in the context of a democratic society, and do not comply with the European Convention on Human Rights. For these reasons the Quigley proposals should be replaced by an alternative based on recognised fundamental principles.

4. RECOMMENDATIONS FOR AN AUTHORISATION PROCESS WHICH WOULD PROMOTE THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY FOR EVERYONE IN NORTHERN IRELAND

Adequate recommendations should address the particular issues within Northern Ireland so as to promote human rights and fundamental freedoms in Northern Ireland, and in relation to public processions and counter-protests, the right to freedom of peaceful assembly especially.

For over three decades, democracy in Northern Ireland has been threatened and dangerously undermined by terrorism. Over the past few years, more successfully than ever before, terrorists have been able to use and abuse the democratic system to further their own political aims, jeopardising human rights and fundamental freedoms in Northern Ireland.

The destruction of the right to freedom of peaceful assembly by the Loyal Orders has been one of the goals actively pursued by terrorist organisations. The protection of this right to freedom requires that (A) basic principles be upheld in order to enable the right to freedom of peaceful assembly to be exercised, (B) that a robust and fair process governing the exercise of this right be implemented, and that (C) decisions made by the public authority in charge be in compliance with these principles.

(A) Basic principles must be upheld in order to enable the right to freedom of peaceful assembly to be exercised

The framework for the exercise of the right to freedom of peaceful assembly should be based on basic principles. (1) First principle: the right to freedom of peaceful assembly only applies to peaceful public processions and peaceful counter-protests. (2) Second principle: the authorisation process must not constitute an interference in the exercise of the freedom. (3) Third principle: the duty of the State is to protect the right to freedom of peaceful assembly. (4) Fourth principle: any restriction imposed on a peaceful assembly must be prescribed by law, have a legitimate aim, and be necessary in a democratic society. (5) Fifth principle: the prohibition of the abuse of rights with the aim of destroying the right to freedom of peaceful assembly.

(1) First Principle: The right to freedom of peaceful assembly only applies to peaceful public processions and peaceful counter-protests (Article 11§1 ECHR)

It should constantly be recalled and emphasised that the right to freedom of peaceful assembly can only be enjoyed by those who organise and take part in a peaceful public procession or a peaceful counter-protest. There is no right to freedom of peaceful assembly for those who organise and/or take part in violent public processions or violent counter-protests, or who organise and/or take part with a violent intention. Such public processions or counter-protests should therefore be prohibited by the public authorities.

(2) Second Principle: The authorisation process must not constitute an interference in the exercise of the freedom (Article 11§1 ECHR)

In order to guarantee the proper exercise of the right to freedom of peaceful assembly, an authorisation process for public processions and counter-protests should be implemented by the public authorities. This process must be as simple as possible in order to enable the public authorities: first, to control the nature of the proposed public processions and counter-protests; and secondly, to impose restrictions, if necessary in a democratic society. A burdensome, lengthy, costly authorisation process, which amounts to an illegitimate restriction on the exercise of the right to freedom of peaceful assembly, must be ruled out.

(3) Third Principle: The duty of the state is to protect the right to freedom of peaceful assembly²⁰

In order to protect the freedom of peaceful assembly, the duty of the State is not only to abstain from interfering with the exercise of this freedom, but in some circumstances to take positive measures to uphold it. Both negative and positive aspects of the duty of the State must be used to guarantee effective freedom of peaceful assembly.

(4) Fourth Principle: Any restriction imposed on a peaceful assembly must be prescribed by law, have a legitimate aim, and be necessary in a democratic society (Article 11§2 ECHR)

The legal norms referred to in order to impose restrictions must be sufficiently precise for citizens to understand what their actions would entail. The legitimate aim of a restriction must strictly conform to those enunciated in Article 11§2: “in the interests of national security and public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”. Any restriction imposed on a public assembly must also be necessary in a democratic society and must therefore correspond to a pressing social need, be proportionate to the legitimate aim pursued and be justified by relevant and sufficient reasons.

(5) Fifth Principle: Prohibition of the abuse of rights with the aim of destroying the right to freedom of peaceful assembly (Article 17 ECHR)

No public authority, organisation or individual should be allowed to exploit in their favour the principles enshrined in the European Convention in order to engage in any activity or perform any act aimed at the destruction of the rights and freedoms stated in the Convention.

(B) *A robust and fair process governing the exercise of the right to freedom of peaceful assembly (Diagram 3)*

The process governing the exercise of the right to freedom of peaceful assembly should have (1) a single public authority in charge of public assemblies; (2) prior notification of both public processions and counter-protests should be made compulsory; (3) the procedure should be simple and open to the organisers of public processions and counter-protests; and (4) the decisions made by the public authority should be open to review by the Secretary of State or by the courts.

(1) A Single Public Authority in charge of public assemblies

There would be one authority in charge of making decisions in relation to both public processions and counter-protests. We suggest a Freedom of Peaceful Assembly Commission, the “FreedomPAC”. It would have the means of taking into account the totality of the circumstances surrounding the event in order to make informed and reasoned decisions, concerning on one hand the public procession and on the other the counter-protest. A sole authority would avoid disparity of treatment between those who organise and take part in public processions and those who organise and take part in counter-protests, and favour consistency.

(2) Prior notification of both public processions and counter-protests should be made compulsory

Public processions which have not been exempted by law (eg funerals) should be notified 21 days in advance. All notifications would be made directly to the FreedomPAC. All counter-protests would have to be notified to the FreedomPAC 14 days in advance. These notifications would enable the FreedomPAC to take into consideration both assemblies at the same time, so as to be able to make appropriate decisions. The FreedomPAC would have the power to carry out investigations into any matter where public processions or counter-protests have taken place without advance notice, and power to refer these to the police so that offenders (organisers and participants) be prosecuted.

(3) The procedure should be simple and open to the organisers of public processions and counter-protests (Diagram 4)

- (a) The fair administrative procedure to be used before the FreedomPAC should be as simple as possible. The FreedomPAC should be an effective body, accessible to both organisers of peaceful public processions and those of peaceful counter-protests.
- (b) Once a notification has been made to the FreedomPAC it would immediately be sent to the police, who would have the responsibility of providing any relevant or useful information concerning a proposed public procession or counter-protest. In providing information, the police will have to give primary importance to their duty to protect the right to freedom of peaceful assembly.

²⁰ ECtHR *Plattform “Ärzte für das Leben” v Austria*, 21 June 1988, Series A, No 139 para 32.

- (c) The FreedomPAC would first have regard to the violent or non-violent nature of the public procession or counter-protest. In the case of a public procession or a counter-protest of a violent nature, or organised with violent intention, or organised by those who adhere to anti-democratic principles, the FreedomPAC would have to issue a decision prohibiting the violent public assembly.
- (d) If the public procession and/or counter-protest is deemed peaceful, the FreedomPAC could then organise a meeting to which the police, procession and counter-protest organisers entirely committed to democratic principles would be convened. During this meeting those attending could have the right to ask others questions and would also be asked to answer questions put to them. All relevant information considered by the FreedomPAC would be disclosed to the meeting so that all involved would know the basis on which the decision is made.
- (e) Following this meeting, the FreedomPAC would issue two separate decisions, one concerning the public procession and another concerning the counter-protest, seven days before the assemblies are due to take place.

(4) The decisions made by the public authority could be reviewed by the Secretary of State or by the courts

The decisions made by the FreedomPAC would be open to review by the Secretary of State in case of emergency for the protection of public safety. The organisers of public processions or counter-protests would have the right to challenge the decision made by the FreedomPAC in the courts.

(C) *The power of the public authority to make decisions in compliance with the basic principles (Diagram 5)*

The FreedomPAC would be given (1) the power to prohibit any violent public procession or counter-protest which is not peaceful. It would then have the power to impose restrictions (2) on a proposed peaceful public procession and also (3) on a proposed peaceful counter-protest. However, any such conditions would have to be within the terms of Article 11 of the ECHR.

(1) The power to prohibit violent public processions or counter-protests

- (a) The FreedomPAC would have the duty to verify the nature of any public procession or counter-protest duly notified. It would assess all information at its disposal, in particular from the police, in order to determine whether or not the public procession and/or the counter-protest are peaceful and organised with a peaceful intention and organised by those who are entirely committed to democratic principles. In providing information to the FreedomPAC, the police would have to give primary importance to its duty to protect the right to freedom of peaceful assembly. All such information would have to be disclosed to the organisers of any such procession or protest, save where the police had legitimate security grounds for withholding such information from the public domain. (In such cases a court would have the right to review the matter to determine if it was legitimate in the public interest to withhold the information.)
- (b) In the case when the public procession and/or the counter-protest are violent, or organised with a violent intention, or organised by those who adhere to anti-democratic principles, the FreedomPAC would have the power to prohibit these assemblies from taking place. Only public processions and counter-protests recognised as peaceful would then be further considered and could eventually be subjected to restrictions imposed in compliance with the provisions of Article 11§2 of the ECHR.

(2) The power to impose restrictions on a proposed peaceful public procession

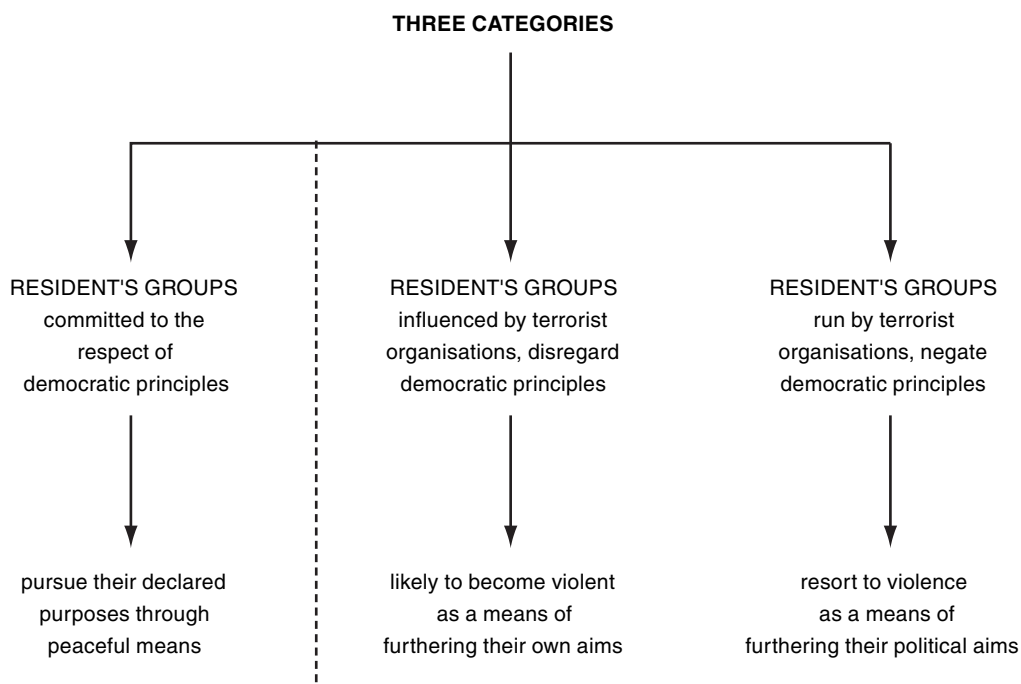
- (a) The FreedomPAC would have the power to impose restrictions on peaceful public processions. Any restrictions would have to be prescribed by law and would need to be in pursuit of a legitimate aim and be necessary in a democratic society.
- (b) The legitimate aim pursued would be one or several of those mentioned in Article 11§2 of the ECHR. In most cases the FreedomPAC would have to consider imposing restrictions on the grounds of the prevention of disorder or crime, or the protection of the rights and freedoms of others.
- (c) When dealing with the issue of the prevention of disorder or crime, the FreedomPAC would especially have to take fully into account the positive duty of the State to protect the right to freedom of peaceful assembly. Restrictions would have to be imposed only if serious public disorder caused by protesters could not be prevented by the police. In this case, whatever restrictions imposed should be proportionate to the aim pursued, ie the prevention of disorder or crime.
- (d) When taking into account the protection of the rights of others, the FreedomPAC would need to have regard to the right to private and family life (Article 8 of the ECHR) and the protection of property (Article 1 of the First Protocol to the Convention). The requirements for a peaceful public procession to be allowed to proceed would need to be balanced with the requirements necessary to ensure that the rights to private and family life and property are protected.

- (e) Having given the proper and greater weight to the requirements for the right to freedom of peaceful assembly to be maintained, the FreedomPAC would be able to impose restrictions on the public procession as long as they are necessary in a democratic society, ie proportionate to the aim pursued by the restrictions and justified by relevant and sufficient reasons.
- (3) The power to impose restrictions on a proposed peaceful counter-protest
- The FreedomPAC would have the power to impose restrictions on peaceful counter-protests, under the same criteria as those imposed on peaceful public processions.
 - Since the public procession would have been authorised on the grounds that it was peaceful and there would be no threat of violence from the procession, there should therefore be no requirement for restrictions to be imposed on the peaceful counter-protest, in pursuance of the legitimate aim of prevention of disorder or crime.
 - The FreedomPAC would therefore usually only have to consider imposing restrictions on a peaceful counter-protest on the grounds of the protection of the rights or freedoms of others. The rights of others, in the case of those who organise and/or take part in the peaceful public procession, include the right to freedom of peaceful assembly (Article 11 ECHR), the right to freedom of expression (Article 10 ECHR) and the right to freedom of religion (Article 9 ECHR).
 - The requirements for these rights to be respected would have to be balanced with the requirements for the right to freedom of peaceful assembly of those who organise and/or take part in a counter-protest, but the right to organise a counter-protest must not be allowed to result in inhibiting the right to freedom of peaceful assembly of the procession organisers/participants.²¹ The requirements for the rights and freedoms of the procession organisers/participants must therefore be given greater weight than those of counter-protest organisers/participants. Any restrictions imposed on the counter-protest would of course have to be proportionate to the aim pursued.

CONCLUSION

The present recommendations, if implemented, would ensure that the right to freedom of peaceful assembly is upheld in Northern Ireland in compliance with the European Convention on Human Rights, and would prevent this fundamental right from being undermined by the activities of terrorist organisations.

**Diagram No. 1:
Residents Groups**



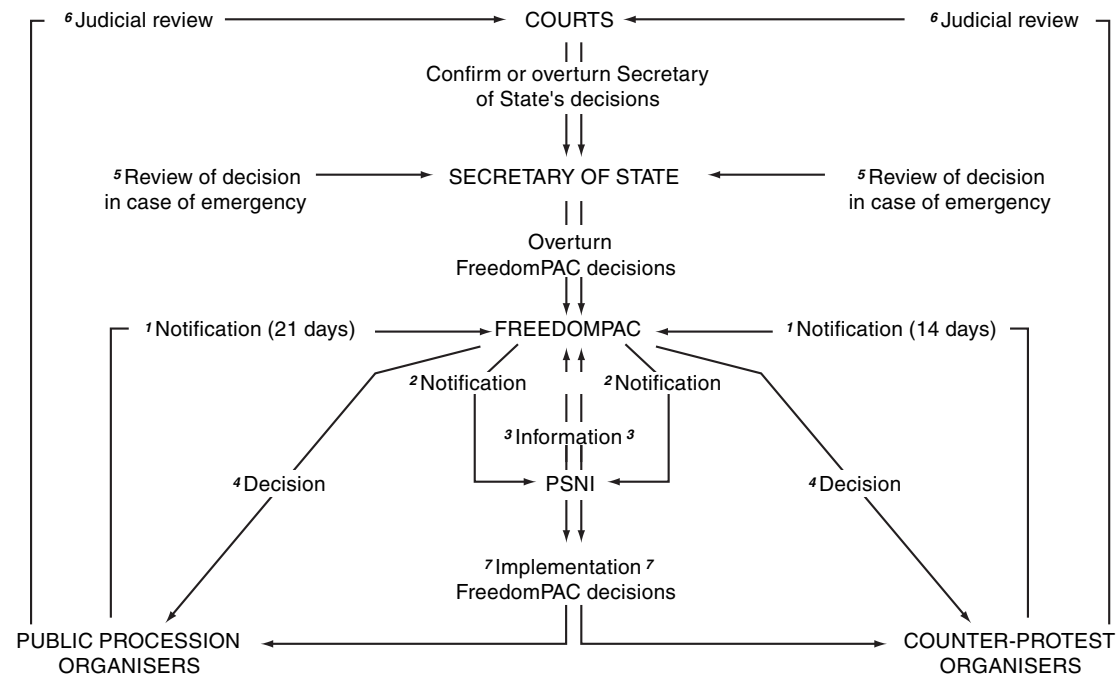
²¹ ECtHR: *Plattform "Ärzte für das Leben" v Austria*, 21 June 1988, Series A, No 139 para 32.

Diagram No.2:
Thwarting the Right to Freedom of Peaceful Assembly

STAGES OF THE PROCESS ORGANISATION AND FUNCTIONING	STAGE 1 MEDITATION	STAGE 2 PROCEEDINGS	STAGE 3 ASSESSMENT	STAGE 4 COMPLIANCE
NOTIFICATIONS	Beginning of Stage 1 Loyal Orders must notify before 1st October of each year what parades they wish to take place during the following year		Beginning of Stage 3 Residents groups can notify a protest- related parade fourteen days after a Determination has been issued by the Rights Panel for Parades and Protests	
BODIES IN CHARGE	Parades Facilitation Agency	Rights Panel for Parades and Protests	Police Services of Northern Ireland	Compliance Branch of the Rights Panel for Parades and Protests
FUNCTIONS	To intensify mediation and facilitate local arrangement over an extended period of time, commencing on October 1 of each year	To organise a hearing and issue Determinations on the right to freedom of peaceful assembly and the rights and freedoms of others	To assess the situation and make a decision in the interests of national security or public safety or for the prevention of disorder or crime	To receive reports from monitors and police immediately after the parade has taken place in respect of which a Determination has been issued; and state whether there has been a failure to comply with a Determination
OUTCOME	Arrangement between Loyal Orders and Residents Groups If no agreement, good faith certificate required to enable the Loyal Orders to go to Stage 2	Determination on parade with or without restrictions relating to the right to freedom of peaceful assembly	Decision with or without new restrictions imposed on the parade on the grounds of public safety or prevention of disorder	Warning by the Compliance Branch and/or agreement with parade organiser to prevent future infringement of Determination Chairman of Rights Panel can arrange hearing and possibly impose a sanction
PRINCIPLE	Should not be ignored	FUNDAMENTAL RIGHTS		Should not be negated by violent non-violent protests

**Diagram No. 3: The Alternative
The Process**

GENERAL VIEW



**Diagram No. 4: The Alternative
The Process**

PARTICULAR VIEW ON FREEDOMPAC

Stages	Public Assemblies	PUBLIC PROCESSION		COUNTER-PROTEST	
Stage 1	Assessment of the nature of the public assembly	VIOLENT	PEACEFUL	VIOLENT	PEACEFUL
		Decision of prohibition by FreedomPAC		Decision of prohibition by FreedomPAC	
Stage 2	Imposition of restrictions on peaceful assemblies	MEETING Organised by the FreedomPAC With - PSNI - Public Procession Organisers - Counter-protest organisers committed to respect of democratic principles DECISION imposing restrictions or not		MEETING Organised by the FreedomPAC With - PSNI - Public Procession Organisers - Counter-protest organisers committed to respect of democratic principles DECISION imposing restrictions or not	

Diagram No. 5: The Alternative**THE POWERS OF THE FREEDOMPAC**

FreedomPAC Powers	Public Assemblies	PUBLIC PROCESSION	COUNTER-PROTEST
Stage 1	Power to prohibit violent public processions and counter-protests	PROHIBITED Violent Violent intention Anti-democratic principles promoted	PROHIBITED Violent Violent intention Anti-democratic principles promoted
		PERMITTED Peaceful	PERMITTED Peaceful
Stage 2	Power to impose restrictions on peaceful public processions and counter-protests	RESTRICTIONS IMPOSED As prescribed by law and necessary in a democratic society in the pursuance of the legitimate aims stated in Article 11.2 ECHR	RESTRICTIONS IMPOSED As prescribed by law and necessary in a democratic society in the pursuance of the legitimate aims stated in Article 11.2 ECHR
		NO RESTRICTIONS IMPOSED Not necessary in a democratic society in the pursuance of the legitimate aims stated in Article 11.2 ECHR	NO RESTRICTIONS IMPOSED Not necessary in a democratic society in the pursuance of the legitimate aims stated in Article 11.2 ECHR

APPENDIX 9**Memorandum submitted by the Ulster Bands Association**

Thank you for your letter concerning the latest enquiry of the Committee into The Public Processions (Northern Ireland) Act 1998 and Sir George Quigley's review.

When Sir George Quigley's report was published, a regional newspaper carried a response from a SDLP MLA which suggested that the correct course of action was "if its not broke don't fix it" and suggested that the review was unnecessary and not constructive.

If the intention of the legislation was:

- to be discriminatory against the tradition of parades and parading;
- to trample wholesale upon the human rights of those who take part in parades which are enshrined and protected by the European Human Rights Commission;
- to be secretive in its decisions and the process of how these decisions were arrived at;

then this opinion is undoubtedly correct and no amendment should be made to the present legislation.

However it is the view of this Association that a review of the Parades Commission and the surrounding legislation is necessary if not vital to restore public confidence in a system which should not only be, but also be seen to be, open and fair in all matters in relation to its deliberations and conclusions.

There is a lot of merit contained within some of Sir George's recommendations and there are also a few points in which clarification would be required before a decision either way can be given. There are also a few points that we do not completely agree with, and we will take this opportunity to air our views on those matters.

1. THE BALANCE AND COMPOSITION OF THE ADJUDICATING BODIES

The North Report and the discussions which have ensued from it and gave birth to the matters under consideration have always stressed the need for balance. Balance between the right to march and the right to protest, balance between the tradition of marching as a means of demonstrating ones point of view and the likelihood of civil disorder, balance between the civil rights of one community against another. This concept is laudable but poorly drafted legislation has endowed it with a fundamental flaw.

Much has been made of the balance and composition of the Parades Commission both in the religious and cultural spheres. However, in practice, this balance (although supported in part by the legislation) was not apparent. The composition of the Commissioners who heard the evidence and who deliberated upon the outcome of a parade application was never and has never been disclosed to a third party. Furthermore,

an unfortunate oversight in the drafting of the legislation, omitted to include this check and balance when stipulating the nature and composition of reduced panels to consider applications. It has been possible therefore for a panel representing exclusively the Nationalist/Republican population to effectively rule on a parade. Sir George has completely failed to address this matter in his report.

We suggest therefore that any panel with responsibility for ruling upon parades and/or associated protests should be an evenly balanced panel with representation from both sides of the community.

We also suggest that the names of the persons who have considered the matter should be made known at the time of publication of their decision.

2. RESERVATIONS ABOUT THE NEW ADJUDICATION PROCESS

As an Association, we feel that Sir George has over cooked the egg on this matter.

Despite the efforts of the present Parades Commission, who for some reason find it possible to increase the number of determinations every year (some would call it “empire building”—others have a different name for it) the majority of parades are of a peaceful nature and do not give cause for complaint. To ask the organisers of these parades to supply a notice of parade by October of the previous year seems a somewhat Draconian measure bearing in mind that the majority of bands break from practice for two to three months at the end of the season (usually during the months of October, November and December)and often do not hold their Annual General Meetings or Election of Officers until after Sir George’s deadline has passed.

To ask every parade organiser to give notice could prove to be unwieldy from the clerical and administrative point of view and would increase the likelihood of clerical error or oversight.

It would perhaps not be unrealistic for this proposal to come into force where problems exist and where any breakdown in communication can be directly attributed to the parade organisers but we consider that for the system to be even handed then potential protests must also serve a similar period of notice to the new body and they must also be attributable for their actions. This requirement for prior notice should only be required where there is substantial evidence of previous non engagement and/or non-participation in discussions and only then when a prior intent to parade or protest has been received by the police.

The majority of the parades being non contentious parades could be dealt with under existing arrangements.

However a failure to meet with or discuss parades with individuals of the opposite persuasion where there is a genuine fear for personal safety should not be a factor in the final outcome of the adjudication.

We must remind you that certain paramilitary organisations are only declaring themselves to be on cease-fire and are not formally at peace at time of writing. To quote a prominent republican “They haven’t gone away you know”. Indeed some would say that intelligence gathering has not ceased and the threat to life and limb is still ever-present.

Further to this matter of security we strongly urge you to reconsider the requirement for the staff of the new body (or for that matter the staff of the present Parades Commission) to embrace the regulations of the Official Secrets Act and enforce these bodies to become subject to this legislation and all it entails. The information that they deal with on a daily basis is of a highly sensitive and personal nature and deliberate or accidental disclosure of those details to the wrong people as has happened in the past can place the life and well-being of individuals named on form 11/1 in jeopardy.

We have seen family homes turned into high security buildings on the basis of carelessly handled information by employees of the present Commission.

Sir George has not included any form of review or appeal procedure against decisions of his new body. Under his proposals only a High Court could reverse the decision of his new body. In Northern Ireland the system of jurisprudence is such that individuals are the only persons entitled to seek a judicial review and only then if they are directly affected by the decision. In addition the costs of such a proposed action are prohibitive and assistance from the State are minimal and are not available to collective bodies. These factors render the likelihood of legal recourse down to almost non-existent.

This should be addressed immediately.

3. HUMAN RIGHTS

A lot of the problems surrounding the installation of the Parades Commission and subsequent legislation seem to stem from dubious (to say the least) or mendacious advice concerning legal rights. The assumption has been made that every parade is disruptive and has a knock-on effect upon the human rights of everyone else and the Parades Commission go to great lengths to stress that no hierarchy exists within the human rights and that the human rights of all must be considered, etc and often cite the human rights issue in their determinations. They in fact look for offence before any has been given.

We have been involved in parading for years and it is our experience that there is no reason why a peaceful parade cannot co-exist with a peaceful protest and the normal daily life of others can continue.

The present Parades Commission is obliged by the Act to have consideration for the likelihood of a breach of public order which is a fundamental role of the police and therefore should only cite this duty where they are in possession of overwhelming evidence of likely disorder from the police. We have recently experienced an alarming incident where the police have stated on a form 11/1 that a parade was not contentious after a thorough examination of the arrangements for the parade only to have that decision overturned by a clerical employee of the Parades Commission.

9 October 2003

APPENDIX 10

Memorandum submitted by the Community Relations Council

INTRODUCTION

The Clerk to the Northern Ireland Affairs Committee (NIAC) wrote to the Community Relations Council to invite it to assist the Committee by communicating its views on the Parades Commission and Public Processions (NI) Act 1998. Council welcomes this opportunity to respond to the Quigley Review recommendations.

BACKGROUND ANALYSIS

Responses to date have indicated both support and concerns about the recommendations made by Sir George Quigley from a number of organisations, groups and political parties. Observations from some of the responses published on the internet note that:

- the SDLP argue that the review is fundamentally flawed and that the major recommendations should be rejected outright;
- the CAJ suggests that it is too early in the life of the Commission for it to be subjected to a major overhaul and endorses the proposal for a “stronger and more structured role for a facilitation function”;
- the Grand Lodge of Ireland takes the view that the Parades Commission must be replaced and would welcome its immediate removal;
- the Ulster Unionist Party recommends that the Parades Commission be removed and replaced with a fair and impartial rights based determining body;
- Sinn Féin expressed concerns over the suggested bigger role for the PSNI in the marching issue and views Quigley’s recommendations as effectively meaning the disbandment of the Parades Commission.

Council observes the dissatisfaction of others in relation to the role and remit of the Parades Commission from two main viewpoints:

1. *Retain and strengthen the existing Parades Commission*

The Commission is hampered by issues such as:

- lack of transparency in process and legal and political accountability;
- lack of authority over static protests;
- failure of some organisations to acknowledge and co-operate with the Commission;
- unclear understanding about the relationship between rights and responsibilities of parading;
- changing membership of the Commission;
- differing expectations of the Commission’s role and responsibility.

This school of thought suggests that these difficulties should be addressed via the existing structures in recognition of the fact that the Commission is a relatively new organisation which has made good progress but needs time to embed itself more completely in this very contentious area of work.

2. *Disband the existing Parades Commission*

The second view is that the Commission should be disbanded in favour of an entirely new structure. Quigley recommends amending legislation to establish two new, distinct, public bodies to replace the Commission:

- under recommendation 28, the first new body would be a Parades Facilitation Agency (PFA) headed by a Chief Facilitation Officer with general oversight responsibilities for parades. The agency would have facilitation, monitoring and educational roles and responsibilities but its range of duties would stop short of determination and/or compliance functions. It would be responsible for guidelines, procedural rules and codes of conduct;
- under recommendation 30, the second new body would be an Independent Rights Panel (IRP) for parades and protests which would “as a last resort” be the determining body for all disputed parades where the PFA was unable to facilitate an agreement between affected parties. The panel would have a Compliance Branch “to monitor adherence to determination” and would be headed by a chairperson with legal qualifications and experience appointed by the Lord Chancellor.

Council notes that the report is unclear as to how the PFA and IRP panels, staff and structures would effectively work together, with others (such as CRC) and with the PSNI.

Council is concerned that recommendation for the creation of two new bodies to replace the existing Commission, could take several years to become established and this could result in community relations being adversely affected in this long drawn out process. This recommendation also comes at a time when the Commission itself points out that it has acquired valuable expertise and experience in dealing with the issue and that an experienced, stable Commission is of considerable benefit to the parading issue. Furthermore, it comments that “there is considerably more engagement and that the green shoots of resolution are breaking through what was once a particularly stony ground”.

Council is also mindful that the Commission has been reappointed for a further two years and agreement to phase it out in preparation for a new body may result in two years of apathy and lack of direction or the undermining of the decision making powers of the existing Commission.

COMMUNITY RELATIONS COUNCIL RESPONSE

Council recognises that, since its inception in 1998, the Commission has been fraught with difficulties due to the sensitive and contentious nature of the issue it must address in a relatively new and developing structure. The work of the Commission has been further hampered by the refusal by some bodies to engage with it.

Council further acknowledges that although contested parades are few in number they often result in deepening community division and causing violent incidents, injury and even resulting in the loss of life. Its impact on the social economy has contributed to Northern Ireland being the poorest of the four regions.

The role of the police

Council is concerned that Sir George Quigley separates out public safety issues from human rights issues. He states that “with a few exceptions, there was no demand for a return to the pre-1998 Act situation when the regulatory function was discharged by the police or when politicians had a role in decision making”. However he seems to contradict this statement when he recommends that the police take responsibility for public safety aspects of parade applications thus giving PSNI (and subsequently Policing Board) a greater role in the decision making process. Council views the current system as more appropriate mechanism for delivery ie the Commission or its alternative, is the decision-making body with the PSNI policing the decisions and providing relevant information and advice to the Commission. Council is also anxious that the threat of public disorder does not determine the end decision to let a contentious parade march a certain route or not.

The role of the Local Assembly

The Parades Commission is currently accountable to the Secretary of State who has responsibility for all aspects of policing and security. It is expected that a new Assembly will take on this responsibility and Council recommends full community relations guidance and training be undertaken by politicians responsible for overseeing this area of work.

The Commission or its alternative

Council recommends that the issue of NI parades should be addressed on a long term ongoing basis and agreed where possible, by local consensus. It should be managed by an independent regulatory body which is:

- made up of an appropriate number of representative, diverse and experienced Commissioners and staff trained in community relations (currently no women sit on the Board of the Parades Commission);
- equipped to provide/facilitate mediation between the various players;

-
- resourced to act on Sir George Quigley’s statement of the importance of the “promotion of greater understanding by the general public of issues concerning public procession” by providing/facilitating education to promote greater understanding about the Commissions role, the issues surrounding parades, approaches to conflict resolution, the importance of mediation, the need to balance rights with responsibilities, etc.

Council recommends that the Parades Commission or its alternative must ensure that:

- policies, procedures and practice for addressing the parades issue are transparent, legally and politically accountable, inclusive, fair, user friendly and are monitored and evaluated on an ongoing basis;
- guidelines are made more specific about what it means in reference to current considerations such as: the nature of the parade; the arrangements; the characteristics of the contested part of the route; the impact of parade on relationships within the community; the disruption to the life of the community and the genuine attempts to broker local agreement etc;
- a Code of Conduct which is specific in relation to the prevention of disorder in relation to paramilitary flags, public drinking, threatening behaviour, drunkenness and abuse. The role of Monitors is crucial in the assessment of Code compliance;
- the human rights (including security) of all those affected by parades are taken fully into account including legal issues such as the right of assembly, the right to a parade as an assembly and the right to a specific route as part of that parade. Council is concerned about the proposal to amend current legislation to include explicit reference to article 11 of the European Convention on Human Rights (ECHR). ECHR is already reflected in UK law by the Human Rights Act 1998;
- procedures are robust enough to deal with all the various types of parades and protests in all the differing circumstances including parades which are non contentious and independent of each other (also reviewing static protests which are currently the responsibility of the police);
- approaches are developed to ensure that relations between the two main traditions are improved rather than entrenched ie must address dialogue alongside dispute.

CONCLUSION

Council recognises that the issues and outcomes of contentious parades reflect the deep division that exist in NI. It acknowledges that the community relations problems make the issue of addressing contentious parades all the more difficult. Council supports Sir George Quigley’s vision of an inclusive, open, tolerant and compassionate society whose members have the self-confidence to embrace diversity and thrive on difference.

Council is willing to contribute its expertise in conciliation/mediation programmes and education in community relations issues generally. Together with DECAL and the Parades Commission, Council currently supports the training programme for parade stewards and marshals being delivered by East Tyrone College of Further and Higher Education.

10 October 2003

APPENDIX 11

Memorandum submitted by Democratic Dialogue

In an earlier submission to the Northern Ireland Affairs Committee, Democratic Dialogue suggested how the Parades Commission’s “Guidelines” document might be revised so as to lay down clear parameters in relation to the interpretation of the European Convention on Human Rights (ECHR)²². It argued that the Quigley review failed to address the question of how international human rights standards ought to be interpreted, and that it was vital that a clearly marked threshold for intervention by the determining body should be established. Moreover, it proposed that this default position should be defined in terms of:

- the type of behaviour protected by a right to freedom of “peaceful assembly”;
- what is a sufficiently “pressing social need” to justify restrictions being placed upon its exercise; and
- the boundaries of the rights and freedoms of others in the context of public assembly.

The primary objective of such changes to the Commission’s “Guidelines” would be to narrow the space in which the protagonists on either side of disputes are able to use the rhetoric of rights. This submission pursues that same goal. It argues, however, that revised “Guidelines”, of themselves, will not maximize the contribution which “rights” can make to the long-term resolution of parade disputes. Instead, new Guidelines must be accompanied by revised procedures which prioritise the rights issues, thereby setting the agenda for any subsequent dialogue between the parties.

²² Not printed.

The proposals described below (and illustrated diagrammatically) attempt to address a number of the criticisms of the Parades Commission made by Sir George Quigley. In particular:

- the lack of transparency in the Commission’s procedures;
- the Commission’s failure to consistently apply the concept of “engagement”.

They have also been designed with two further fundamental criticisms in mind. Namely, that the Commission’s existing procedures:

- Relegate the “rights” issues almost to an afterthought.
- Restrict the capacity of mediators to intervene in complex community disputes because their remit is limited exclusively to parades.

I hope that the attached proposals will be of some assistance to the Committee in its discussions. They are intended to provide one possible alternative model to that proposed by the Quigley Review, whilst not entailing such “root and branch” reform. Most of the suggestions outlined here could be implemented by revising the Commission’s “Procedural Rules” without amending the Public Processions (NI) Act 1998.

10 October 2003

AN ALTERNATIVE TO THE MODEL PROPOSED BY THE QUIGLEY REVIEW?

A COMMISSION FOR PEACEFUL ASSEMBLY (CPA)

The statutory notification period, and formal evidence gathering sessions

Following the example of the Commission’s 16 evidence gathering sessions in 1998 (which were held, on average, 124 days before the date of the parade) re-introducing such sessions could provide a trigger (if one is necessary) for independent mediators to become involved. This would avoid the dramatic increase in the statutory notification period recommended by the Quigley Report. The holding of such evidence gathering sessions would also increase the overall transparency of the Commission’s work. Transcriptions of each session could be provided to all interested parties, and copied to the independent mediation agency (see further below).

A Preliminary Determination on the Validity of the Parties’ Rights Claims

At present, the Parades Commission’s procedures introduce the provisions of the ECHR only at the final determination stage. Even then, parties often view the expository section of determinations as meaningless. These routinely cite particular rights without explaining how, precisely, they are affected in the circumstances. As was argued in Democratic Dialogue’s earlier submission to the Committee, when the language of rights becomes a legal gloss which is used to render decisions immune from legal challenge, this serves only to embolden parties, encouraging them to adopt the rhetoric of rights to defend entrenched positions.

In order to maximise the contribution which a rights framework can make to the resolution of parade disputes, the parties’ rights claims must be more closely scrutinised. The procedure for adjudicating on parties’ claims must, therefore, provide an opportunity for such scrutiny. Moreover, this scrutiny must take place early on in the process. An initial judgement on the validity, or otherwise, of the rights claims made would help to clarify and frame the areas on which local agreement must be reached if an imposed determination is to be avoided.²³

The procedure outlined in the attached diagram gives primacy to this initial assessment of the validity of the rights claimed by the event organiser, and the potential conflict entailed by any equally valid rights claimed by those who live or work in areas through which parades pass. It is premised on the argument that it is unsatisfactory for the adjudicatory body to play upon the indeterminacy of the legal criteria in a bid to provide an incentive for the parties to engage in dialogue (noting that successive reviews of the Parades Commission—including the Quigley Review—have criticised the Commission’s use of the concept of “engagement”).

²³ Again, this highlights the need for clearly defined parameters so that the adjudicatory body has transparent criteria by which to determine the validity of such claims. On the “validity” of “claims” see Joel Feinberg’s compelling argument in “The Nature and Value of Rights” in Feinberg, J., *Rights, Justice and the Bounds of Liberty: Essays in Social Philosophy* (1980), Princeton, New Jersey: Princeton University Press. Feinberg argues that to “have a claim” is to “have a *prima facie* case” (ie a case meriting attention), and that rights are simply “valid claims” where validity “is justification of a peculiar and narrow kind, namely justification within a system of rules.”

While it might be argued that a preliminary determination would remove the incentive for one or other party to engage (in the belief that they have already got what they want), the Commission's role ought to be the application of determinate human rights standards to local disputes, laying down clear parameters regarding "peaceful assembly" and "the rights and freedoms of others". While there can be no substitute for voluntary direct dialogue, the Commission should not be in the business of requiring parties to engage as an end in itself, irrespective of the rights issues. Indeed, the concept of engagement is devalued when dialogue is forced upon parties in situations where there is no valid rights case to answer.

It is recommended, therefore, that the adjudicatory body should aim to publish a preliminary determination on the validity of the various rights claims and on the "necessity" (in Northern Ireland's "democratic society") of imposing restrictions, within 14 days of notice having been received. In some ways, this would represent a return to the idea of issuing a preliminary view on contentious parades. Residents' groups, for example, have argued that the Commission's decision not to issue a preliminary view after 1998 "was a mistake which has encouraged the Loyal Orders to engage in last minute PR stunts rather than seriously addressing clearly defined problems associated with their parades."²⁴

Referral to an Independent Mediation/Conciliation Service

There are a number of drawbacks in having a team of mediators (ie the Commission's Authorized Officers) dedicated solely to the parades issue. It is suggested that an independent agency should be tasked with pursuing the ideal of "local accommodation" on a whole range of issues pertaining to the marking of territorial boundaries (including flags, murals and other local disputes).²⁵ Parade disputes occur within a particular local context and cannot easily be isolated from other ongoing issues. Furthermore, dealing with such issues together could provide a more effective way of co-ordinating third-party interventions (particularly given the frequent concurrence of a number of local disputes at any given time), would mean that mediators were more in touch with local developments, and by insulating the mediators from the adjudicatory process, would increase the likelihood of meaningful engagement rather than short term positioning. One possibility, would be for the Community Relations Council (CRC) to take a more proactive role in co-ordinating such work. The CRC has itself argued that:

Conciliation and/or mediation work ought to be the responsibility of organisations other than the regulatory body or Commission. The Community Relations Council, as a funder of the main organisations active in this field, would be well placed to undertake the co-ordination of this work.²⁶

If—at the Preliminary Determination stage—restrictions were deemed necessary, the adjudicatory body could refer the parties to an independent mediation/conciliation service, thereby holding out the prospect of a voluntary local accommodation. This would serve to affirm "the idea of participating in mediation" whilst preventing such participation being viewed "as a box-ticking activity to curry favour with the Commission."²⁷

The focus upon rights claims, however, should not be limited to the adjudication stage.²⁸ Rights should be seen as integral to the entire process of managing and resolving conflict around parades, including mediative interventions. While the primary purpose of mediation is not generally to educate the parties involved, such interventions could seek to build an understanding of the value and meaning of rights.²⁹ Mediated dialogue might then explore the "rights and freedoms of others"—how, in the particular context, are these rights being infringed, and what could be done to prevent such infringement? Indeed, it is likely that there will be more than one possible solution to any given conflict of rights—as the legal theorist, Jeremy Waldron, has stated:

Interests are complicated things. There are many ways in which a given interest can be served or dis-served, and we should not expect to find that only one of those ways is singled out and made the subject matter of a duty.³⁰

²⁴ "Memorandum submitted by the Lower Ormeau Concerned Community" in Northern Ireland Affairs Committee (2000–01) *The Parades Commission*. HC120-II, p 209 [emphasis added].

²⁵ See also Brendan Murtagh's argument that the North Commission was too narrowly constituted in focusing solely on the parades issue. Murtagh, B (1999) *Community and Conflict in Rural Ulster*. Coleraine: Centre for the Study of Conflict, p 56.

²⁶ *Response of the Community Relations Council to the Review of the Parades Commission*, March 2002, paras (7) and (10).

²⁷ McAllister, B (July 2002) Memo from Brendan McAllister (Director of Mediation Northern Ireland) to Sir George Quigley, re Review of the Parades Commission, 23 July 2002, p 3.

²⁸ Cf. *The Quigley Report* (2002), para 15.15.

²⁹ See Parlevliet, M (2002), p 31.

³⁰ Waldron, J (1993) *Liberal Rights: Collected Papers 1981–1991*. Cambridge: Cambridge University Press, p 212.

Such meditative efforts might also serve to correct any misunderstandings between the parties which the Preliminary Determination may, itself, have caused.

Possible Review Hearing

If mediation/conciliation is successful in helping the parties reach an agreement about how the conflict of rights, as specified in the Preliminary Determination, can be addressed, the adjudicatory body would simply be notified that agreement had been reached, and the Preliminary Determination would be rescinded. If no agreement is found, the Preliminary Determination would be confirmed unless new material evidence (ie evidence not cited in the Preliminary Determination) was presented to the Commission. In the event of new evidence being submitted, the Commission would convene an informal hearing before deciding whether to confirm or amend the Preliminary Determination.

A decision not to impose restrictions could be challenged in the same way as a decision to impose restrictions by anyone with a sufficient interest in the case.³¹ Applications for any such review should be lodged at least 5 days before the date of the event.

³¹ Similar to the judicial review test of *locus standi*, or the more strict “victim” test under s 7 of the *Human Rights Act* 1998.

Evidence Gathering:

Oct.-March: CPA convenes public evidence gathering sessions in areas where concerns about parades have been raised. All proceedings transcribed, published and copied to independent mediation/conciliation agency.

Notice:

Notice of intention to organise a public assembly submitted to PSNI 28 days before the date on which the event is to be held, or as soon as is reasonably practicable thereafter. CPA will decide if notice was, or was not, reasonably practicable in the circumstances.
Has the notice requirement been satisfied?

NO

Illegal assembly

YES

Preliminary Determination:

If the CPA believes that restrictions are 'necessary', it shall, within 14 days of notification (or as soon as is reasonably practicable thereafter) issue a preliminary determination. This should state:
- whether the CPA believes the organiser's intentions to be peaceful;
- the grounds on which restriction has been deemed 'necessary'.
- restrictions linked explicitly to 'aims' pursued.
Has a determination been issued?

NO

YES

**Negotiation/
Mediation/
Conciliation:**

Parties referred to independent mediation/conciliation agency. CPA is notified if accommodation is reached.
Has an accommodation been reached?

YES

NO

Possible Review:

Application to review CPA's decision either to issue, or not to issue, a preliminary determination. This must, where practicable, be lodged 5 days before the date of the event, and must furnish the CPA with fresh evidence. On this basis, the CPA will invite parties to attend an informal hearing.
Has the organiser satisfactorily addressed any new issues raised, or those contained in the preliminary determination?

YES

NO

**Event facilitated:
Terms of notification
or accommodation
upheld.**

**Event restricted:
Final determination confirms or
amends the preliminary
determination.**

APPENDIX 12

Memorandum submitted by the Apprentice Boys of Derry

Thank you for your letter 3 September. We are always hopeful that at some point an inquiry with regard to the Parades Commission will produce something worthwhile which has substantive follow through. We believe that the starting point of any new inquiry by the NIAC should be your last report, and view Quigley in that context. This is the fifth review of the Parades Commission, the second by the NIAC, and we wonder how much more in-depth reviewing has to be undertaken before some action/change occurs.

We would again make the point that the ABOD is the only Loyal Order to officially engage with the Parades Commission, and as such our perspective is unique and one based on experience.

All reviews are subject to consideration in the light of a Judicial Review which was heard in April 2002 and on which Justice Kerr has, to date, still not made a judgement. This is appalling tardiness in the justice system. While the issue of the JR is one of Legal Aid, it relates to a case on natural justice which (if ever heard) may significantly impact upon the way in which the Parades Commission operates. The Commission uses this delay in the JR process to defer any comment on its current procedures.

We attach our response to the Quigley Review.³² We would add, however, that the core issue to our view on the Parades Commission has not altered since the last NIAC review: the Parades Commission lacks credible procedure with respect to the requirements of natural justice. Furthermore, what credibility the Commission might have had has been completely compromised with the events since Quigley reported. The Parades Commission has been completely compromised, with details of confidential minutes being found in the possession of the IRA. Members of our organisation were visited in the weeks before Christmas 2002 by the PSNI with the information that they should improve their security. Further visits followed in 2003.

As most of the attached information³² explains our position with regard to the Parades Commission, we would like to make the following points on the nature of the NIO response to the Quigley Report, and of the attitude of the Parades Commission to more recent matters of concern.

- Without the JR we are not able to make a proper judgement on the procedures of the Parades Commission as they stand—according to the Parades Commission.
- A process of engagement with the Parades Commission in North Belfast last autumn was halted because the Commission's representatives were unwilling/unable/not competent to answer the issues brought by the local community to the meetings. Written response was incoherent.
- We expressed our points to Paul Murphy on Quigley, in January, and requested a meeting. Despite hosting a meeting with other Loyal Orders, the ABOD were fobbed off.
- We have never had any acknowledgement by the Parades Commission of the considerable hurt caused to our members as a consequence of the inability to keep information confidential. The relationship with the Parades Commission is now iceberg cold.
- We wrote to Jane Kennedy in April regarding the matter of IRA targeting of our members and the lack of confidence created by the procedures relating to notification of Parades. We were referred to the Security Department of the NIO. A meeting was held in May where the points were made with regard to the procedures of the Commission and to the lack of communication with regard to the consultation process by the NIO. No response or communication has been made on these matters since then.
- We have had no official request for a view on the extension of consultation of the Quigley Report. We have had no notification of the extension of consultation. We have no idea what the process of consultation is at this time. What is the delay in at least making a preliminary view?

The issue of the Parades Commission will not go away. The performance of the Parades Commission is a matter that directly affects the confidence and affinity of our communities towards authority, and generally towards the fairness of the wider political process. The Parades Commission is failing to fulfil its remit, with a quiet summer probably more to do with the Parades Commission sticking to its Tower and engaging with very few. At this point in time we do not see any recovery of trust with the current Parades Commission, not that there was a great deal in the first instance. For that reason we were disgusted that the entire Commission has been reappointed for a full two year term, without the posts being advertised. Again, to our minds, a breach of good faith and proper practice, and totally contrary to any due process. What is new?

If you detect in our words a degree of despair, you would be right. Happy to comment and contribute to the NIAC review in any way we can, but we are beginning to wonder what is the point? What difference did the last NIAC review make?

10 September 2003

³² Not printed.

APPENDIX 13

Memorandum submitted by the Ulster Unionist Party

Following oral evidence the UUP wishes to submit the following written evidence addressing further Convention rights deemed to be undermined by the Parades Commission and the relevant legislation, apart from Article 11's guarantee of the right to freedom of peaceful assembly.

Article 11's guarantee of the right to freedom of peaceful assembly, other Convention rights are likewise undermined by both the orchestrated campaign of agitation and the Commission.

Article 10 "Everyone has the right to freedom of expression"—Loyal Order assemblies are integral to the expression of a cultural and religious heritage. The Parades Commission rulings restricting these assemblies are on the basis of hostility expressed in the campaign of agitation to such freedom of expression.

Article 11 "Everyone has the right to freedom of peaceful assembly and to freedom of association with others"—it is of consequence that Article 11 links these two freedoms. The right to freedom of association finds an obvious expression in the freedom of peaceful assembly. Hostility to the Loyal Orders, and the right of citizens to freely associate themselves with these Institutions, is a central component of the agitation against their right to freedom of peaceful assembly.

Article 17 "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein"—on a routine basis both the campaign of Republican agitation and the rulings of the Parades Commission spuriously invoke other Convention rights in order to place unwarranted restrictions on the exercise of the fundamental rights secured by Articles 10 and 11.

21 April 2004

APPENDIX 14

Memorandum submitted by the Police Service of Northern Ireland

Thank you for your letter of 3 September 2003 relative to the review of the Parades Commission and the Public Processions (Northern Ireland) Act 1998 by Sir George Quigley. I have enclosed the Police Service of Northern Ireland (PSNI) response to the 34 recommendations made by Sir George.³³

In relation to the case for implementing the key recommendations of the Quigley Review, it is the organisational view that implementing these recommendations would be a step back to pre-1998 practices. Some of the recommendations, however, that PSNI would like to see implemented are commented upon in our response. New legislation would be necessary to implement these recommendations, which we agree are necessary:

1. Establishment of a Compliance Branch—recommendation 15.
2. Protest meetings to be dealt with equally alongside parades—recommendation 20.
3. The Codes of Conduct should be backed up by new legislation, ie to require all marshals to undergo training—recommendation 25.
4. Paramilitary trappings, (recommendation 25(e) and (f)). Clear legislation is required, stating what articles/clothing are involved and providing guidelines for enforcement to both police and the Director of Public Prosecutions.
5. Legislation is needed to deal with the conduct of bands—recommendation 26.

30 September 2003

APPENDIX 15

Memorandum submitted by the Garvaghy Road Residents Coalition

EXECUTIVE SUMMARY

Garvaghy Road Residents Coalition is an independent community-based organisation established in Portadown in 1995. During the course of the past eight years, we have advocated and campaigned for change to the manner in which contentious marches in the North of Ireland are held and governed. During this period we have dealt directly with the current British Prime Minister and four consecutive Secretaries of State, as well as with consecutive Irish Governments, including two Taoisigh, on this matter.

³³ Not printed.

We welcome this opportunity to respond to the report of the Review of the Parades Commission and the Public Processions (Northern Ireland) Act 1998. This summary contains our main proposals and the headings they are to be found under in the main body of our response.

In the rest of this submission we fully outline our concerns and proposals and we append a copy of our original proposals to the Review itself.

It will be apparent from this paper that we favour the first option outlined in paragraph 15 of the Executive Summary of the Quigley Report, which is to primarily leave things as they are and to allow the Commission more time to achieve its ends. We do not believe that the Parades Commission and its manner of operation require the substantial alteration as the Report suggests. However, we do put forward a number of proposals in this paper which, we believe, will strengthen and enhance the existing Commission and ensure its acceptance among all sections of the community.

We are also in favour of option two (paragraph 16 of the Report's Executive Summary), under certain circumstances, which is to ban certain contentious marches in specific areas for a specified length of time.

The Good Friday Agreement, human rights and proposed changes to legislation

The European Court has explicitly stated that the Convention is to be read as a whole, and that therefore the application of any individual Article must be in harmony with the overall logic of the Convention.

It is our belief that the Report's interpretation of, and its recommendations in relation to, Article 11 of the ECHR are extremely, if not fatally, flawed. In our view, the government should not countenance any such piecemeal application of the Human Rights Act which could undermine the spirit and purpose of both the Convention and the Good Friday Agreement.

We propose that, with the exception of the "traditionality" clause, the existing criteria should be retained.

We welcome the proposal at paragraph 15.18 of the Report to drop the current provision in section 8(6)(e) of 1998 Act regarding traditionality.

Ensuring confidence in the independence of the Parades Commission

We believe that the issue of the independence of the Commission can be addressed to the satisfaction of all through the following proposals:

(a) The Parades Commission:

- In order to introduce an external element into the process of recruitment and selection of Commissioners, the Irish and British Governments would jointly appoint three independent assessors to actively oversee and report on the recruitment/selection process. (In the event of the return to devolved government, the Office of the First Minister/Deputy First Minister would also be involved along with both governments);
- The independent assessors' reports would also be made available for public scrutiny;
- Membership of the Commission would last for a maximum of five years;
- In order to ensure continuity of experience, members would be selected and recruited on a rotational basis, and
- The Commission's make-up should at all times reflect the demographics of the North of Ireland.

(b) Commission staff:

- The practice of secondment of civil servants to the Commission from other government departments would totally cease, and
- All staff and personnel positions will be filled through an open recruitment policy in accordance with fair employment practice.

Engagement/facilitation/mediation

We agree, in principle, with the Report's view that the engagement or facilitation role must be strengthened and separated from the adjudication function.

We propose the creation of a dedicated unit within existing Commission structures staffed by properly trained personnel with proven expertise and wide experience in the field of facilitation/mediation and conflict resolution. This dedicated unit would act under the direction of, and report to, a senior Commissioner (possibly the vice-chairperson). In order to prevent conflict of interest and avoid duplication of roles, that senior Commissioner, as director of facilitation/mediation and conflict resolution, would play no active role in any adjudication process.

Openness and transparency

We propose that:

- All parties to a dispute, including the police, should be initially asked to present formal written submissions, setting out their areas of concern along with relevant evidence, to the Commission. The Commission would then furnish all parties to a particular dispute with consolidated and summarised copies of all submissions made by organisations and/or individuals opposing or favouring a march. While the identity of organisations should be disclosed, the identity of individuals would not be, unless with their prior agreement.
- All parties, knowing each other's position, would then be invited to individual hearings with the Commission. Not only would the Commission cross-examine each party on its own position paper, but each party would also be in the beneficial position of being able to reject or refute allegations or evidence presented to the Commission by the other party or parties.
- Having considered all evidence and rebuttals, the Commission would then adjudicate upon the matter and issue a determination including, in that, a clear and concise summary of all evidence received and substantiated by it.
- A similar process would be carried out during the review stage.

We propose:

- That the deadline for submission of notice of a parade should be extended to not less than 42 days.
- If there is to be an exception to the above, we submit that parade organisers who breach the deadline be required to show a satisfactory reason for that breach.
- That no bands are authorised to participate in a parade other than those identified at the time of submission of the formal notification.
- That in the case of contentious parades, original determinations by the Parades Commission shall be decided and made public no less than 21 days prior to the date of any proposed march.
- In order to permit citizens the exercise of their right to legal remedy or redress through the courts, the Parades Commission should have the power to review its earlier conclusions, provided that such a review should be completed and the conclusions made public no less than 14 days before a proposed march.
- That the powers of Chief Constable and the Secretary of State be amended as follows:
 - (a) The intervention powers of the Chief Constable be removed.
 - (b) If the Secretary of State has reason to be seriously concerned about a determination of the Parades Commission, it would be open to the Secretary of State to reconsider the Parades Commission's determination under the same statutory criteria as that body had applied and to issue a revised determination. Such a revised decision must be reached no later than seven full days before a proposed march in order to permit citizens the exercise of their right to legal remedy or redress through the courts.
 - (c) Before the Secretary of State issues a revised determination, he must consult with the Parades Commission and all other interested parties.

Monitoring of parades and policing of parades

We propose:

- That the work and membership of the monitoring team be extended to ensure the effective monitoring of compliance and non-compliance with determinations, and the reporting, in writing, of all incidents of non-compliance with determinations by parades organisers, participants or supporters, to the Commission. In order to ensure transparency and openness, copies of these reports should be open for public inspection at the Commission's offices.
- That these parade monitors work completely independently of the police, as monitoring of policing operations before, during and after parades should form part of their duties. In this regard, and where breaches of legally-binding determinations have occurred, it will be part of this team's tasks to monitor any immediate or follow-up actions by the police (including establishing if any processes for prosecution are initiated) and to fully report their findings, in writing, to the Parades Commission. Again, these reports should be open for public inspection at the Commission's offices.
- That these reports be accepted by the Commission as evidence with regard to future applications for parades.

We propose amending the appropriate legislation to extend the remit and powers of the Police Ombudsman's office in order to examine police operational matters in this regard.

We also propose that a permanent member of that office's staff be appointed to liaise with the Parades Commission in order to deal with complaints or issues raised through that forum.

Enforcement

We propose that:

- In the case of contentious parades, (ie those which are referred to the Commission for consideration) it will be a further requirement for organisers of such parades to post bonds and provide proof of insurance, etc.
- Unless through the intervention of the courts, a determination of the Parades Commission, or a revised determination issued either by the Commission or by the Secretary of State, shall be legally binding on all parties, including the police force.
- Legislation be introduced empowering the Commission to impose fines and penalties for breaches of determinations and/or the Code of Conduct upon the named individual organiser, the local organisational body and upon individual participants. Where the local organisational body is part of a larger organisation, and where repeat offences have occurred, that the power to sequester the funds or property of the larger organisation be conferred upon the Parades Commission.
- Where there have been repeated instances of non-compliance with determinations and/or the code of conduct, and/or violence by march participants, the Parade's Commission should be empowered to reach and promulgate conclusions in relation to one or more parades in an area and to do so where appropriate for a minimum period of one year and a maximum period of five years.
- That it be a legal requirement for the Parades Commission and Police Ombudsman's Office to record information on parades in detail and monitor the police force's impartiality, fairness and effectiveness in ensuring compliance with the Commission's determinations.

Public safety

- We are fundamentally opposed to the proposal that the police, rather than the Parades Commission, should decide whether or not restrictions should be placed on a parade on public safety grounds, with the Secretary of State being empowered to review the police decision.

INTRODUCTION

Garvaghy Road Residents Coalition is an independent community-based organisation established in Portadown in 1995. During the course of the past eight years, we have advocated and campaigned for change to the manner in which contentious marches in the North of Ireland are held and governed. During this period we have dealt directly with the current British Prime Minister and four consecutive Secretaries of State, as well as with consecutive Irish Governments, including two Taoisigh, on this matter.

We welcome this opportunity to respond to the report on the Review of the Parades Commission and the Public Processions (Northern Ireland) Act 1998. However, we again express our previously published concerns that the review itself appears not to have been motivated by any real need for a review of the existing Parades Commission or associated legislation, but that it arose out of the Weston Park talks in 2001 as a concession to those Unionist parties who oppose any restrictions on the small percentage of loyal order marches in Northern Ireland that have been contentious.

We also note that this Review conducted by Sir George Quigley followed a similar review conducted in 2000. On the surface, this seems at odds with the two Governments' publicly stated view that the Commission has enjoyed "four successful years of operation against a difficult background".

We broadly welcomed the Report of Independent Review on Parades and Marches in 1996 that was established as a result of events that occurred primarily in Portadown, but also elsewhere, in July 1996. GRRC also expressed some scepticism about the need for a Parades Commission, believing that Government was merely abdicating from its responsibility and duty in law to uphold and protect the rights of minority communities from the threat of fear, and violence.

Nevertheless, in our view, the Parades Commission has succeeded in introducing an element of fairness and consistency into decisions about contentious parades that was noticeably absent when such decisions were taken by the RUC, the Secretary of State, or the courts prior to the setting up of the Commission. That is not to say that we have totally agreed with determinations made in relation to contentious marches in Portadown or elsewhere. While GRRC, and other residents' groups, have unsuccessfully taken judicial reviews of several of the Commission's determinations, it is noticeable that none have been instigated by the legal representatives of the Orange Order in Portadown—the most vociferous opponents of the Parades Commission—even though the Commission's reasons have been set out so fully, and when published within the requisite period, to allow for a challenge. We believe that our failure in those judicial reviews may have been due to a reluctance and lack of will on the part of the judiciary to interfere in what they saw as primarily a political problem. Others could equally argue that this lack of censure by the courts is evidence of the efficiency of the Parades Commission.

Nevertheless, there can be no doubt whatsoever that the Commission has succeeded in changing the climate in which such contentious marches occur. Prior to 1998 when the Commission became operational, decisions previously made by the RUC, the Secretary of State, and the courts were clearly improperly

influenced by political considerations in relation to contentious marches which had been a focus for sectarian tensions and violence over successive generations. Had that not been the case, there would have been no need for the British Government to establish the Independent Review of Parades and Marches in 1996, or for the subsequent establishment of the Parades Commission.

It is against this background that we have considered the present review to be unnecessary and largely unhelpful.

It will be apparent from this paper that we favour the first option outlined in paragraph 15 of the Executive Summary of the Quigley Report, which is to primarily leave things as they are and to allow the Commission more time to achieve its ends. We do not believe that the Parades Commission and its manner of operation require the substantial alteration as the Report suggests. However, we do put forward a number of proposals in this paper which, we believe, will strengthen and enhance the existing Commission and ensure its acceptance among all sections of the community.

We are also in favour of option two (paragraph 16 of the Report's Executive Summary), under certain circumstances, which is to ban certain contentious marches in specific areas for a specified length of time. Indeed, this view is entirely consistent with one of the original recommendations arising from the Independent Review of Parades and Marches. The Parade's Commission should be empowered to reach and issue determinations in relation to one or more parades in an area and to do so where appropriate for a minimum period of one year and a maximum period of five years, as the ultimate sanction against non-compliance with legally-binding determinations. We deal with this and the issue of penalties for non-compliance in Section 7.

As for the third option, change as described in paragraph 17 of the Report's Executive Summary, we regret to say that the proposals contained in the report will not, in our view, achieve the "considerable acceleration in the trend towards local accommodation" that the report envisages. Nor do we believe that a suitable or viable alternative to the existing independent Parades Commission has been brought forward by this Report. Instead, we fear that the majority of proposals, if adopted, will lead to a return of the pre-1998 situation, will only serve deepen existing tensions and will re-create the potential for widespread inter-communal unrest during the "marching season".

We do, however, support the objective of strengthening the facilitation/mediation role in relation to contentious parades, but we differ from the Report on how this can be achieved.

In the rest of this submission we outline our concerns and proposals in detail.

1. THE GOOD FRIDAY AGREEMENT, HUMAN RIGHTS AND PROPOSED CHANGES TO LEGISLATION

The importance of the Good Friday Agreement—with its principles of equality and parity of esteem defining the nature of democracy in the North of Ireland and its progress towards conciliation between the traditions—must be the constitutional context and framework within which all legislation must be applied and interpreted. We are of the view that, in relation to any consideration of changes in legislation dealing with the governance of contentious marches in the North of Ireland, the British Government must give full consideration at all times to the Agreement signed between it and the Irish Government in 1998.

In particular, the government should be mindful of its stated duty in that document to ensure the protection of the right of people to live free from sectarian harassment, in the same manner that the rights of ethnic communities to live free from racial harassment are protected by law in England, Scotland and Wales.

Although the Quigley Report correctly identifies the fact that a number of different human rights are concerned in the issues raised by contentious parades, and that some of these rights conflict, we disagree with the Report's approach to and analysis of human rights issues.

We firmly believe that the recommendation contained in paragraph 15.13 to amend section 8 (6) of the Public Processions (Northern Ireland) Act 1998 and so protect, by law, "the right to march" will not "simplify" the position as the report claims. On the contrary, this will serve only to muddy the waters and result in greater disagreement than has been the case since the Commission came into existence. Leaving aside the fact that this could well open the door for even greater numbers of new contentious marches (a nationalist parade through a loyalist residential area of Portadown, for example), there are several grounds for objecting to this proposal.

First, the Human Rights Act 1998 already applies the European Convention on Human Rights,³⁴ to the Public Processions Act as it does to all other legislation in the North. We can see no apparent cause or other over-riding legal necessity to incorporate Article 11 of the ECHR into the Public Processions Act.

Secondly, the Report itself offers no rationale for incorporating Article 11 alone into the Public Processions Act, to the exclusion of all other relevant articles. Indeed, the European Court has explicitly stated that the Convention is to be read as a whole, and that therefore the application of any individual Article must be in harmony with the overall logic of the Convention.³⁵ If it is thought necessary to

³⁴ Article 13 being one exception.

³⁵ *Otto—Preminger—Institut v Austria* (1994), paragraph 47.

incorporate Article 11 into the Public Processions Act, why not recommend the inclusion of all the other articles of the Convention that are relevant to the parading dispute and which have been called upon at different times and by different parties (eg Articles 3, 8, 9, 10, 14, 17, 18 and Article 1 of the First Protocol)?

Thirdly, the report controversially proposes to split up paragraph 2 of Article 11. This means that the principle enshrined in Article 11 that the right to freedom of assembly can be restricted “for the protection of the rights and freedoms of others” is unnecessarily separated from Article 11’s restrictions based on “public safety” and “the prevention of disorder or crime”. This is certainly not “precisely” modelled on Article 11, as claimed at paragraph 38 of the Report’s Executive Summary. Moreover, the only reason we can see for making this distinction, which is not made within the European Convention itself, is to facilitate the Report’s other somewhat questionable proposals set out in Chapter 20 permitting the RUC/PSNI alone to make decisions on grounds of public safety and disorder.

It is our belief that the Report’s interpretation of, and its recommendations in relation to, Article 11 of the ECHR are extremely, if not fatally, flawed. In our view, the government should not countenance any such piecemeal application of the Human Rights Act which could undermine the spirit and purpose of both the Convention and the Good Friday Agreement.

The Report’s recommendations in this regard would have the actual impact of encouraging the threat and actual use of violence, including murder, by marchers and their supporters as occurred in Portadown and which spread rapidly across the North during 1996. That surely is not a situation which the Government would seek to have reemerge.

The Report in paragraph 15.16 deals with proposed new guidelines and criteria for assessing whether the rights and freedoms of others would be affected by a parade. While they repeat and re-order many of the criteria contained in the existing guidelines, they do not create the effect of “balancing competing rights”. Rather they inject an unfair imbalance into the process so that the emphasis falls in favour on the rights of the marchers and against the rights of residents, whom the report constantly describes as “objectors”. Residents of areas affected by contentious marches are exactly that—residents—men, women and children with human and civil rights who happen to reside in a particular locality.

This fallacy of seeing residents as mere “objectors” or “counter-demonstrators” forms a large part of the flawed conclusions of the Report. We believe that this derives from a misplaced interpretation of the nature of Orange parades and that of residents’ objections. It is not a simple case of one group demonstrating support for a particular and explicit cause, countered by another group opposing that cause. What we are dealing with here is a much more subtle and unspoken message—often disingenuously denied by marchers, yet only too plainly apprehended by residents—conveyed in the very act of parading through (one might say “temporarily occupying”) particular areas where that message causes most offence. It is a classic case of the medium being the message. The Report fails to identify or recognise that message in its analysis, and so inevitably presents itself as partial in many of its conclusions. This imbalance is particularly apparent in any examination of the criteria found under the five headings in 15.16:

- the nature of the parade;
- arrangements for the parade;
- characteristics of contested part of route;
- potential for disruption; and
- any other matter concerning the parade which arises under any Article of the ECHR or any other international human rights agreement to which the UK is a party or under the general law which affects the rights and freedoms of others.

Only the last two of these headings reflect the residents’ main concerns, and the last criterion is merely a catch-all. The heading concerning disruption introduces a new criterion, “effect of parade on traffic flow”, undermining the significance of more important criteria in that section, such as the effect on residents’ freedom of movement and access to public amenities and to places of worship. For example, in 1997, Catholic residents of the Garvaghy Road were physically prevented by the RUC and military from attending their weekly Sunday Masses held in St John the Baptist Catholic Church on the Garvaghy Road at 8, 10, or 12 o’clock because of a contentious march.

Furthermore, essential important principles and criteria from the current guidelines, such as “Disruption to the life of the community”, “Impact of the Procession on Relationships within the Community”, and “Compliance with the Code of Conduct” are very noticeably omitted. This omission further exacerbates the unfair imbalance injected into the process in favour of the rights of the marchers. Only the last of these three appears under the heading “Arrangements for the parade” and is downgraded to “Extent of Conformity to the Code of Conduct”. The effect is that, rather than the determining body being obliged to ensure a proper balancing between the rights of marchers and those of residents, residents are forced to make their own case. Indeed, with regard to compliance with past determinations (in effect compliance with the law), the Quigley Report makes no stated reference whatsoever to the repeated and often violent breaches of, and non-compliance with, determinations on over two hundred occasions by march organisers and march participants in Portadown alone. The Report’s recommendations reverse the relative burdens placed on marchers and residents.

- We propose that, with the exception of the “traditionality” clause, the existing criteria should be retained.

We do not understand how the proposed new set of criteria, which specifically includes “the potential for disruption”, is supposed to eradicate the perception that “the fundamental reason underlying the imposition of conditions on processions (and particularly re-routing) is the threat of violence on the part of those who object to the procession (paragraph 39). Once again, as happens throughout the Report, the very real threat and actual use of violence by marchers and their supporters in favour of the procession, is ignored.

It has always been our position that residents do not object to the right to march *per se*, but they do object to oppressive, triumphalist or abusive marches that disrupt their right to peacefully go about their normal business. It is worth pointing out that public assemblies and marches are treated differently in Britain than in the North of Ireland.

The North’s Parades Commission can only impose route and/or behavioural limitations upon contentious marches. This is in marked contrast to the situation whereby the British Government exercises a more robust approach in dealing with the imposition of limitations upon contentious assemblies in England than it does in the North.

Blanket bans on all outdoor public assemblies due to racial unrest in Bradford, Burnley and Nottingham for periods of up to three months in recent years are evidence of this fact.

Even when march organisers in the North stated that they did not intend to accept, or to abide by, the Commission’s rulings, this outright banning capacity was not resorted to by Government nor was it sought by the Chief Constable, for example, at Drumcree in 1998 or since.

However, while we highlight this discrepancy, we do not seek the widespread imposition of such draconian measures. Instead, as will be seen in Section 7, we believe that the imposition of complete bans should be available as an option of last resort, particularly in cases where there has been repeated non-compliance with determinations and restrictions. Nationalists have sought merely to have route restrictions imposed upon contentious parades and marches which impinge upon the rights and freedoms of citizens residing, or carrying out business, in those areas affected by these contentious marches.

While we urge that the Orange Order’s right to assembly be limited, we do respect that the right, as defined by Article 11 and within the overall application of the ECHR, exists. Indeed, it should be noted that in Portadown, the Orange Order’s right to freedom of assembly has been upheld. No complete or outright bans on that right of assembly have been recommended by the Commission, or imposed by the British Government, even in view of the extensive violence which has emanated from members and supporters of the Orange Order.

Independent observers, including Irish, British, Canadian and South African parliamentarians, of certain contentious parades prior to the setting up of the Parades Commission reported appalling scenes of sectarian abuse by marchers against residents. Residents were also subjected to violence from state forces on those same occasions and placed under, what were to all intents and purposes, periods of martial law and lengthy curfews. To characterise the need for regulation of such marches as nothing more than a caving in to the threat of violence from residents is a gross distortion of historical and proven facts that requires challenge rather than repetition.

We welcome the proposal at paragraph 15.18 of the Report to drop the current provision in section 8(6)(e) of 1998 Act regarding traditionality. Not only does this criterion have no foundation in human rights law, but also, past bad practice is not a sound basis for organising or permitting contentious marches to proceed through areas that have undergone radical demographic change or have suffered the worst extremes of violence over the years. The need for the deletion of this factor is further reinforced by the Parades Commission’s own annual report dated June 2000. According to that report, 70% of people surveyed by Research and Evaluation Services with regard public perceptions and the situation regarding parades considered that “the changing religious mix of an area should be taken into consideration by those organising parades.”

We are not, however, entirely clear of the intention of Sir George’s proposals in this regard since, after proposing the deletion of this provision from the legislation, he immediately thereafter (para 15.19) seems to suggest that traditionality should carry weight in the decision making process. In a truly rights-based approach, this would not be case.

2. ENSURING CONFIDENCE IN THE INDEPENDENCE OF THE PARADES COMMISSION

Rightly or wrongly and at various times, the Parades Commission has been charged with a lack of independence from government. We believe that the issue of the independence of the Commission can be addressed to the satisfaction of all through the following proposals:

(a) The Parades Commission:

- in order to introduce an external element into the process of recruitment and selection of Commissioners, the Irish and British Governments would jointly appoint three independent assessors to actively oversee and report on the recruitment/selection process. (In the event of the return to devolved government, the Office of the First Minister/Deputy First Minister would also be involved along with both governments);
- the independent assessors' reports would also be made available for public scrutiny;
- Membership of the Commission would last for a maximum of five years;
- in order to ensure continuity of experience, members would be selected and recruited on a rotational basis, and
- the Commission's make-up should at all times reflect the demographics of the North of Ireland.

(b) Commission staff:

- the practice of secondment of civil servants to the Commission from other government departments would totally cease, and
- all staff and personnel positions will be filled through an open recruitment policy in accordance with fair employment practice.

We believe the latter two proposals to be in keeping with the precedent already set by the Oversight Commissioners office.

3. ENGAGEMENT/FACILITATION/MEDIATION

It seems to us that, from any objective standpoint, those who wish to march through an area, particularly a residential district, where they are not welcome and where there is overwhelming public opposition to such a march, are under a greater burden to make their case than the residents of that area, not least of all because all marches are to some extent disruptive. Indeed, one can draw a comparison here between the pros and cons of certain assemblies, perceived to be racist, taking place near or through ethnic minority neighbourhoods in Britain. This is not to say that residents are not under an obligation to be reasonable, but in deciding upon whether a march may proceed along a particular street it seems to us that there should be more regard to the efforts, or absence of them, on the part of the marchers, to gain acceptance from the residents, rather than to the willingness or otherwise of the residents to be persuaded. Residents, in areas where there has been sectarian violence and murders, who, in the past, have been subjected to sectarian abuse and violence by marchers and fellow-travellers at parades, will rightly object to any pressure not to oppose further such parades without clear evidence of a radical change in attitude and, most importantly, behaviour, on the part of the marchers. In the absence of such change, residents will understandably withstand pressure put on them to change from their position.

By saying this we do not seek to absolve Nationalists in the North of Ireland, or ethnic minorities in Britain, from their social responsibilities, but those responsibilities do not extend to puffing up with further sectarian or racial abuse.

On page 169, with regards facilitation, the Report states “failure to achieve direct contact should not in itself prevent the issue of a positive report” by the Facilitating Agency “certifying that the organiser of the parade had satisfied the requirements” at paragraph 14.22 (v) of acting in good faith and “had participated in a manner that was designed to resolve the issues involved” to the Rights Panel. This is clearly in conflict with paragraph 15.31, where Sir George drafts the following clause, which he would like to see included into Public Processions legislation—“In the exercise of their right to freedom of assembly, all have a right to have their honour respected and their dignity recognised and must themselves respect the honour and recognise the dignity of others”. We would argue that it is reasonable that there should be more regard to the efforts, or absence of them, on the part of the marchers, to gain acceptance from the residents. Therefore, failing to engage in direct contact and so refusing to “respect the honour and recognise the dignity of others” should logically prevent the issue of any positive report.

However, it remains unclear throughout the Report as to how the two totally separate structures envisaged (the Rights Panel and the Facilitation Agency) would relate to one another, or how the proposed Rights Panel would take account of the outcome of the efforts of the Facilitation Agency.

We agree, in principle, with the Report's view that the engagement or facilitation role must be strengthened and separated from the adjudication function. Our understanding is that the two functions are currently separate within the workings of the Parades Commission. Unless the Commission can present strong objections to enhancing that separation, there can be no valid reasons for not enhancing that separation within its own internal structures even further.

- We propose the creation of a dedicated unit within existing Commission structures staffed by properly trained personnel with proven expertise and wide experience in the field of facilitation/mediation and conflict resolution. This dedicated unit would act under the direction of, and report to, a senior Commissioner (possibly the vice-chairperson). In order to prevent conflict of interest

and avoid duplication of roles, that senior Commissioner, as director of facilitation/mediation and conflict resolution, would play no active role in any adjudication process. This would be broadly in keeping with Report's recommendations in 14.22.

The quality, expertise and experience of those personnel involved in this internal unit will obviously be the most crucial aspect to be addressed by the Commission and by government. The ability to recruit personnel with international conflict resolution experience from outside the North of Ireland should not be excluded.

4. CONFIDENTIALITY

The Report contends that "it is difficult to envisage circumstances in which many need feel any inhibitions about expressing their views fully" (paragraph 16.26). Factual evidence exists which completely disproves this assertion. Two members of the GRRC and at least two other members of other residents groupings, along with one lawyer, have all been included in the NIO's Key Persons Protection Scheme as a result of the level of active threat from Loyalist paramilitaries against them due to their profile in relation to the issue of contentious marches. Rosemary Nelson, murdered four years ago by loyalist assassins, acted as legal representative to the GRRC, and along with the GRRC's main spokesperson, was the subject of a loyalist pro-march hate campaign before her death. In the light of these very real dangers, other individuals, unless protected by confidentiality, would indeed be inhibited from frankly voicing their views and, especially, their fears.

The key issue here, in our view, is not any supposed conflict between transparency and confidentiality, but a truthful examination of whether or not the Commission is making fair and proper decisions; whether that can be discerned from their published decisions; and whether or not there is due regard given to the need to protect the confidentiality, and thus the safety, of individuals. Given the reality of life in the North of Ireland, it seems to us essential that the process of determining whether or not restrictions need to be placed on any given parade should not itself deepen the tensions that already exist. In our view, the report's proposal (paragraph 16.27) that "objectors" objections be served on parade organisers and that open adversarial hearings should be held between "parties directly in dispute" is a recipe for disaster. This will not lead to greater fairness. Indeed, it is most unlikely to reassure those who feel that the decision-making process is unfair. Instead, it will create a forum in which differences between marchers and residents will be heightened, attitudes will harden, and the Commission's task in the future will be made even more difficult. It will also dissuade those individuals who have genuine concerns about contentious parades from coming forward, for fear that being publicly identified will result in their being targeted for violence.

The Report's proposals will heighten tensions not only between communities, but conceivably within communities as well. The report's depiction of two "sides" in a "dispute" ignores the reality that there are many shades of opinion within all communities and organisations. There are clearly some members of the loyal orders who take a very dim view of the activities of their fellow brethren and their loyalist "supporters", but who may not be prepared to say so publicly because of their own safety concerns. Equally, some members of nationalist communities may not be prepared to repeat in public views that diverge from those of the majority of their community.

We also believe that in the case of organisations such as the Loyal Orders, residents organisations, political parties, trade unions, Chambers of Commerce, etc, submissions made by them to the Commission for consideration should be made available to each of the other parties in the particular dispute. (We deal further with this in Section 5.)

It follows from the above that the confidentiality rule serves a real purpose and, when properly applied, should enable the Commission to make better rather than worse decisions.

5. OPENNESS AND TRANSPARENCY

Although the report asserts that "both sides allege lack of openness and transparency" on the part of the Commission, it fails to produce any firm evidence to substantiate this broad assertion.

From a Nationalist viewpoint, the main lack of transparency arises from the content of "secret" briefings given to the Commission by the RUC/PSNI. We believe that evidence and "intelligence reports" given during such briefings, which remain unseen and cannot be challenged, is inconsistent with the right to a fair hearing. On the other hand, some of those connected to the Loyal Orders would contend that they do not know of the reasons behind Nationalist objections to their marches.

Without resorting to the open adversarial type of process put forward in the Report and referred to in the previous section of this paper, there are ways and means by which greater openness and transparency can be introduced to the workings of the Commission, particularly during the pre-determination, determination, pre-review and review processes. We propose that:

- All parties to a dispute, including the police, should be initially asked to present formal written submissions, setting out their areas of concern along with relevant evidence, to the Commission. The Commission would then furnish all parties to a particular dispute with consolidated and

summarised copies of all submissions made by organisations and/or individuals opposing or favouring a march. While the identity of organisations should be disclosed, the identity of individuals would not be, unless with their prior agreement.

- All parties, knowing each other's position, would then be invited to individual hearings with the Commission. Not only would the Commission cross-examine each party on its own position paper, but each party would also be in the beneficial position of being able to reject or refute allegations or evidence presented to the Commission by the other party or parties.
- Having considered all evidence and rebuttals, the Commission would then adjudicate upon the matter and issue a determination including, in that, a clear and concise summary of all evidence received and substantiated by it.
- A similar process would be carried out during the review stage.

Without question, the above would necessitate changes to the time-scales for notification, adjudication, review, etc. We believe that the following timescales, contained in our original submission to the Quigley Review, will facilitate such a process. We propose:

- That the deadline for submission of notice of a parade should be extended to not less than 42 days.
- If there is to be an exception to the above, we submit that parade organisers who breach the deadline be required to show a satisfactory reason for that breach.
- That no bands are authorised to participate in a parade other than those identified at the time of submission of the formal notification. (As parades are often an annual event, usually taking place around the same date and times each year, and are often organised well in advance, it should not be too difficult to introduce this. It also means that the Commission and other interested parties will know if a parade applied for will have 5, 10 or 35, bands participating)
- That in the case of contentious parades, original determinations by the Parades Commission shall be decided and made public no less than 21 days prior to the date of any proposed march.
- In order to permit citizens the exercise of their right to legal remedy or redress through the courts, the Parades Commission should have the power to review its earlier conclusions, provided that such a review should be completed and the conclusions made public no less than 14 days before a proposed march.
- That the powers of Chief Constable and the Secretary of State be amended as follows:
 - (a) The intervention powers of the Chief Constable be removed. While this will not prevent the police from making submissions to the Commission, it will avoid a position where they can effectively overrule a legal determination.
 - (b) If the Secretary of State has reason to be seriously concerned about a particular determination of the Parades Commission, it would be open to the Secretary of State to reconsider the Parades Commission's determination under the same statutory criteria as that body had applied and to issue a revised determination. Such a revised decision must be reached no later than seven full days before a proposed march in order to permit citizens the exercise of their right to legal remedy or redress through the courts.
 - (c) Before the Secretary of State issues a revised determination, he must consult with the Parades Commission and all other interested parties.

6. MONITORING OF PARADES AND POLICING OF PARADES

We welcome the proposal that any issues raised by the policing of parades should be drawn to the Commission's attention. However, the Report is unclear what is meant by "those monitoring parades", or by what is meant by proposing to place them under an obligation to report policing issues to the Commission.

At the present time, the Commission does have a small team of parade monitors. We welcome the Report's view that this work should be enhanced. We propose:

- That the work and membership of the monitoring team be extended to ensure the effective monitoring of compliance and non-compliance with determinations, and the reporting, in writing, of all incidents of non-compliance with determinations by parades organisers, participants or supporters, to the Commission. In order to ensure transparency and openness, copies of these reports should be open for public inspection at the Commission's offices.
- That these parade monitors work completely independently of the police, as monitoring of policing operations before, during and after parades should form part of their duties. In this regard, and where breaches of legally-binding determinations have occurred, it will be part of this team's tasks to monitor any immediate or follow-up actions by the police (including establishing if any processes for prosecution are initiated) and to fully report their findings, in writing, to the Parades Commission. Again, these reports should be open for public inspection at the Commission's offices.

- That these reports be accepted by the Commission as evidence with regard to future applications for parades.

From our experience, there is no dedicated body that routinely monitors the policing of parades. Non-governmental organisations such as the Committee on the Administration of Justice, the Pat Finucane Centre and the US-based PeaceWatch have attempted to monitor the policing of certain specific parades. None of these organisations have either the resources or statutory powers to conduct such monitoring on a regular basis.

However, when these organisations have monitored parades in the past, they have published the results and drawn them to the attention of all interested parties. Anyone who has any concerns about the policing of any specific parade, or parades generally, should be able to voice those concerns to the Parades Commission. However, for that to happen, the Commission should be given the means to ensure proper and full investigation of such complaints.

- We propose amending the appropriate legislation to extend the remit and powers of the Police Ombudsman's office in order to examine police operational matters in this regard.
- We also propose that a permanent member of that office's staff be appointed to liaise with the Parades Commission in order to deal with complaints or issues raised through that forum.

7. ENFORCEMENT

While there is ample, hard evidence which can be produced to demonstrate repeated breaches and clear cases of non-compliance with Parades Commission determinations, few, if any, examples can be produced to show how those responsible for these actions have been punished or penalised by the Parades Commission or the police. For example, while the main Drumcree determination is made once each year, 51 other separate weekly applications have been made annually by march organisers to proceed along Garvaghy Road. By July 2003, well in excess of over 250 determinations will have been made in respect of this one area. Since the issuing of the original determination in July 1998, there have been repeated instances of failure by march organisers and participants in Portadown to abide by the Code Of Conduct, or to fully comply with the restrictions imposed by determinations, during legally notified parades. There were also numerous illegal demonstrations and parades organised by the Orange Order in Portadown during the same period. On many occasions, participants in both legally notified and illegal Orange Order parades in Portadown resorted to the use of violence.

Non-enforcement, rather than effective enforcement, of the law appears to have been the norm in relation to all the foregoing. To reverse this inadequacy will be part of the task for the parade monitors and the Police Ombudsman's Office as set out in Section 6 of this paper.

However, if the Parades Commission is to govern and adjudicate on parades and marches in an effective manner, then it must also be equipped with the wherewithal necessary for proper enforcement.

Therefore, we propose that:

- In the case of contentious parades, (ie those which are referred to the Commission for consideration) it will be a further requirement for organisers of such parades to post bonds and provide proof of insurance, etc. (Organisers of public events, such as festivals, concerts, etc, are already obliged to produce such documentation).
- Unless through the intervention of the courts, a determination of the Parades Commission, or a revised determination issued either by the Commission or by the Secretary of State, shall be legally binding on all parties, including the police force. (Experience has shown that breaches of determinations have occurred and, moreover, that the police force failed to act to ensure compliance, on the part of organisers and participants, with conditions imposed by the Commission).
- Legislation be introduced empowering the Commission to impose fines and penalties for breaches of determinations and/or the Code of Conduct upon the named individual organiser, the local organisational body and upon individual participants. Where the local organisational body is part of a larger organisation, and where repeat offences have occurred, that the power to sequester the funds or property of the larger organisation be conferred upon the Parades Commission. (Financial sanctions are often applied when organisations or individuals fail to comply with statutory requirements throughout a broad spectrum of activities in public life. Parade organisers or participants should not be treated differently).
- Where there have been repeated instances of non-compliance with determinations and/or the code of conduct, and/or violence by march participants, the Parades Commission should be empowered to reach and promulgate conclusions in relation to one or more parades in an area and to do so, where appropriate, for a minimum period of one year and a maximum period of five years. This proposal is similar to the Report's own recommendation at 15.25–15.26.
- That it be a legal requirement for the Parades Commission and Police Ombudsman's Office to record information on parades in detail and monitor the police force's impartiality, fairness and effectiveness in ensuring compliance with the Commission's determinations.

8. PUBLIC SAFETY

We are fundamentally opposed to the proposal that the police, rather than the Parades Commission, should decide whether or not restrictions should be placed on a parade on public safety grounds, with the Secretary of State being empowered to review the police decision (chapter 20). Such a proposal would, in our view, signal a return to the bad old days of pre-1998, despite the report's assertion to the contrary. We believe that such a proposal arises from a misplaced sense of complacency caused, ironically, by the Commission's good work in creating an improved climate around the most contentious marches. The Report fails to recognise or acknowledge the potential for future widespread unrest during the marching season which this actual proposal could cause.

Sir George Quigley is at pains to assert that his proposal would not be a return to a pre-1998 situation. Yet, his report is abundantly clear with regard to the effective outcome of this proposal in paragraph 20.13(ii) "Legislation could empower the police to make the public safety decision and to impose such conditions as that decision required. The result would be precisely the same as if the Determining Body were confined to rubber stamping police advice on public safety". The result of this proposal would be such that any human rights' approach would be completely undermined by the police's ability to intervene, and the determining body would then in effect become totally subordinate to purely policing considerations.

The abject failure of the RUC to act in an impartial, fair and balanced manner on the issue of contentious marches was one of the main reasons that led to the establishment of the original Independent Review on Parades and Marches in 1996. Problems identified with the policing of such parades by the then RUC included: a failure to effectively enforce reasonable restrictions imposed on parades; a failure to treat each and every application for parades in a fair and equitable manner; the use of indiscriminate and discriminatory violence and firing of plastic bullets; and the imposition of lengthy curfews on residents. It is also no secret that many members of the RUC were also members of or had close family ties with, those very organisations whose parades they were being asked to decide upon and police. The role of successive Secretaries of State, who clearly took political decisions on contentious marches based solely on political considerations, merely helped reinforce the need for an independent commission.

As the report itself notes, "Most of those who gave evidence (including some who were very critical of the operation of the existing arrangements) accepted that independent third party regulatory machinery was probably a fact of life . . ." (paragraph 14). This, together with the Irish and British Governments' publicly stated view expressed when announcing this Review that the Parades Commission had enjoyed "four successful years of operation against a difficult background" is a measure of the success of the Parades Commission and its ability to minimise the public order element.

Removing the public safety element from the Parades Commission's decision-making process would once again make the public order element a potentially explosive issue, instead of it being merely one factor amongst many that needs to be weighed and balanced.

To make public safety issues the sole preserve of the police would give the police, and ultimately the Secretary of State, the power to overrule the determining body.

In our view, it is much better to maintain the existing Parades Commission and therefore have one body weigh up all the considerations relating to a parade and make a rounded decision. The alternative will be to create a situation where the determining body, having considered everything except public safety, decides to impose restrictions on a parade to preserve the rights of others but the RUC/PSNI decides to remove those restrictions on public safety grounds. That was the basis of the dubious scenario in response to the Drumcree stand-off in 1996. The threat and actual use of violence, including murder, by marchers and their supporters over a five-day period in Portadown and elsewhere was used to overthrow an initial rerouting order.

Even with the ongoing implementation of the Patten Report, the current PSNI is a long way yet from shaking off its mainly Protestant/unionist make-up, or its reputation for sympathy with, if not membership of, the loyal orders. Its attempts to become a police service representative of, and at the service of, all the community can only be assisted by the removal from the PSNI of the extremely contentious responsibility for decisions on parades. Re-instating that responsibility would only be a retrograde step and, would no doubt, have far-reaching repercussions extending into the Policing Board and beyond into the wider community in the North.

Even if a fully representative policing service becomes established in the North at some time in the future, we are of the opinion that no consideration should be given to conferring such powers upon it.

30 March 2004

APPENDIX 16**Supplementary memorandum submitted by the Police Service of Northern Ireland**

You may recall that Assistant Chief Constable Duncan McCausland, Police Service of Northern Ireland, appeared before the Northern Ireland Affairs Committee on 26 April 2004, at Parliament Buildings, Belfast. In his evidence Assistant Chief Constable McCausland offered to provide the Committee with written confirmation in relation to the costs of policing parades.

The figures outlined by Assistant Chief Constable McCausland—repeated below—represent the total annual costs of public order policing, including parades, for the periods June to September.

2001 £22,372,997

2002 £28,338,883

2003 £18,124,421

19 May 2004

APPENDIX 17**Supplementary memorandum submitted by the Parades Commission**

1. Further to your letter of 21 July, I am now in a position to write back and provide you with some feedback on the parading season in summer 2004. This was our fifth season and although quiet it was essentially one of the trickiest despite, by now, the Commission's considerable experience. I think that I can speak for all the Commissioners when I say that this season has been the most demanding for them.

2. I am pleased to have this opportunity, because each additional year adds further to the cumulative time period over which it is possible to make judgements about the Public Processions Act and its operation, particularly in terms of trends.

OVERVIEW

3. The Commission is pleased to report that, despite increased political and media interest in parading this year as compared to 2003, it has been another relatively peaceful parading season, thanks to a whole range of people—community and political representatives, police, authorised officers and parade organisers among others—working hard on the ground. Cross-community dialogue is of course occurring on issues that go much wider than parading—and helpfully that dialogue is reducing misunderstanding and strengthening relationships across the divisions. It is also now increasingly encompassing the issue of parades, as a facet of community life that requires to be addressed. Secondly there is some evidence of an increased confidence in the unionist and loyalist community, including among the Loyal Orders, to talk to nationalists and to the Commission about parades.

4. Each year, the level of interest in parading can vary depending on the political backdrop. This year the Commission experienced not only the considerable media and political attention that is the norm, but also a greater interest than previously was the case in using parading issues for political purposes. Nevertheless this year has also seen some real and substantive progress, not all of it visible. This will present future challenges and opportunities in order to bring the parading conflict closer to the point where differences are tolerated, mediated or presented in peaceful and democratically acceptable ways. It is important that whatever change the future brings is not introduced in a way that loses the threads of the work that is going on now and where considerable progress has been made. A degree of continuity will be vital to peaceful outcomes.

STATISTICS

5. I have attached, as Annex A, some interim comparative figures on parading for your information. These relate to the period 1 April to 31 August for 2003 and 2004. I have to caution that these figures are provisional and as such are subject to revision. The figures indicate that there has been a decrease in the number of contentious parades this year compared to last. Of course, a decrease in numbers of contentious parades does not in itself mean that there has been a fall in the overall "contentiousness" attached to parading and recently, the Commission has been hearing from elected and community representatives that some parades that were not considered contentious should have been.

POSITIVE DEVELOPMENTS

6. I have alluded to some positive developments this year. Belfast is currently one of the most difficult parading locations in Northern Ireland, particularly North and West Belfast. But the emergence there of a Parades Forum on the unionist side, which is willing to engage in dialogue with nationalist residents' groups about parades and which has represented on it the Orange Order is a particularly interesting development. The Commission viewed and continues to view the existence of this group as a positive indication that problems, which have occurred in the past and occurred this year, also have a greater likelihood of community resolution. However, it is crucial that the Forum if it purports to discuss parades is able to demonstrate that it includes and represents those bodies organising the parade. On the nationalist side there has been the development of a body called the Parades Dialogue Group in the Ardoyne area. The Commission will support interaction and dialogue between these groups and will facilitate this where appropriate. This exercise will not be without problems, but I am sure you will agree that it holds considerable potential for moving forward.

7. The Commission has in the past 12 months met and held constructive dialogue with groups and individuals that would not meet it in the past. Though still not officially recognised by the Orange Order leadership, it has continued to have contact with members of all Loyal Orders and has facilitated mediated dialogue between nationalists and republicans and members of parading organisations. Some of this is ongoing. Its authorised officers also have a much wider range of contacts than would have been possible a few years ago. The Commission's view is that this work requires further investment, as it has enormous potential in terms of educating, informing and building communication and understanding, which is vital to peaceful outcomes on the ground. The Commission continues to explore the scope for joint activity with the Community Relations Council, as recommended in the North report.

JUDICIAL REVIEW

8. Legal challenge to the Commission has come to the fore again—most notably this year from the Loyal Order and unionist side. These constant challenges are beneficial insofar as they serve to clarify the law for all concerned. Currently, the Commission is awaiting the judicial review taken by Dunloy Orangemen. It is important to set out the backdrop to that particular judicial review, which in some respects could be the most critical to date. The Commission's determination was made in respect of a public procession organised by Dunloy LOL No. 496 to parade in Dunloy on 11 April 2004.

9. Paragraph 4.4 of the Parades Commission's Guidelines (which is a statutory instrument) states:

"Communication with the Local Community: The Commission will also take into account any communications between parade organisers and the local community or the absence thereof and will assess the measures, if any, offered or taken by parade organisers to address genuinely held relevant concerns of members of the local community. The Commission will also consider the stance and attitudes of local community members and representatives."

10. Further under the Parades Commission Procedural Rules (which is also a statutory instrument), paragraph 3.3 states:

"All evidence provided to the Commission, both oral and written, will be treated as confidential and only for the use of the Commission, those employed by the Commission and Authorised Officers. The Commission, however, reserves the right to express unattributed general views heard in evidence but only as part of an explanation of its decision."

11. The impact of these two paragraphs is firstly that the Commission must take into consideration contacts between the relevant communities or the absence thereof and the impact that this has had. Secondly, and this is a particular irritant to Loyal Orders, evidence given to the Commission must remain confidential to the Commission, but not the gist of that information which the Commission can share with those organisations who choose to engage with the Commission. For those who do not have direct contact with the Commission this creates a problem.

12. The Applicant has taken the Application on his own behalf and on behalf of all other members of the Lodge. Relief is sought in several areas, but he has also asked for a declaration that paragraph 4.4 of the Parades Commission's Guidelines is unlawful and ultra vires, and the same is requested in relation to paragraph 3.3 of the Parades Commission's Procedural Rules. This judicial review challenges, not just the determination that the Commission made in Dunloy, but also much of the process used to arrive at that determination, so it will be of considerable interest to Government and the legislature as well as to the Commission itself. It is unlikely that the case will come before the courts until October. The Commission has been led to believe that at the moment it is the applicant's intention to take the issue eventually to the Court of Human Rights in Strasbourg and that donors have made funding available for that exercise.

KEY PARADING SITUATIONS IN 2004

13. After St Patrick's Day and Easter (when there are parades from both the unionist and nationalist traditions), the main marching season in 2004 continued with the Tour of the North—a large contentious parade organised by the Loyal Orders. This occurs on a Friday evening around the middle of June, this year taking place on the 18th. The total number of participants notified to take part was in excess of 2,000 including 23 bands. The parade is organised by the “Belfast Orange Hall United Districts Committee” and is referred to as the Tour of the North because the route processed is confined to streets and roads lying within confines of North Belfast.

14. The route varies year on year and with this variation so changes the degree of contentiousness attached to the parade. This year the route was less problematic than in the previous year. The Commission did not issue a formal determination in respect of this parade but rather issued advice in the form of a decision to underline to the organiser the importance of respectful behaviour in the vicinity of interface areas and drawing to his attention the Commission's Guidance for Parade Participants as set out in the Code of Conduct. The parade passed off without major difficulties. There were some allegations as to the negative behaviour of followers—an issue that has assumed greater importance than ever in 2004. But overall, the Tour of the North indicated that, where parades are well organised and marshalled, the likelihood of civil upset is greatly reduced. The Commission saw examples of this elsewhere too, for example with the Junior Orange parade in Portadown on 29 May 2004.

15. Another “major” parade of the season is known locally as the “Whiterock” parade, or at times, the “Springfield Road” parade, both referring to aspects of its route. The parade properly is “The Annual Whiterock Parade by No.9 District LOL to Whiterock Orange Hall Springfield Road”. The parade was notified to take place on Saturday 26 June 2004. It is a contentious parade as part of its notified route takes it on to what is seen by many nationalists as a nationalist part of the Springfield Road. However, this is an arterial route and one along which live people from both traditions, so that it can be seen as a space that should be shared. The parade was subject to a protest notified by Springfield Residents Action Group.

16. The Commission's original determination for this parade (made on 18 June 2004) placed upon it a route restriction prohibiting it from the contentious part of the Springfield Road and excluded the participation of a particular band. Critical considerations for the Commission had been the lack of effort by the organiser to take steps aimed at addressing the community relations aspects of the parade in a way which is sensitive to the community and a lack of confidence on the part of the Commission that previous code of conduct breaches would not be repeated. In 2003 there was poor behaviour during the event, which the organiser did not address. However, as a result of the emergence on the unionist side of the Parades Forum (as referred to in paragraph 6) which sought to address these issues through dialogue with nationalists, the Commission was asked to review this determination (which plainly had come as a shock to the organisers) and did so (on 25 June 2004) in the light of new information regarding dialogue and in addressing of some behavioural, band and emblem related issues. The Commission, whilst understanding the concerns of the residents group, considered that the residents had been wrong not to follow up preliminary meetings with a full meeting with the Parades Forum in advance of the parade. This meeting would clearly have shown whether the emerging Parades Forum was capable of representing the parade organiser and would have demonstrated the genuineness and meaningfulness of the engagement on the part of the Parades Forum in the presence of a Commission representative. As a result, and in order to acknowledge this changed approach by the newly formed Parades Forum, the Commission removed the route restriction. The Parades Forum, has given guarantees to the Commission about its readiness to go into genuine and meaningful dialogue with residents in autumn 2004, including its Orange membership. This now remains to be demonstrated in practice.

17. Orange Order parades on 12 July this year were notified as usual throughout Northern Ireland. Parades to and from the main demonstration in Belfast included a number notified to pass along the Crumlin Road and its contentious stretch in the area of the Ardoyne shop fronts. These parades presented their own particular problems arising from the sense of isolation expressed by the unionist community and the feelings of nationalists who do not want these parades passing through their area on a frequent basis without discussion. This was particularly the case given previous poor behaviour by followers of the parade and also because of the impact of the police operation on the local community. On this occasion, the approach adopted by the police on the ground, who faced the issue of what to do with a considerable number of followers in the evening, chose as the best way, in their opinion, to shepherd them past the relevant area after the parade had passed. This led to intense anger in the nationalist community who felt hemmed in and uninformed about the police plans. After the parade was over, there were confrontational scenes that were widely reported in Northern Ireland. Earlier comments by Orange Order representatives had added to the tension by suggesting that street protest might accompany any decision by the police not to allow the crowd of followers to process past the Ardoyne shops.

18. The situation regarding followers has always been a difficult one and has exercised both the Commission and the police for some time. It gave rise to increasing concerns this year. This issue came to finality when, from the Commission's perspective, there was an unexpected application for leave to apply for judicial review on the part of a single follower of one of the bands.

19. The legal situation, briefly, is that the applicant, identified as an intended lone follower of one of the parades notified to pass Ardoyne shop fronts on 12 July 2004, claimed that the Commission's decision in

respect of that parade infringed her human rights. The Commission's position, and one shared by the court, was that the Commission was empowered to place restrictions and conditions on the parade organiser and parade participants only. A follower, who was not a participant, was not subject to the terms of a Commission determination. When a follower becomes a participant is, of course, the real issue. Followers could be subject to direction by the police under other legislation, most notably relating to public order or through the exercise of common law powers. In this light, the application for leave to apply for a judicial review was turned down. The view of the presiding judge, Mr Justice Weatherup, is attached for your information at Annex B. It will be seen in that appendix that what he said then was an elaboration of what he had also said in an earlier judicial review in July 2003 in the case of McRoberts, when he remarked:

"As I have said before the organisers of these events cannot continue to be absolved from the consequences if disorder continues and there does not appear to be a method by which control can be exerted over those who hang on, or follow, or seek to support in some fashion these parades."

As you will see from reading the more detailed extract from the 2004 judicial review in Appendix B, this leaves the definition of participants very much open to prevailing circumstances; matters of degree and fact and to the intentions of those involved (almost, in a way and in that context, returning the issue of parades to the "pre North" position, which, from a police point of view may be of concern). The Commission is of the view that there are often circumstances on the ground when followers or supporters of a parade may become participants in the procession itself and therefore become subject to the determinations of the Commission, but the Commission considers the parade as notified. The frequently stated unionist view that the Commission "lost" a judicial review is without foundation.

20. The issue of followers is one which we expect will require further exploration with NIO, the PSNI and our legal advisers. There is no easy legal solution to the problem within the current legal framework. Ultimately only a combination of greater social responsibility on the part of parade organisers and protesters, dialogue between the two parts of the community and tolerance will provide the solution. If parade organisers fail to take any responsibility for the wider impact of a parade, it may result in even tighter conditions being necessary in future.

21. Senior politicians from across the range of political parties provided evidence to the Commission in relation to its decision-making in West and North Belfast this year and this was of course taken fully into account during the relevant decision-making processes. Political and community representatives also made strenuous efforts on the ground to keep the peace with a considerable measure of success in at times difficult circumstances. This work can make a considerable difference to the success of any parading season and, in the Commission's view did so this year.

THE COMMISSION'S DECISION-MAKING

22. While there are those who would prefer determinations to be replicated in similar terms year by year, that is neither desirable nor possible. Quite apart from human rights issues, there are statutory implications stemming from the Public Processions Act itself, as changing scenarios on the ground must cause, rightly, the Commission to look at each determination on each occasion afresh. Further, it is also not always possible to anticipate these determinations, simply because they arise from intense deliberation within the Commission itself (which is a diverse cross-community body) after all the evidence, information and advice has been received and after all representations have been heard. Until the Commission has reviewed all the evidence, information and advice available and heard all the representations, it cannot be anticipated in advance what those decisions will be. Those who do not engage with the Commission are more likely than others to be surprised by changing circumstances and it is less than satisfactory, not just for the Commission, but also in terms of increased tensions on the ground, when groups who have not engaged with the Commission at all before the original determination at that point seek to engage through a review of the determination.

23. The concept of the "routine determination", which is anticipated and predictable, is not something that the Commission can ever be comfortable with, particularly in the context of changing circumstances in relation to code of conduct issues, engagement or other matters. The Commission is neither prepared to accept that parade organisers have what has been described as a "God-given" right to parade certain routes, especially in the absence of good behaviour or a readiness to discuss problems about the parade with local residents or their representatives; nor that residents have a "God-given" right to stop parades, particularly along main thoroughfares that in the context of genuine dialogue should constitute shared space.

24. Sometimes a more challenging determination, that is one more demanding of tolerance, may involve a parade being allowed along a stretch of route where a parade has not occurred for some time. Sometimes it may involve a parade not being allowed along a stretch of route for the first time. The Commission constantly implores, but often in vain, protagonists to use the post-season period to engage, not just with the Commission, but also with each other. When this does not occur, it contributes significantly to tension and uncertainty in the following season.

25. There is now in general much greater compliance of Commission determinations throughout the community, even when, as this year showed, some of those determinations place significant challenge on community and political leaders involved. In a number of locations, there is a stronger sense of cross-community contact on parades or other issues, and these contacts have helped the understanding that

one community has for the other's difficulties. Many of the old attitudes and lack of tolerance remain; sometimes too there is a degree of paranoia about the perceived motives for some Commission decisions—and this can so easily be fuelled by media speculation; but, despite this, leaders in both communities rose to the challenge of controlling difficult situations in 2004. The Commission does not under-estimate the leadership challenges that its determinations present within communities and appreciates the intense frustration that some leaders within communities or parading organisations may feel when things do not go their way.

26. The Commission believes strongly that there is much to be done between now and the 2005 season to ensure that the parading scene continues to be an improving one. Areas where the Commission considers that considerable work is needed include most particularly Belfast, but also Craigavon and a number of rural towns and villages, where issues require to be resolved.

PARTNERSHIP WITH THE POLICE

27. The Commission is appreciative of the difficulties that the implementation of its determinations presents for those most affected on the ground not just parade organisers and local communities, but also, despite the difficulties they faced this year in relation to a small number of parades, the Police Service. The police have at times a difficult job in managing parades and protests, but the Commission has, again this year, seen professional and creative work by police in reducing the scope for public disorder at parades. The Commission has noted examples of situations where the actions of police officers have significantly improved a parading situation and the Commission would wish to pay tribute to this. The success or failure of the Parades Commission in achieving continued progress in relation to parading issues will continue to be closely tied not only to the quality of advice it receives from police officers before a parade, but also to the demonstration of fairness, openness and overall professionalism of the police in the delivery of controlled parading situations on the ground. It is for this reason that the Commission will continue to work to develop further the close partnership that it has with the police and will exhort all involved in parades disputes to engage constructively with the police and vice versa to minimise problems at contentious parades.

FURTHER WORK

28. The Commission is currently planning its workload for the out-of-season period. A range of interests have expressed a desire to engage with the Commission at the end of the season, and the Commission looks forward to this opportunity to seek to develop understanding and explore ways to make progress in a range of locations.

29. The Commission would be delighted in particular to review the season with representatives of all political parties to see if there is any scope for a shared vision about parading in general terms and to seek out ways of ensuring that 2005 is even less problematic than 2004 so that the continuous progress made so far can be sustained. The current situation in a number of locations will not stand still and without concerted effort by both communities there remains scope for an increase in the level of contentiousness of at least some parading situations in Belfast and beyond.

SUMMARY

30. In summary, the key points that the Commission would wish to register with the Northern Ireland Affairs Committee are:

- (a) 2004 has been a largely peaceful parading season with the Commission continuing to build on successes in previous years.
- (b) There were fewer parades marked "contentious" in 2004.
- (c) There is increased practical, constructive contact by key interests with the Commission and its authorised officers, though official stances remain.
- (d) Greater early engagement by key interests would reduce considerably the sense of surprise when Commission determinations change.
- (e) The issue of followers is one not adequately addressed by the Public Processions (Northern Ireland) Act 1998 and is one that needs careful consideration.
- (f) There is greater cross-community contact, which has made a significant difference in a number of locations.
- (g) An important judicial review is due to take place later in the year, which challenges aspects of the Commission's process.
- (h) Close partnership with the police is vital to the success of the Commission in reducing the contentiousness of parading situations.
- (i) Further constructive work by all interested parties is needed this autumn to address concerns that could otherwise feed through into 2005.

Annex A

Parades 1 April–31 August
(Figures are provisional and subject to revision)

	2003	2004
Total number of Parades	2,596	2,729
Contentious	182	165
“Loyalist/Loyal Order”	2,054	2,050
“Nationalist”	42	54
“Other”	500	625

“Loyalist/Loyal Order”, “Nationalist” and “Other” are broad terms used for informal categorisation.

Annex B

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
 QUEEN’S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY “JR1” FOR LEAVE
 TO APPLY FOR JUDICIAL REVIEW

WEATHERUP

(1) This is an application for leave to apply for judicial review of a determination of the Parades Commission in respect of a parade notified to take place in Belfast on Monday 12 July 2004. The applicant proposes to follow the parade from Ligoniel Orange Hall to, and back from, the demonstration field. This is the first case in which a follower has applied for judicial review of a determination of the Parades Commission as such applications have generally been made by organisers of parades or residents of the area affected. This is an application for leave to apply for judicial review and therefore, at this stage, it is only necessary for an applicant to establish an arguable case for leave to be granted, in which event the case will proceed to a substantive hearing.

(2) The applicant is a resident of what she describes as a flashpoint area in Belfast. She has concerns for her personal safety which have been set out on affidavit and which might arise from publicity about her application. Accordingly, I have acceded to an application that this matter should proceed anonymously. Her details are in Court. The applicant will be known as “JR1”.

(3) The respondent, the Parades Commission, has raised the objection that the applicant does not have sufficient interest in the decision to entitle her to bring this application for leave to apply for judicial review. The applicant proceeds on the basis that she has family links with a participating band known as “The Pride of Ardoyne Flute Band” and it is her intention to proceed with the parade and the band from Ligoniel along the route of the parade to the demonstration field and then to return home along with the parade. The respondent has put before the Court an application that has been made by an organising body described as “Ballysillan LOL1891” and that shows that there are no accompanying bands with that particular parade. However, the respondent has stated that four applications have been made in respect of this parade by four organising bodies and that one of those organising bodies is known as the “Ligoniel True Blues LOL1632”. In respect of that application it is accepted by the respondent that the details of accompanying bands include The Pride of Ardoyne Flute Band. The four applications relating to this procession have resulted in four similar determinations issued by the Parades Commission. Accordingly, the applicant has a sufficient interest because her declared involvement as a follower of a band with which members of her family are associated relates to one of the notified bands that will accompany one of the organising bodies that is participating in this parade and is affected by one of the four determinations issued by the Parades Commission. The applicant has a sufficient interest to proceed with this application.

(4) The respondent confirmed that all the determinations are in similar terms. The conditions applied to the organisers and all persons taking part in the parade on Monday 12 July 2004 include condition (b), which provides that:

“On the return route only lodge members and the notified marshals may process on foot between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road.”

It is the applicant’s case that this restriction interferes with her rights by preventing her from walking along the specified part of the route.

(5) The powers of the Parades Commission are set out in the Public Processions (Northern Ireland) Act 1998 which established the Parades Commission.

By section 6 of the Act it is provided that a person proposing to organise a public procession shall give notice of that proposal to a member of the police. It is further provided that the notice shall specify various matters including the number of persons likely to take part in the proposed public procession. Those who organise or take part in a procession and do not comply with the notice requirements are guilty of an offence.

By section 8 of the Act it is provided that the Parades Commission may issue a determination in respect of a proposed public procession imposing on the “persons organising or taking part in it” such conditions as the Commission considers necessary.

(6) It is apparent, therefore, that the power of the Parades Commission to impose conditions in respect of proposed public processions is limited to two groups—(1) organisers and (2) those taking part, ie participants in the parade. In this case the applicant has described her role as walking with her child alongside the parade from its origins at Ligoniel to the demonstration field and back again. The respondent accepts that the applicant is not an organiser of the parade and more particularly that her description of her role means that she is not taking part in the parade and she is not a participant. The respondent further accepts, therefore, that as the applicant is not one of the specified groups she is not subject to the terms of the determination and she is not subject to the conditions that have been imposed by the Parades Commission, those conditions being limited in their operation to organisers and those taking part.

(7) It follows from the clarification of the Parades Commission’s position that followers, if I could describe them loosely in that fashion, are not persons taking part in parades. I must immediately qualify that by saying that there may be cases where purported followers are indeed taking part in parades and if they are taking part then, of course, they will become subject to the conditions that have been imposed by the Parades Commission. Whether or not they are taking part is a matter of fact and degree from case to case. In general, if a person is intending to be part of a parade, and further if that person is in close proximity to the parade, and further if that person is acting in a manner that an observer might reasonably conclude was in common purpose with the parade, they may be found to have become more than a follower and to have become a participant in the parade. Such a conclusion would not be based on the numerical strength of the persons who purported to be followers, as one such person may become a participant while 20 persons may in the circumstances not be taking part in the parade and may remain followers and not participants.

(8) The determination is directed to those who are organisers and those who are taking part and requires compliance by those persons with the specified conditions. Accordingly, the applicant in this case, who it is agreed from her description of her intentions will be a follower, is not prevented by the terms of the determination from taking any course of action that she might wish to take. The applicant may be guided by the organisers and those taking part, but she cannot be prevented by the organisers or those taking part from walking along the identified part of the route. Of course she may agree to any requests made by the organisers or those taking part or others. Further the applicant cannot be prevented by police from walking along the specified part of the route by reason only of the terms of the determination that has been made by the Parades Commission.

(9) However, the applicant may of course be prevented by police from walking along the specified part of the route in the exercise of general police powers, including public order powers and any other police powers that allow the police to prevent the movement of people in particular places.

(10) The grounds on which the applicant seeks leave to apply for judicial review can be considered under three heads:

- (i) First, that the Parades Commission’s decision is ultra vires, as being beyond the powers of the Parades Commission. There are two grounds specified—first that no power exists for the Commission to issue a determination binding non-participants and secondly that the applicant is not taking part and is not a participant. The respondent agrees these two grounds and so there is no issue. The Parades Commission does not purport to make a determination that applies to non-participants.
- (ii) Second, that the Parades Commission decision is unreasonableness on the basis that it did not give proper account to the applicant’s rights and did not allow her an opportunity to address the Parades Commission on her rights. This ground assumes that the applicant is directly affected by the Parades Commission’s decision which, for the reasons already discussed, is not the case as the applicant is not an organiser or a participant in the parade.
- (iii) Third, that the Parades Commission’s decision is a breach of the applicant’s rights under the European Convention, namely Articles 9, 10 and in particular Article 11, which is concerned with the right to peaceful assembly and association. Again this ground assumes that the applicant is directly affected by the decision and again that is not the case.

(11) In the circumstances outlined above, there are no arguable grounds for judicial review and accordingly leave to apply for judicial review is refused.

APPENDIX 18

Memorandum submitted by the Committee on the Administration of Justice

Thank you for your letter of 3rd September 2003 regarding the inquiry into the Parades Commission and the Public Processions (Northern Ireland) Act 1998.

Enclosed for your information is a copy of our submission to the Quigley Review and a copy of our response to Sir George's final report.

WHAT IS THE CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, the Lawyers Committee for Human Rights and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include—publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include prisons, policing, emergency laws, the criminal justice system, the use of lethal force, children's rights, gender equality, racism, religious discrimination and advocacy for a Bill of Rights.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

CAJ RESPONSE TO THE QUIGLEY REVIEW ON PARADING³⁶ (January 2003)

INTRODUCTION

On 27 November 2001 the Secretary of State announced the appointment of Sir George Quigley to conduct a review of the Parades Commission and the legislation under which it was established. The subsequent report was submitted to government in September 2002, and circulated for consultation in November 2002. The following commentary responds to Sir George's findings and recommendations and, unless indicated otherwise, all paragraph or page references relate to the Quigley report.

The Committee on the Administration of Justice (CAJ) has worked on the human rights aspects of parading, and the policing of such parades and associated protests, since the mid-90s, and has published extensively on this subject. Except where necessary, this commentary does not explore CAJ's detailed argumentation regarding human rights and parading, but instead restricts itself to commenting on the specific proposals made by Sir George Quigley.

COMMENTARY

CAJ is obviously aware that many across the community (but particularly perhaps members of the Loyal Orders) are dissatisfied with the Parades Commission. This is presumably in part at least why it was thought necessary to undertake a review. What is less clear, however, and the report does not explore this adequately, is the nature of that dissatisfaction. Without a clear analysis of the problems, it is difficult to decide on appropriate solutions.

Thus, for example, George Quigley comments—"most of those who gave evidence (including some who were very critical of the operation of the existing arrangements) accepted that independent third party regulatory machinery was probably a fact of life" (para 14). This would appear to suggest that few challenge the existence of the Parades Commission, even though they may have concerns about the way it works. If this is in fact the case, it is difficult to see why Sir George proposed such radical changes. Indeed, given the radical changes that Sir George proposes, it would have been very helpful to have a more explicit analysis of the underlying problems that his proposals are intended to remedy.

³⁶ Full title: Review of the Parades commission and Public Processions (Northern Ireland) Act 1998, Sir George Quigley, GB, PhD, submitted to government on 27 September 2002, published by Northern Ireland Office with cover letter dated 7 November 2002.

Options (pages 11-12)

Sir George suggests that there are three possible options for change. CAJ would tend more to the first—which is to rely on the current arrangements to “gradually guide protagonists towards local accommodation”. We are not particularly sympathetic to the second option (to impose a blanket ban on some parade routes, either permanently or semi-permanently), and we are unconvinced that the third option, the one favoured by Sir George (para 17), will in fact “enable a considerable acceleration in the trend towards local accommodation”. We comment on this in more detail below.

CAJ was particularly struck by the Parades Commission’s own assessment (para 20) that “there is considerably more engagement and that the green shoots of resolution are breaking through what was once particularly stony ground”. Given engagement, it (the Commission) does not believe there are many circumstances where a loss of route is inevitable. Sir George does not challenge this analysis, and we are therefore at a loss to see why now, when change appears to be underway at the grassroots level, that the whole system should undergo a radical overhaul.

In our correspondence with Sir George, we drew certain analogies between the Parades Commission and the early experiences of the Fair Employment Agency (subsequently Fair Employment, and then Equality Commission). As with fair employment in the ’70s and early ’80s, parading and the disputes around parading are politically contentious. Statutory bodies established to deal with these deep conflicts are likely to be lightning-rods for much criticism. However, with time, the Fair Employment Agency (and later the Commission) came to be seen as acting in good faith and as having facilitated positive and constructive change in society. It is our belief that this may well prove to be the case for the Parades Commission in due course. In any event, CAJ believes that it is too early in the life of the Commission for it to be subjected to a major overhaul.

Facilitation role (para 25)

CAJ has never had strong views as to the best way to ensure effective facilitation but believes that this is a matter on which the views of the immediate parties to the dispute are of most importance. We are, however, clear that any facilitation role should not be confused with an adjudicatory role, still less undermine—even unwittingly—any such role. Accordingly, CAJ would, subject to certain conditions, endorse the proposal for a “stronger and more structured role for a facilitation function”. The minimal conditions to be met include the readiness of all the different parties to the dispute accepting this proposal, and the establishment of procedural safeguards such as the optional nature of the mechanism (para 29) and non-permeable walls between determination and facilitation (para 32). While in principle accepting the value of facilitation, we do not, however, accept the specific mechanisms proposed by Sir George, and we comment on this in due course.

Formal determination role (paras 35-52)

CAJ has strong views on the Quigley proposals regarding the formal determination role to be performed. We believe that the recommendations, if implemented, would lead to a number of very serious problems and are therefore unacceptable.

Firstly, CAJ can see no justification for amending current legislation to include explicit reference to article 11 of the European Convention on Human Rights (para 38). As a legal proposal, this makes no sense at all. The European Convention (the ECHR) is the legal framework within which all domestic legislation must be interpreted. Its incorporation into UK law via the Human Rights Act requires that public bodies are obliged to make all their decisions in the context of the ECHR protections. It is therefore merely duplication to make specific reference to article 11 of the ECHR in the Public Processions Act. There is no “value added” in proposing something of this nature. Indeed, in our view, such an amendment could risk undermining rather than emphasising the importance of the right of freedom of assembly, since it suggests that the authority for this right derives merely from the Public Processions Act. The rights set out in article 11 are given special force by virtue of the fact that all legislation and public acts must be assessed against the Human Rights Act.

Secondly, even if it were thought necessary (and not undermining) to repeat this protection in the Public Processions Act, there is no logic supplied by Sir George as to why article 11 should alone be “privileged” in this way. If it is thought necessary to incorporate article 11 into the Public Processions Act, why not include all the other articles of the Convention that are relevant to the parading dispute and which have been called upon at different times and by different parties (eg articles 3, 8, 9, 10, 14 and 17)?

Last but far from least, having privileged article 11, Sir George then proceeds inexplicably to propose privileging only certain parts of article 11. Article 11 of the ECHR allows domestic law to restrict the right to freedom of assembly “in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”. For some reason, the restrictions underlined in this text are to be included in the Public Processions Act in a different provision from the other exceptions cited and are clearly differentiated. No such differentiation exists in the ECHR. Later in the text, one can begin to glean some of Sir George’s thinking, but he does not

explain his thinking here when the idea is first introduced. Indeed, on the contrary, the text is misleading in that he refers to the need for the Public Processions Act to be “modelled precisely on Article 11”. His proposal then fails to do this.

CAJ sees no reason for replicating extant legislation by incorporating article 11 into the Public Processions Act, and finds it even more unacceptable to incorporate some articles of the Convention and ignore other relevant articles, and/or to incorporate one specific article in a selective way.

GUIDELINES (PARA 40)

CAJ is in no sense convinced that the factors cited in paragraph 40 with a view to governing the decision making process are any clearer than those which Sir George has ruled are too opaque. Concerns have been expressed at the lack of transparency of current arrangements but there is little point in exchanging one type of opacity for another. What is meant by the “nature” of the parade, the “arrangements”, or the “characteristics” of the contested part of the route? Some detail is provided in chapter 15, but it still leaves lots of room for uncertainty or disagreement. If the proposal of amending the guidelines is pursued, it would be very important to consult extensively, agree upon, and then publish a fairly detailed interpretation of the ‘factors to be considered’.

It is also not clear to CAJ what is the intended status for the considerations that are currently included in the guidelines—considerations such as the “impact of parade on relationships within the community”; “disruption to the life of the community”; and “genuine attempts to broker local agreement”. Is Sir George trying to replace these latter considerations with those in his report, or is he simply proposing additional considerations? The current considerations needed interpretation over time, but they have come to have relatively accepted meanings for all the parties concerned. CAJ believes they serve a useful role in assisting in the balancing of rights that is involved in the determination process. If they need further interpretation to assist in the process of transparency, CAJ would welcome that, but we see no argument for replacing them entirely, or still less for replacing them with criteria that are totally undefined.

Traditional routes (paras. 4 1-42)

CAJ could not find any grounding for the “traditional” criterion in international human rights law and therefore opposed reference to it in the Public Processions Act. In practice, however, we found few problems on the ground since we have not found that this criterion was allowed to predominate over others. We are not, however, entirely clear of the consequences of Sir George’s proposals in this regard since he proposes deleting this provision from the legislation (para 41), but immediately thereafter (para 42), he seems to suggest that traditionality should carry weight in the decision making process. It may be that he is attempting to distinguish between the rightsbased determination process and the facilitation process (see paras 15.18–15.20, page 187/8), but this would need to be clarified.

Frequency of parades (para 43)

CAJ sees no problem in the facilitator taking on the role of negotiating the frequency of parades with the parading organisation on condition that the parading organisation is made aware of their rights to pursue their claims to peacefully assemble in compliance with the law and any lawful restrictions placed upon them.

Transparency of the decision making process (para 49)

CAJ argued in its submission that transparency in the decision making process was an important issue. We certainly share the concern of some that the decision making process, and the published determinations flowing from that process, should be as open as possible to allow for a full understanding of the deliberations of the Commission.

We also however raised the concerns that had been brought to our attention by both marchers and residents about the importance of confidentiality. People were worried about the possible reaction to them, both on the part of other parties to the dispute, but also on occasion from those within their own community or group, in the event of disagreement.

CAJ was therefore greatly surprised by Sir George’s conclusion that “it is difficult to envisage circumstances in which many need feel any inhibitions about expressing their views fully”—Sir George suggests that the Determining Body can exercise discretion about the extent of confidentiality, but it would be unsatisfactory if the various parties were uncertain as to whether their request for confidentiality would or would not be respected.

Without wanting to decry the comparisons between Scotland and Northern Ireland, it seems to CAJ quite disingenuous to suggest that “little adaptation” (para 50) would be required within the two jurisdictions. Unfortunately, violence—and even death—has been an all-too-frequent consequence of the disputes around marching in Northern Ireland, and it is very dangerous to minimise the risk to all parties concerned by drawing inaccurate analogies with the situation in Scotland.

Nature of parades (para 55 and 56)

While not disputing the contention that “the vast majority (of organisers) wish to be responsible for well-conducted events”, it seems to CAJ that the report’s author does not allow for the fact that the parade in and of itself (or the route thereof) will be seen by some as provocative, sectarian, offensive, or abusive. Thus, Sir George notes that “provocative, sectarian, offensive or abusive behaviour on the part of protestors is as reprehensible as similar behaviour on the part of those on parade”, but the problem is often not seen as one confined to the behaviour of individual protestors or marchers.

Protests (para 59)

CAJ is undecided about Sir George’s proposals regarding protests. Is it always as clear as he implies that “parades” and “protests” together constitute “the totality of the event”? In 2002, for example, much of the public disorder in North Belfast was connected to the tensions around parading, but in only a few instances could one match a specific protest or disturbance with a specific march or parade. In previous years, there was a whole array of small-scale time-limited peaceful protests that involved women and children blocking roads. Such protests were portrayed as Drumcree-related, though they were geographically and chronologically unconnected to the Drumcree protest.

Public safety (para 60 on)

This is another section of the report where CAJ disagrees strongly with Sir George’s proposals. As indicated earlier, his proposals amount to an unjustified (and, in our view, unjustifiable) differentiation between the various elements included within article 11.2 of the European Convention. Sir George is proposing that the “national security, public safety, and the prevention of disorder or crime” restrictions be cited separately from the other restrictions listed in article 11.2, and that the decision making process on these limitations be entirely different from that applied to article 11 generally. The problems with his approach are several.

Firstly, Sir George seems to draw a distinction between “human rights considerations” and “public safety” considerations, but all of the different considerations he draws on are cited in article 11.2 of the European Convention of Human Rights (and indeed replicated in several other articles of the ECHR). Accordingly, “public safety” considerations are amongst the human rights considerations to be examined when trying to adjudicate between conflicting rights; there is no justification within the Convention for treating this limitation differently from any of the others in article 11.2. In CAJ’s view, it is not possible—and would anyway be unwise—to consider some elements in isolation from others.

Secondly, having arbitrarily separated out public safety considerations, and claiming, without any legal basis, that they are “out-with” human rights considerations, the Quigley review proposes that the police be the sole arbiters of the public safety aspects of parade applications. This is one of the most problematic proposals in that it returns the police to a central role in the decision making process, similar to one they performed in the past, before the Public Processions Act came into force. In CAJ’s view, one of the most important legislative advances in recent years has been the clear separation made between decision-making and policing the decisions once made. The Parades Commission is currently responsible for the first, and the police for the latter. This clear delineation of roles has protected the police from some of the charges of political partisanship of the past. This is an improvement both in natural justice terms, and in removing the police from a highly contentious position where marchers or protestors, and sometimes both, were angry with the police because of their decision to allow or impede a parade.

Moreover, it is highly questionable whether the police can in law limit their involvement to the public safety aspect of parading. The police are subject to the Human Rights Act like other public bodies, and their decisions therefore must be in conformity with it. They are not free to disregard their human rights obligations simply because these have been formally assigned to some other decision-making body. It is therefore not at all clear to CAJ how Sir George could conclude that “the police would have no part to play in the evaluation of the rights-based factors” (para 65).

Sir George’s argument for this radical change is that it would make the police more accountable. In CAJ’s view, there are many other—better—ways of doing this, and the risk of returning the police to the invidious position they were in previously is much too great. Oddly, Sir George gives only one clear reason for increasing the decision-making powers of the police in this contentious area, and that is the fact that the police can best make judgements about how the police budget is spent.

The review does at least recognise that there will be concern expressed about the role that the police are being asked to take on. Sir George claims that his recommendation would in no sense amount to a return to the pre 1998 Act with regard to the police role. He argues that the police would only make a determination on the public safety aspects of parade applications after the rights-based determination has been made. This fact, he claims, would ensure that the police would be “involved in the implementation, not the making, of the Determination and would not therefore have the dual role which was regarded as an unsatisfactory feature of the pre-1998 Act situation” (para 65). But this claim does not bear close scrutiny. The fact that the police come in at a second stage of the decision-making process, rather than the preliminary stage, does

not remove them from the decision making process. Indeed, the public safety considerations are likely on occasion to be considerable, and this stage of the decision-making will often therefore be a very crucial one. In reality, few marchers or residents will think of the police as merely implementing decisions, if a determination is made authorising or banning a parade on grounds of public safety alone.

Thirdly, and independently of who determines and how they determine the risks posed to public safety by specific parades or protests, CAJ believes it is quite misguided to give such weight to this specific criterion. In a commentary in 2001³⁷, we looked back over the decision making process in previous years and noted:

“in 1996 and in 1997 fear of violent disorder was the overwhelming criterion for decisions. Thus, in 1996, it was disorder that led to the police allowing a march down the Garvaghy Road (despite nationalist wishes) and the threat or disorder that led the police to deny a march down the Ormeau Road (despite unionist wishes). (CAJ’s) conclusion in the past was that such a stance undermines the concept of the rule of law, encourages resort to violence in order to achieve one’s aims, and leaves the rights of a minority (whoever they might be) unprotected. By 1998, the Parades Commission took a broader view of the legal framework than had the police before them, and considered themselves legally obliged to bear a number of important considerations in mind alongside concerns about public safety (eg a balancing of rights, proportionality, disruption to the community etc).”

We concluded that “it would be very unwise if the Parades Commission were to fall into the trap of earlier decision making processes that allowed the threat of public disorder to take on a privileged position in the decision making”.

In a commentary on the policing of marching disputes in 1998,³⁸ CAJ noted “that the police decided this year to exercise control over the situation largely by a careful policy of non-intervention and laissez-faire. This operational approach was greatly facilitated by the fact that the decision making process as to whether to allow a march to proceed or not was no longer solely a matter for the police.”

Sir George indicated clearly that he wanted to avoid anything that might be equated to a “rioters’ charter” (see 15.15). Ironically, though Sir George wanted to give less priority to the “public safety” limitation, CAJ believes that the approach recommended (of the police focusing on this single consideration in the last stage of the decision making process) will ensure both that this restriction is accorded more rather than less weight, and will exacerbate the problems of policing any subsequent disorder.

New structures (para 6 7-72)

It was not particularly clear to CAJ how the two distinct panels proposed here (ie an independent Rights Panel for Parades and Protests and a Facilitation Body) would work. It is also unclear how either or both of these entities would relate to the police role in subsequently determining public safety considerations.

We have already challenged the distinction between “rights” and “public safety”, but what is the intended link between Authorised Officers and the Rights Panel? Will the Authorised Officers be linked solely to the Facilitation Agency? If so, how will the Rights Panel garner information of the kind that we understand the Authorised Officers currently provide to assist the Parades Commission in its determinations? Who will the parade monitors “report” to? If the police alone are to assess public safety, any concerns about response to public safety considerations on the ground must presumably be fed to the police—but does this not change the monitors’ role greatly from the current arrangements?

Offences (para 85)

CAJ agrees that the upholding of the rule of law requires that those in breach of the law are held to account before the courts. Indeed we have previously raised concerns with the Director of Public Prosecutions on this issue, and have expressed concern about the lack of clear statistics as to who is pursued and why, and why those breaking the law are often not pursued. CAJ would however caution against emphasising the penalties approach as opposed to the value of a wider debate about creating a “culture of rights”. The two approaches are in fact complementary rather than contradictory and should be seen as such.

BODY OF THE REPORT

The preceding commentary focuses on the executive summary and the main recommendations and findings of the Quigley Review. There are, however, a number of issues in the body of the report itself which merit brief comment.

1. It is noteworthy that as long ago as the North review, concern was expressed at the excessive emphasis given to the ‘public order’ aspects of parading and the failure of these concerns to be balanced against other concerns (para 3.18, page 55). CAJ believes that the proposals of Sir George seriously risk returning Northern Ireland to a situation where the ‘trump card’ becomes the public order element of the decision making process.

³⁷ Policing and Public Order in Northern Ireland 1996–2000, some CAJ reflections: CAJ, May 2001, SAil.

³⁸ Public Order Policing 1998, CAJ, S 80.

2. One of the roles of the Parades Commission (para 3.24, page 59) is education. Elsewhere (para 3, page 71), Sir George indicates that the “promotion of greater understanding by the general public of issues concerning public processions” is one of four specific duties of the Commission laid down in the legislation. This is one arena where CAJ has been critical of the Commission, suggesting that they could do more to promote greater public understanding of its role, of the conflict of rights around parading, of the need to balance rights etc. CAJ is disappointed that Sir George did not make specific recommendations to this effect, apart from requiring the Agency to retain an educational function.

3. Para 3.27 and 3.28, pages 60–61, explain the genesis of the guidelines currently used by the Parades Commission in its determinations. The Commission is expected to consider (i) the physical location and route; (ii) the impact on the local community, including frequency of parades, disruption to trade, traffic and everyday life; (iii) the purpose of the parade eg whether it is commemorative, a Sunday church parade or band parade; and (iv) features particular to that parade eg tradition, numbers, past behaviour etc. The North review had also recommended that “alongside these four elements, the (Parades) Commission should also take into account the preparedness of the parties to work to reach local accommodation and to look constructively at alternative means of doing so”. As noted elsewhere, Sir George does not indicate clearly what problems have arisen with these guidelines. There is a suggestion that they are opaque and lacking in transparency, but this would seem to argue for more detailed interpretation and clarification, not the imposition of new (or supplementary?) undefined criteria.

4. Para 8.5 (page 94) indirectly highlights a problem that Sir George did not explore in his Review at all. He notes that “earlier days were recalled when the boot was on the other foot and the local balance of demography and power prevented Nationalists from marching where they wanted and where the control of public space was used to control public expression”. This is an odd formulation, since it suggests that Sir George thinks that the limitations on nationalist expression are merely of historical interest. Nationalists might argue that they are still not allowed to peacefully march through public spaces seen to “belong” to the other community. Indeed, most commentators would agree that it is impossible to conceive of a nationalist-organised event being allowed by the authorities to walk down the Shankill or indeed into the centre of Portadown. But more importantly for the purpose of the resolution of the parading dispute is the fact that “equivalence” is not an issue here. Parading—because of its history and its cultural roots—has a quite different significance for members of Loyal Orders and for Catholics or nationalists. In a deeply divided society, people often mistakenly look for equivalence and bargaining counters: this is not feasible in the marching context. This makes a broader educational process around the rights at issue all the more important.

5. Para 10.1, page 110, “With a few exceptions, there was no demand for a return to the pre-1998 Act situation when the regulatory function was discharged by the police or when politicians had a role in decisionmaking”. This finding does not surprise CAJ; we, however, believe that Sir George’s proposed changes will in fact bring about this very situation, and will—albeit inadvertently—put the police in the position of decision-makers once again. Indeed, given the potential for the police decision to be hotly contested (from either or both sides of the political spectrum) it is also likely that these disputes will in time be argued out in the Policing Board. In this way, elected politicians, as well as the police, will be brought back into the maelstrom of the parading dispute.

6. Para 10.2, page 115, CAJ notes support for the idea that “appointments to the Board should pay regard to the need for gender balance”. The Parades Commission is required to be “as far as practicable . . . representative of the community in Northern Ireland” (article 2 (3) of Schedule I of the Public Processions (NI) Act 1998). Given this requirement, CAJ believes that it is quite unacceptable that it currently consists of seven men and no women. Despite the fact that a review was underway, we were disappointed that the government did not remedy this situation at the earliest possible opportunity. Instead in December 2002, government re-appointed all of the current members for a further year.

7. Para 12.5, page 127, Sir George refers to “the rights most frequently referred to in the context of the parades issue” and provides the full text of articles 8, 9, 10, 11, 14, 17, 18 and article 1 of the First Protocol. He does not in fact refer to article 3³⁹, which has been referred to by some commentators. This appendix (with the addition of article 3) highlights CAJ’s own contention that there are several rights in the ECHR relevant to this debate. Accordingly, since the Human Rights Act incorporates all of these ECHR rights into domestic law, there is no logic to “privilege” article 11 alone, as in Sir George’s proposals.

8. Para 13.11, page 145: while Sir George is understandably disappointed that steps towards engagement have been so tentative, he himself noted earlier the long lineage of the disputes involved “No decade between 1850 and 1940 lacked at least one summer of serious rioting” (para 9.4). This is obviously not an argument for complacency, but a recognition that solutions will neither be quick nor easy, in ensuring that in future the rights of all are fully respected.

9. Para 20.11, page 229: CAJ has commented at length on the risk of engaging the police actively again into the formal decision making process. We recognise the important role of the police in providing information to the Commission, and no-one would suggest that their insights and advice should be disregarded by the Commission in arriving at its decision. Indeed, Sir George seems to indicate that no serious problems have arisen to date in the working relationships between the police and the current Parades

³⁹ “No-one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

Commission, and that “there is no reason to believe that the Commission do not operate with the utmost responsibility in the use they make of police advice”. Given the apparent lack of problems in this area, one must wonder why such a radical change is being proposed?

10. CAJ has no problem in principle with the fact that “it is possible under current arrangements for the Commission to make a Determination which in effect runs counter to (police) advice”. Firstly, we think that public order (which will inevitably be a primary concern for the police) should not be the decisive criterion, and the Parades Commission should have the power to over-ride police advice. Secondly, we think that the other considerations that must be assessed alongside public order require a balancing of rights that is best done by an independent body and not the police. Thirdly, the main argument that Sir George gives for assigning formal decision-making on public order grounds to the police is the responsibility they must exercise over police priorities and determining scarce police resources. Any special focus on the budgetary consequences of allowing or prohibiting a parade would need to be very carefully monitored, to ascertain that the rights of all parties were being adequately ensured. Again, we think that this function is best carried out by the police working with the Parades Commission, not working alone.

CONCLUSIONS

While CAJ believes that improvements could be made in the current functioning of the Parades Commission, we do not believe that Sir George has made a cogent argument for the radical over-haul that he is proposing.

Unfortunately, CAJ has had to conclude that the recommendations do not provide an acceptable building block for the future of parading in Northern Ireland, and risk exacerbating the situation. We believe that the changes proposed are fundamentally flawed for a variety of reasons: they flow from a mis-reading of international human rights law; they will not improve the situation on the ground; they could undermine the consensus that is building up around the need to respect the rights of all involved; and they risk placing the police in an invidious and unacceptable position.

CAJ SUBMISSION TO THE REVIEW OF THE PARADES COMMISSION BEING CARRIED OUT BY SIR GEORGE QUIGLEY, 2002

INTRODUCTION

The Committee on the Administration of Justice (CAJ) is an independent nongovernmental group that works to protect and promote human rights in Northern Ireland. CAJ works across the gamut of civil, political, economic, social and cultural rights as defined in international human rights law. Since its inception in 1981 the organisation has worked on conflict related issues such as policing, criminal justice, emergency legislation, and prisoners, but also broader non-conflict related issues such as gender equality, disability, race discrimination etc. The organisation was awarded the Council of Europe Human Rights Prize in 1998.

The organisation has been active on issues relating to parading and associated protests since 1995, both because of the conflict of rights that marching gives rise to, and because of the lessons these events hold for public order policing. Apart from regular items in the organisation’s monthly newsletter *Just News*, and extensive correspondence with a wide variety of public authorities, marching organisations and residents’ groups, a variety of publications and submissions have been placed in the public domain outlining the organisation’s findings, for example—

- Policing and Public Order in Northern Ireland: summary 1996–2000
- Submission to the Progress Review on the work of the Parades Commission (November 1999)
- Public Order Policing, December 1998
- CAJ response to the Guidelines, Code of Practice and Procedural Rules issued by the Parades Commission, February 1998
- CAJ comments on the Public Processions etc.(NI) Bill, November 1997
- Policing the Police, November 1997
- Commentary by CAJ on the 1996 Primary Inspection Report by HMIC with reference to the RUC, March 1997
- The Misrule of Law, October 1996
- Review of Parades and Marches, October 1996

The documents listed above have all been made available to the Review. The following paper seeks to answer the various questions posed by Sir George Quigley in his questionnaire, and in so doing draws extensively on our work over several years and on the different public commentaries cited above.

CAJ is a human rights organisation. As such, it is interested only in the human rights aspect of the parades issue: the assertion of rights by the different parties to the dispute, the state’s responsibility to adjudicate fairly between these competing rights, and the responsibility to police impartially the adjudication and any

resultant public order problems that may arise. There are a number of issues which are raised in the questionnaire which do not raise human rights concerns and therefore CAJ has nothing to contribute on these issues. We expect that others will address these issues in some detail.

Question 3: should there be a regulatory machinery and what form should it take?

CAJ never argued explicitly for a Parades Commission *per se*, but after the debacle of 1996, where the government had in advance eschewed all responsibility for the impending crisis in Portadown, we argued that—

- The government had a responsibility to create some form of regulatory mechanism to prevent serious disorder;
- this mechanism should be quite distinct from the police who have responsibility for policing the eventual decision and should not also have responsibility for the decision itself;
- any adjudicatory mechanism should be independent of government;
- and be representative of the broader society.

On this latter point “representative” can be, in our view, either a body which consists of representatives of all the different perspectives (residents and marchers), or one that consists of none of them. It would be unacceptable for the adjudicatory body to consist of only some of the contentious perspectives. In response to the specific issues raised in the questionnaire, CAJ believes that the current legislative provisions relating to the composition of the Board are acceptable, with the possible exception of the confusion which surrounds the concept of the board being “representative”, and we have commented on this above.

As to whether the Parades Commission should also engage in mediation, we would refer Sir George Quigley in particular to CAJ’s response to the Northern Ireland Office review which is in our “Submission to the Progress Review of the work of the Parades Commission” (5.95, November 1999). In our very earliest comments on the draft legislation (see S.61, November 1997) CAJ had recommended that a mediation function not be included. We obviously think that the mediation function is a very important one, but we believed that this function should not be performed by the Parades Commission since it needed to adjudicate between conflicting positions and there might be a conflict of interest if adjudication and mediation were carried out by the same body. Our concerns were not apparently shared and the Commission was given both mediation and adjudication roles.

In reality, CAJ found there to be less conflict of interest arising between the functions of adjudication and mediation than we had feared. Accordingly, when the NIO carried out its study in 1999, we indicated that we had experienced few direct problems. We nevertheless noted that the actors more directly concerned (both residents and marchers) had on occasion expressed concerns that such a conflict might arise, or might be perceived as having arisen. Throughout these exchanges, CAJ was quite clear that, if a choice had to be made between adjudication and mediation, the Parades Commission must retain the former role. Adjudication requires statutory powers and cannot easily be performed by anyone other than something akin to the current Parades Commission, whereas there are a variety of groups and mechanisms which might be established to carry out a mediation role.

At earlier stages, CAJ commented at length on the criteria for making determinations and argued in particular that they should draw on international human rights law. We are reasonably satisfied that the agreed criteria do in fact now reflect good international practice, though we had previously (CAJ, s.61) noted some reservations about the importance accorded to the extent to which a route was considered “traditional”, since we saw no grounding for it in international law. Indeed, since human rights law puts the emphasis on protecting minorities from an abuse of majoritarian rule, “traditional” routes—which may reflect the legacy of past power relationships—arguably runs counter to good human rights practice. In practice, however, we have had few serious criticisms to make of the criteria being applied to determinations.

As to the process to be followed in coming to its decisions, it is obviously vital that the process be open and transparent. Moreover, the Commission must be prepared, when necessary, to answer for its decisions before the judiciary when those affected feel that due process has not been respected.

Question 4: Direct experience of the operation of the Parades Commission

The best way to respond to this question is to refer to CAJ’s commentary on the Commission’s work dated July 2001 which comments in detail on the Commission’s annual report and the Northern Ireland Affairs Committee’s assessment of the Parades Commission (copy enclosed herewith).

Question 5: Any changes to be proposed in areas such as:

- a. *Criteria governing appointments:* As indicated above, CAJ believes that the legislation should define “representative” more clearly.
- e-f *Protest meetings:* CAJ has not previously commented on the extent to which protest meetings should be regulated and has not given this issue sufficient consideration to comment helpfully at

this stage. (This is also true for question 11 regarding “other” parades and whether or not there are issues here to be raised. In our commentary on the legislation in 1997, however, we did oppose extending the Parades Commission remit much beyond the issue of contentious parades—see S.61.)

g&j *Commission’s power to impose conditions and penalise offences: To date, one of the problems that CAJ has been aware of is the failure of the Commission to monitor the extent to which conditions imposed were in fact complied with. CAJ was aware of several situations when the imposed conditions were not met, and it was not clear what action, if any, the Commission had taken. Clearly, over time, the failure of the Commission to ensure that its conditions are met could undermine its credibility. This therefore needs to be remedied and presumably the appointment of parade monitors will assist in this work in the future.*

h. *The powers of the Secretary of State and Chief Constable:* In the drafting stage of the powers of the Commission, CAJ was very critical of the retention by the Secretary of State and the Chief Constable of the power to intervene and in essence countermand rulings by the Parades Commission. In practice, this power has not been formally exerted. Indeed, on one occasion when there was extensive public speculation as to the extent that the Parades Commission was succumbing to political pressure from government on a specific decision, public reaction was extremely negative (from all political corners). At the same time, it would be wrong to be overly complacent. The very existence of the legislative provision means that practice can change with a change of personnel, and CAJ still believes that this provision should be removed.

We do recognise, however, that on very rare occasions it is conceivable that the police might simply be overwhelmed by force and be unable to comply with the Parades Commission ruling. While expressing the hope that such incidents would be extremely rare, CAJ recommended that the legislation provide for such a situation by placing an obligation on the Chief Constable in such situations to make a full report to the Parades Commission of the reasons for his/her action as soon as practicable thereafter.

m. *Educational role of the Commission:* In its comments on the Commission’s Annual Report, CAJ commented on the importance of the Parades Commission seeking to inform the wider general public of its own role, and the centrality of rights to the parading dispute. We believe that they could make greater efforts in this regard. It is our sense that the current Parades Commission is much less known and much less visible to the general public in Northern Ireland. While to some extent that is a welcome development, suggesting that parades and the disputes surrounding them are not as much centre-stage as they were even just a few years ago, we believe that it is unfortunate that the periods between high activity and high tension were not used to promote a greater understanding in the general public about the work of the Commission.

n. *Parades Monitors:* This is a new phenomenon and as yet largely untried. We look forward with interest to seeing how this system works. CAJ was very active in sending out observers to monitor the policing of parades in the mid-90s, and believes that many lessons have been learnt in consequence. It is not our intention to continue to perform this function on a routine basis if statutory bodies such as the Parades Commission, the NI Human Rights Commission, the Police Ombudsman, and the Policing Board carry out their respective responsibilities in this domain.

With regard to the Commission’s Annual Report, we have already alluded to our earlier commentary on the document which is attached herewith.

Question 6-8 the role of other interests in civil society:

Society as a whole has a contribution to make to the resolution of this problem. CAJ, as a human rights group, brings international human rights perspectives to the debate and has sought to influence the legislation and the policing of these situations. We believe that the Parades Commission has a difficult enough task seeking to adjudicate and manage disputes around parades and protests without taking on responsibility for tackling the even more fundamental causes that often underlie these problems—social disadvantage, political alienation, a legacy of discrimination and major social and economic inequalities. Community forums could be an important way of addressing some of these fundamental problems but, if and when they are created, they should feed into the work of the Commission and be aware of the work of the Commission, but should not be seen as an alternative to it.

There is also much of interest in the Patten report in the context of community policing that could be relevant here since the intention is to find ways in which to ensure “the [community and the police] working together: mob/using resources to solve problems affecting public safety over the longer term rather than the police, alone, reacting short term to incidents as they occur” (para 7.3, *A New Beginning to Policing in Northern Ireland*).

Question 9: does the parades regime established by the 1998 Act assign an appropriate role to the police?

CAJ believes that one of the key elements which gravely undermined public confidence in policing in the summer of 1996 was the fact that the police had a dual role to play in the unfolding crisis. The police were both responsible for determining whether or not a particular parade would be allowed to take place, and what limitations might be imposed on it, and subsequently the police were responsible for ensuring that their ruling was fully complied with. These two functions have the potential for posing a conflict of interest and, in practice, have done so, with serious negative consequences for the impartial upholding of the rule of law.

CAJ has consistently argued that the two functions of (a) parade adjudication and (b) public order policing, must be kept quite distinct. We are satisfied that this is the case under the current legislation, and believe that any move to change this situation would be retrograde. As with all other aspects of criminal justice, the police should enforce the law or—in this case—the decisions of the legally constituted Parades Commission, not determine what the law or the decisions themselves should be. CAJ notes that when the Northern Ireland Affairs Committee discussed this matter in 2001, they agreed that the role assigned by law to the police should not be changed (recommendation h).

Moreover, we should take this opportunity to note that CAJ's experience of observing many parades and protests over the last few years has been that the police role on the ground can and does play an important role in either exacerbating or defusing tensions around the events themselves. We believe that Sir George Quigley should comment on this issue, since often the parades dispute is thought of only in terms of the immediate protagonists (marchers and protesters). It is CAJ's experience that the police handling of the situation is of at least equal significance in determining whether or not the rule of law is effectively and properly upheld.

Documentation already supplied to the review and in the public domain indicates that there are many issues which are crucial to effective public order policing. For example:

- police advance planning;
- communications on the ground;
- operational decisions (when and how to deploy officers, when and how to deploy riot police in particular, response to illegal activities whether peaceful or violent, resort to plastic bullets etc.);
- mechanisms for subsequent accountability.

All too often, CAJ has witnessed highly questionable decisions being made by individual police officers, or by senior officers, which have fuelled rather than defused tension. While many improvements have been made in recent years, and these have been commented on positively by us in our reports, CAJ has also expressed the concern that some of the changes may be as much due to different policing problems on the ground as to any active learning or change on the part of the police.

It is to be hoped that the positive changes that have been recorded on the ground can be maintained and indeed reinforced by the many new structural and institutional mechanisms recently introduced. The new arrangements put in place pursuant to the Patten report (devolved commands within the PSNI, a greater emphasis on human rights protections in police training and codes of conduct, greater emphasis on community policing, a new Policing Board, an Oversight Commissioner) together with the independent Police Ombudsman, the Parades Commission and the NI Human Rights Commission provide an array of mechanisms which should facilitate the police in carrying out their important responsibilities of upholding the law.

Question 10: has the incorporation of the European Convention of Human Rights into law (ie the passage of the Human Rights Act) improved the prospects of resolving the issue of contentious parades?

There are several different issues that arise in the context of this question. Some people, for example, will argue that the reliance of different parties to any dispute on their rights, and on legally enforceable duties flowing from those rights, is divisive, unhelpful and fuels rather than defuses tensions. This is not the stance of CAJ. We believe that the language and concepts of rights, and the responsibility that this imposes on people to respect the rights of others as well, provides a context within which dialogue can begin to take place. While we recognise that the discussion may initially take place in the relatively adversarial setting of the courts—and that face-to-face exchanges between the affected parties would be even better—there is at least the beginning of a rational exchange of views and arguments. In due course, any genuine engagement with the language and concepts of rights focuses attention on our common humanity rather than only on our differences, and facilitates thinking about win-win scenarios in which everyone's rights are respected. Our expectation therefore in the longer term is that people who engage with the rights construct will seek mutually respectful solutions.

There are, however, gains in the shorter term also. CAJ has argued at every stage of the debate that the language and concepts of human rights had a lot to offer to the resolution and regulation of disputes. In our commentary on the 1996 public disorder and in our various commentaries on the North Review, the subsequent draft legislation, and the Parades Commission set up by that legislation, CAJ emphasised the centrality of rights to the dispute. We argued for active government engagement in resolving the problem, and we argued for clear and fair decision-making processes that would reflect international human rights

principles. Long before the Human Rights Act became a formal part of UK legislation, government was of course subject to the provisions of the European Convention on Human Rights (ECHR), and we and others therefore drew upon this treaty in advising on the way forward. It was a close study of the ECHR and other international and regional human rights standards which clarified that (a) all the different parties had rights which had to be effectively respected; (b) no party could lay claim to any ‘absolutè right; (c) there was therefore a genuine conflict of rights which needed to be adjudicated in a fair and transparent manner; (d) that international standards offered criteria such as the importance of the protected right, the need to promote tolerance and broad-mindedness, the weight and significance of the interests that the state was seeking to protect by interfering with the protected right, and the need for proportionality; and (e) that there should be remedies in law for those who felt aggrieved.

These standards were argued for, and were by and large included, in domestic legislation in advance of the passage of the Human Rights Act. Nevertheless, the passage of the Human Rights Act has had an important impact in at least two regards. Firstly, the arguments made in the courts in Northern Ireland can now draw more specifically upon the European standards. Secondly, the general public is more aware of the human rights dimensions of the parading dispute because of increasingly frequent allusions to the operation of the Human Rights Act. The Parades Commission in choosing, since the passage of the Human Rights Act, to argue its decisions on the basis of specific articles of the European Convention has further assisted both in getting the courts to rely increasingly on human rights standards and in the process of wider public awareness.

It must be said, however, that government initiatives around the introduction of the Human Rights Act created some problems that may hold long term consequences for the resolution of the parading dispute. The government suggested in early/mid 2000 that certain aspects of the Human Rights Act could perhaps be fast-tracked. It was thought that article 11, which protects the freedom of peaceful assembly and association, could be privileged over other rights and introduced before the October 2000 date, when the whole Act was due to be introduced. Human rights activists argued that it would be acceptable to fast-track the introduction of the whole Act, but not specific Articles in isolation; any such selective fast-tracking was seen as essentially using the Act for political ends.

The general assumption was that government was proposing fast-tracking the provisions of the Human Rights Act that were thought by the Loyal Orders to advantage their concerns. CAJ is of the view that if this was the case, it was misguided, since Article 11 says specifically that restrictions can be imposed on the right to peaceful assembly “for the protection of the rights and freedoms of others”. In the end, no action was taken, so government manoeuvring seems to achieve nothing other than an undermining of respect for international and domestic human rights instruments.

September 2004

APPENDIX 19

Response by the Northern Ireland Human Rights Commission to the Quigley Review on The Parades Commission and Public Processions (Northern Ireland) Act 1998

SCOPE OF RESPONSE

1. The NIHRC has focused its consideration of the Quigley Review on those recommendations that have a direct bearing on human rights issues, notably the criteria on which determinations by the Parades Commission and related decisions by other agencies should be based and the procedures through which those determinations and decisions are made. It has not sought to comment in detail on other more practical aspects of the regulation of parades, such as the proposed arrangements for the provision and training of marshals, the obligation to carry out risk assessments or the regulation of bands or of paramilitary symbols.

BRINGING THE STATUTORY CRITERIA INTO LINE WITH ARTICLE 11 OF THE ECHR

The Quigley Review recommends that the criteria on which determinations are made should be modelled precisely on Article 11 of the European Convention on Human Rights (paras 36–37).

2. The NIHRC strongly supports this recommendation. It would, as the Quigley Review suggests, emphasise that human rights principles are the essential basis of decisions in this area and help to remove any confusion over the grounds on which determinations are made. The courts in reviewing decisions by the Parades Commission and other agencies are in any event bound to apply the provisions of Article 11, which in its reference in paragraph (2) to the rights and freedoms of others incorporates all other relevant articles of the Convention. This recommendation is also in line with the approach which the NIHRC has consistently taken to the regulation of parades, notably by commissioning a report on the interpretation of

the ECHR in respect of parades and related protests, published as *Parades, Protests and Policing: A Human Rights Framework* in March 2001, and by suggesting in its Consultation Paper *Making a Bill of Rights for Northern Ireland* that the provisions of Article 11 provide sufficient protection to all those involved.

3. It is important in this context to emphasise that all of the provisions of the Convention are of equal importance in decisions on parades. The provisions of Article 8 are particularly relevant in respect of the interference with family life which may arise from the heavy security which has in the past been associated with contested parades. So too are those of Article 10 in respect of the right to free expression for both marchers and those who wish to protest. The express reference to “the rights of others” in Article 11(2) makes it clear that limitations may and in many cases should be placed on the exercise of the right to peaceful assembly in order to protect the rights of others affected by a peaceful assembly, whether by unreasonable disruption or by measures taken to preserve public order. It should also be noted that the rights of others under the Convention also include the provisions of Article 17, which states that nothing in the Convention may be interpreted as implying for any State, group, or person any right to engage in any activity or perform any act aimed at the destruction or limitation of any of the rights and freedoms protected by it.

ADDITION OF A PROVISION EMPHASISING THE OBLIGATION TO RESPECT THE HONOUR AND DIGNITY OF ALL

The Quigley Review recommends that consideration be given to the inclusion of the following provision (para 45):

In the exercise of their right to freedom of peaceful assembly, all have a right to have their honour respected and their dignity recognised and must themselves respect the honour and recognise the dignity of others.

4. There are some advantages in relying exclusively on the provisions of Article 11, as they have been interpreted by the European Court of Human Rights. Its recent decisions, notably *Plattform “Ärzte für das Leben” v Austria* and *Stankov v Bulgaria*, have emphasised that the right to peaceful assembly is not to be curtailed merely because it may annoy or give offence to others or because it may give rise to tension and heated exchange between opposing groups and that in such cases it should where practicable be protected by the authorities rather than subordinated to considerations of public order. The Court has also emphasised in *G v Federal Republic of Germany* and *Steel v United Kingdom* that the right of peaceful assembly does not cover cases where the organisers of a demonstration have violent intentions which may result in public disorder or where they take action which may significantly obstruct others or which is likely to provoke others to violence. Given the obligation imposed on courts and public bodies under the Human Rights Act 1998 to follow the principles established by the European Court of Human Rights, there is no need to spell them out in national legislation.

5. On the other hand there is nothing in the European Convention which would prevent the inclusion of more specific provisions to emphasise these principles or to give further guidance to those making relevant decisions in the light of the particular circumstances in any State. Members of the Human Rights Commission differ between themselves as to the utility of including such provisions; the majority support their inclusion but a small number of Commissioners hold the opposite view. The European Court of Human Rights has consistently given a wide margin of appreciation to national bodies to adopt measures of this kind. Additions to the Convention are precisely what the NIHRC is called on to consider and recommend in respect of the proposed Bill of Rights for Northern Ireland. However, the obligation to respect the honour and dignity of others, as suggested in the Quigley Review, would not, in the view of the whole Commission, provide any particularly useful guidance to the Parades Commission or other agencies in making decisions on contested parades. If further provisions are to be added to those in Article 11, either in the proposed legislation or in associated guidelines or codes of conduct, they should, in the view of those Commissioners who are in favour of such additional provisions, be more directly focused on two issues:

- (i) an obligation to tolerate the expression of opposing views and cultures (see para 6 below), and
- (ii) an obligation to refrain from any form of provocation or harassment (see para 7).

6. Although there is no direct recognition of a right to toleration, an obligation to tolerate different religions and cultures is referred to in all the main international human rights conventions. The European Framework Convention on the Rights of National Minorities includes a more direct provision requiring States to:

“encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory . . .”

It would be possible on this basis to include a provision in the associated guidelines or codes of conduct for the relevant legislation requiring the Parades Commission and other agencies to take into account, when making determinations or imposing conditions, whether or not a spirit of tolerance for parades or demonstrations by opposing groups had been shown by those opposing as well as those organising contested parades.

7. It would also be possible to include in the associated guidelines or codes of conduct for the relevant legislation some more detailed guidance on the interpretation of what is meant by “peaceful assembly” in the context of contested parades. There is already a wide range of criminal offences in the Public Order (NI) Order 1987 in respect of disorderly, intimidating or threatening behaviour, the use of words or behaviour

likely to stir up hatred or arouse fear and provocative conduct at a public meeting or procession and in the Public Processions (NI) Act 1998 in respect of abusive behaviour towards a person taking part in a lawful public procession. In addition, the “Rights” section of the Belfast (Good Friday) Agreement includes a commitment by the parties to “freedom from sectarian harassment”. The NIHRC has already suggested in its Consultation Paper *Making a Bill of Rights for Northern Ireland* that this should not be restricted to sectarian harassment but should include other forms of harassment. On this basis the Parades Commission and other agencies could be required to take into account, when making determinations or imposing conditions, whether or not those organising a parade or protest had taken effective measures to avoid or prevent disorderly, threatening, intimidating or abusive behaviour or harassment by those taking part.

8. The objective of including provisions of this kind would be to encourage all those on either side in respect of any contested parade to seek an accommodation and in the longer term to promote a society in which mutual tolerance of expressions of language and culture by other communities need not be regarded as a threat to their own. It might also assist in reversing the current trend in some areas and villages towards the assertion of exclusive “ownership” by one or other community and the exclusion of any expression, however temporary, by another. That degree of communal separation would not in the view of the Commission represent an acceptable vision for the future of Northern Ireland as a whole and would run counter to the underlying principles of the Belfast (Good Friday) Agreement.

THE SEPARATION OF DECISIONS ON RIGHTS FROM THOSE OF PUBLIC ORDER

The Quigley Review recommends that decisions in respect of public safety, as opposed to the rights issues to be dealt with by the Parades Commission, should be the exclusive responsibility of the police, subject to a reserve power for the Secretary of State to intervene (para 63).

9. The NIHRC is strongly opposed to this recommendation on a number of related grounds. In the first place, it is unrealistic to separate the various considerations that are relevant to a decision under Article 11. Issues of public order and public safety, as well as the rights of peaceful assembly and free expression, are an integral part of any decision on whether or under what conditions a parade or protest is to take place. All these matters must be taken into account by the initial decision-making body, by national courts in appeal proceedings and ultimately by the European Court of Human Rights, all of which are now directly bound by the terms of the European Convention. Secondly, since issues of public order and public safety are often a determining factor in decisions on contested parades in Northern Ireland, to remove these from the Parades Commission would in effect involve a return to the situation prior to 1998 under which the effective decision was left to the police. One of the principal advantages of the provisions of the Public Processions (NI) Act 1998 is that the police are now able to use their professional skills in enforcing communally contentious decisions made by an independent body rather than having to make and then enforce their own decisions. Thus far the police have been able to implement the determinations of the Parades Commission without calling for intervention by the Secretary of State and the NIHRC is not aware of any desire on the part of the Police Service of Northern Ireland, or any other relevant body, to return to the pre-1998 position. Thirdly, the police would in any event retain their common law power to intervene to maintain public order on the ground if, as the situation develops, it becomes impracticable to enforce a determination or condition.

10. An additional consideration in rejecting this recommendation is that it would add to the widespread concern that determinations by the Parades Commission have not been made in a sufficiently open and transparent manner, notably in that the advice on issues of potential public disorder by the police is not made available to other interested parties. Although it is not entirely clear whether decisions on parades fall within the terms of Article 6 of the ECHR, which requires decisions on civil rights and obligations to be made by an independent and impartial tribunal, the NIHRC considers that it is in any case desirable for all the relevant considerations, including those relating to potential disorder, to be made available to and open to representations from all the parties to a contested parade or demonstration. This can best be achieved by requiring the police to present their advice on public order and public safety issues to the Parades Commission. Other interested parties should then be allowed to comment on or contest that advice, although the views of the police would naturally be expected to be given considerable weight.

THE APPLICATION OF THE SAME RULES TO BOTH PARADES AND PROTESTS

The Quigley Review recommends that the same body should be authorised to deal with both parades and protests and that the same criteria should be applied (para 59)

11. The NIHRC is opposed to some aspects of this recommendation on a number of grounds. It recognises the illogicality of the situation in which one body, the Parades Commission, makes determinations and imposes conditions on parades under the Public Processions (NI) Act 1998, and another,

the PSNI, is left in control all aspects of associated protests under the Public Order (NI) Order 1987. But it is concerned that the structure recommended by the Quigley Review may impose unreasonable requirements in respect of prior notice for those waiting to protest against a proposed parade. The suggestion that the organisers of protests should give five months' prior notice of their intentions is impracticable, given the immediacy of many parade-related issues on which protests may legitimately be mounted. And if a broad exemption was granted in circumstances in which it was impracticable to give the required notice, there would be a risk of complex, time-consuming and ultimately unproductive disputes on whether or not it had been practicable to do so.

12. A better means of achieving the objective of the recommendation—to apply the same criteria for restrictions and conditions on those involved in both parades and associated protests along the route—would be to extend the jurisdiction of the Parades Commission in issuing its determinations and imposing conditions to cover both the parade and any contemporaneous protest. It would not be essential for this purpose to impose strict rules in respect of prior notification of intended protests, since those opposing an intended parade would have identified themselves during the extended process for facilitation or in the hearings before any eventual determination, as recommended by the Quigley Review. And the police would, as already indicated, retain their common law power to intervene to protect the peace in the event of unforeseen disorder.

THE SEPARATION OF THE PROCEDURES FOR FACILITATION AND DETERMINATION

The Quigley Review recommends that there should be separate bodies to facilitate local accommodations, a Parades Facilitation Agency and, to make binding determinations, a legally qualified and independent Rights Panel (paras 67–72).

13. The NIHRC is generally in favour of the separation of the two functions of mediation/facilitation and adjudication. This would be in line with recent legislation on discrimination and equality throughout the United Kingdom and elsewhere, which has sought to distinguish clearly between the roles of promoting equality or fair treatment and making formal adjudications on rights. In Northern Ireland the role of the Equality Commission in promoting fair employment practices is formally separated from that of the tribunals which make binding decisions on disputed cases. The role of the NIHRC in promoting human rights and investigating alleged violations is similarly distinct from that of the courts in making rulings under the Human Rights Act 1998. There is no international standard on this issue. The UN's Paris Principles on National Human Rights Institutions, for example, accept that national human rights institutions may have a role in making formal adjudications as well as in more general promotion and investigation. But the recent policy in Britain and Northern Ireland of separating the two functions has generally worked better than the previous structures under which the roles of promotion and adjudication were combined.

14. An additional argument in support of this approach, as indicated above, is that it would ensure compliance with any obligations under Article 6 of the ECHR which might be held to apply to determinations on parades or protests. The proposed Rights Panel with a legally qualified chair would clearly fulfil the requirement for independence and impartiality and the opportunity for the presentation of opposing arguments and evidence which a formal hearing before a tribunal of this kind would involve would fulfil the requirements of openness.

THE EXTENSION OF PRIOR NOTICE REQUIREMENTS AND OF THE DURATION OF DETERMINATIONS

The Quigley Review recommends that the prior notice requirement for parades should be extended to six months to allow time for effective facilitation of local accommodations and that duration of determinations should be extended up to five years (paras 53–54).

15. The NIHRC is generally in favour of an extension of the period of notice for parades, although not as already indicated for protests. It has no strong views on the precise timetable, provided that it allows sufficient time for effective facilitation for each “marching season”. It is also in favour of an extension of the duration of determinations to allow determinations to cover the whole of an annual “marching season”. This would encourage marching bodies to put forward proposals for the whole of each year and enable the proposed Rights Panel to impose reasonable conditions on the number of parades in a given area. Given the disruption which large or repeated parades necessarily involve, this is clearly a legitimate concern for residents and businesses. It would also avoid the unnecessary and time-consuming procedures under the current legislation for the notification and consideration of multiple applications in respect of the same area or route. However, the NIHRC is not in favour of extending the potential duration of determinations for as long as five years, given the potential for circumstances changing from year to year in many areas and the procedural confusion which might arise from repeated applications for amendment of extended determinations.

APPENDIX 20

Memorandum submitted by the Ulster Human Rights Watch

Please find enclosed the summary of the Ulster Human Rights Watch's analysis of the Quigley Report.

Our analysis comprises of:

1. Thwarting the Right to Freedom of Peaceful Assembly—Outline.
2. Thwarting the Right to Freedom of Peaceful Assembly—Report.
2. Thwarting the Right to Freedom of Peaceful Assembly—Diagram.

OUTLINE

1. THE MAJOR FLAWS OF SIR GEORGE QUIGLEY'S REPORT

1. *Failure to outline the factors determining restrictions on protests and to describe the process by which restrictions are to be applied to protests related to parades*

2. *Detailed legislation to curtail the right to freedom of peaceful assembly*

3. *Omission of Article 9 of the ECHR in the context of parades organised by the Loyal Orders*

4. *The central problem of terrorist-influenced residents groups ignored*

2. THE QUADRUPLE-LOCK SYSTEM RECOMMENDED IN SIR GEORGE QUIGLEY'S REPORT

1. *Stage One: Mediation under the supervision of a Facilitating body*

2. *Stage Two: Proceedings before a Determining body*

3. *Stage Three: Assessment by the PSNI*

4. *Stage Four: Compliance operated by a Branch of the Determining body*

REPORT

The Report on the review of the Parades Commission and Public Processions (Northern Ireland) Act 1998, prepared by Sir George Quigley, recommends the introduction of new legislation to strengthen the present system applied to the parades organised by the Loyal Orders. The Ulster Human Rights Watch (UHRW) has carried out an analysis of this Report. It will briefly highlight (1) the major flaws of this document and describe (2) the quadruple-lock system designed to deal with parades.

1. THE MAJOR FLAWS OF SIR GEORGE QUIGLEY'S REPORT

Four major flaws have been identified: (1) Sir George Quigley has failed to outline factors determining restrictions on protests and to describe the process by which restrictions are to be applied to protests which are related to parades; (2) he has failed to acknowledge that detailed legislation would curtail the right to freedom of peaceful assembly; (3) he has omitted the importance of Article 9 of the ECHR in the context of parades organised by the Loyal Orders; and finally (4) he has ignored the central problem of terrorist-influenced residents groups.

1. *Failure to outline the factors determining restrictions on protests and to describe the process by which restrictions are to be applied to protests related to parades*

The Report has pointed out that both processions and the protests organised to object to them should be dealt with by the same body. It recognises that it is illogical under the present legislation that restrictions imposed on processions should be decided by the Parades Commission while related protests can only be restricted by the Police Services of Northern Ireland (PSNI). However, in his Report, Sir Quigley explains in detail the factors which should be taken into account to prepare Guidelines for determining whether restrictions should be placed on parades, but he does not identify any factors to determine whether restrictions should be applied to the protests which are organised with the purpose of objecting to the parades.

Sir George Quigley has also failed to explain the process which should be used in order to impose restrictions on a protest related to a parade. Since a protest is to be notified only after a Determination has been issued by the Determining body, how will restrictions be decided by that Determining body? The Report is particularly unclear on that point and everything suggests that the objectors will be given extended means to abuse the right to freedom of peaceful assembly of those who want to parade.

2. *Detailed legislation to curtail the right to freedom of peaceful assembly*

Although processions and protests both fall under the umbrella of Article 11 of the European Convention of Human Rights (ECHR), the proposed legislation will be designed to regulate in particular the Orange Order's right to freedom of peaceful assembly. Rather than provide a better guarantee for the right to freedom of peaceful assembly, Sir Quigley has proposed very detailed legislation involving complex processes, which will have the adverse effect of reducing the right to freedom of peaceful assembly of those who wish to exercise their right to process. Details regulating paraders' right to freedom of peaceful assembly will only impose increasing conditions and limitations on the enjoyment of their rights. Rather than strengthening the right to freedom of peaceful assembly, the proposed legislation will curtail it.

3. *Omission of Article 9 of the ECHR in the context of parades organised by the Loyal Orders*

The Report has not made any specific reference to the right to freedom of religion, enshrined in Article 9 of the ECHR, combined with the right to freedom of peaceful assembly. Since the Orange Order is essentially based on the Protestant Reformation, the right to freedom of religion is an essential aspect which should have been fully taken into consideration in the Report. The right to freedom of religion includes the right to manifest one's religion publicly and to try to convince one's neighbour through appropriate means. Therefore the possibility of witnessing to others, such as evangelising during parades, must be maintained. Unfortunately, this fundamental right has not been properly taken into consideration in the Report.

4. *The central problem of terrorist-influenced residents groups ignored*

The very serious and concerning issue of terrorist-influenced residents groups has been entirely omitted in the Report. By threatening violence, terrorist-influenced residents groups are at present attempting to force the Loyal Orders to agree to face-to-face discussion. The Public Procession (NI) Act 1998 has already been shown to favour residents groups. If the new recommendations become legislation, terrorist-influenced residents groups will be given even more efficient means of undermining others' rights to freedom of peaceful assembly and freedom of religion through the threat of violence in the quadruple-lock system described in Part 2. The central problem of terrorist-influenced residents groups, which the new proposed legislation would further support, has been totally ignored by Sir Quigley.

These four fundamental flaws make the system recommended by Sir George Quigley intrinsically unsound and detrimental to human rights and fundamental freedoms.

2. THE QUADRUPLE-LOCK SYSTEM RECOMMENDED IN SIR GEORGE QUIGLEY'S REPORT

Sir George Quigley has devised a four-stage system to deal with the Loyal Order's parades. (1) The first stage is one of mediation under the supervision of a Facilitating body; (2) the second is one of proceedings before a Determining body; (3) the third is one of assessment by the PSNI; and (4) the fourth is one of compliance operated by a Branch of the Determining body.

1. *Stage One: Mediation under the supervision of a Facilitating body*

Parades for the following year would have to be notified before the 1st October of each year in order to allow time for mediation to take place between the Loyal Orders and the objectors. This stage would be supervised by the Parades Facilitation Agency, whose duty would be to intensify mediation so as to facilitate some kind of local arrangement. If an agreement is not reached the Orders would have to obtain a certificate from the Facilitation Agency, stating that the parade organiser has engaged in the mediation process with good faith. Without this certificate, the organiser would not have the right to seek a Determination from the Determining body in view of exercising the right to freedom of peaceful assembly.

2. *Stage Two: Proceedings before a Determining body*

Before proceedings could commence, the Determining body, called the Rights Panel for Parades and Protests, would have to have a Report from the Chief Facilitation Officer certifying that the organiser of the parade had acted in good faith and participated in a manner that was designed to resolve the issue involved. This Determining body would comprise three members: the chairman would be appointed by the Lord Chancellor, and the two other members would be drawn from a list of suitable persons. A hearing would be organised before the Determining body at which the Loyal Orders and the objectors would be obliged to present their case. The Orders would therefore become a party to a dispute arguing their case against the objectors before the Rights Panel. The right to freedom of peaceful assembly will be treated on an equal footing with any rights which the objectors may wish to put forward and argue upon. After the hearing, a Determination will be issued on the basis of the Guidelines giving the reasons for the conclusion. If the Rights Panel puts restrictions on the parades, then the Loyal Orders could seek judicial review before

a court. The Determination would of course be enforced by the PSNI. However, even if the Rights Panel does not impose restrictions, the Loyal Orders would nevertheless have to await the decision of the PSNI at Stage Three.

3. *Stage Three: Assessment by the PSNI*

Within fourteen days of the rendering of the Determination by the Rights Panel on Parades and Protests, the objectors would have the right to notify that they will organise a protest to oppose the parade. It is unknown how the Rights Panel on Parades and Protests would be able to make any decisions concerning a protest related to a parade, since the protest would only be notified after a Determination concerning a parade has been issued. The Quigley Report fails to address this issue. At the third stage, the PSNI alone would have to make a decision in the interests of national security or public safety or for the prevention of disorder or crime. If violence is likely to flare up or if they do not have the necessary resources to guarantee public safety, the PSNI would have the power to impose restrictions on the parade. As a result, all the effort invested during Stage One and Two would prove to have been in vain at Stage Three.

4. *Stage Four: Compliance operated by a Branch of the Determining body*

The compliance function is described by Sir George Quigley as “crucial”. Its purpose is to ensure that a Determination is respected. The body in charge of this function would be the Compliance Branch of the Rights Panel for Parades and Protests. It would receive reports from monitors and police (and anyone else, including objectors) immediately after a parade has taken place. Any failure to comply with the Determination could lead to a warning or even a sanction imposed on the organiser of the parade by the Chairman of the Rights Panel for Parades and Protests.

CONCLUSION

Under the new legislation terrorist-influenced residents groups would be in a position to use the threat of violence more effectively at the different stages of the process, in order to force the Loyal Orders to negotiate and eventually to thwart their fundamental rights ie during the mediation process, before the Rights Panel for Parades and Protests, during the assessment by the PSNI and finally using the Compliance Branch to lodge complaints.

The objectors’ main argument to oppose parades is that they also have rights. However, nothing in the ECHR can be interpreted as implying for any group of persons the right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms enshrined in the Convention itself (Article 17 of the ECHR). The duty of the State is to forbid practices which aim at the destruction of human rights and fundamental freedoms. It must not encourage through legislation those who through their activity and actions aim at annihilating the rights of others. The quadruple-lock system proposed by Sir George Quigley in his Report is a threat to fundamental freedoms, in particular to the right to freedom of peaceful assembly.

Therefore, the Report’s recommendations raise very serious concerns which it is imperative to address before any legislation based on the Report is even contemplated. A rushed process will simply result in the mistakes of the past being repeated and perpetuated. This is why the Ulster Human Rights Watch demands that the Secretary of State extend the Consultation period to allow essential submissions to be made in order to guarantee the protection of human rights and fundamental freedoms in relation to the organisation of peaceful assemblies in Northern Ireland.

STAGES OF THE PROCESS ORGANISATION AND FUNCTIONING	STAGE 1 MEDIATION		STAGE 2 PROCEEDINGS		STAGE 3 ASSESSMENT		STAGE 4 COMPLIANCE	
NOTIFICATIONS	Beginning of Stage 1 Loyal Orders must notify before 1 st October of each year what parades they wish to take place during the following year				Beginning of Stage 3 Residents groups can notify a protest-related parade fourteen days after a Determination has been issued by the Rights Panel for Parades and Protests			
BODIES IN CHARGE	Parades Facilitation Agency		Rights Panel for Parades and Protests		Police Services of Northern Ireland		Compliance Branch of the Rights Panel for Parades and Protests	
FUNCTIONS	To intensify mediation and facilitate local arrangement over an extended period of time, commencing on October 1 of each year		To organise a hearing and issue Determinations on the right to freedom of peaceful assembly and the rights and freedoms of others		To assess the situation and make a decision in the interests of national security or public safety or for the prevention of disorder or crime		To receive reports from monitors and police immediately after the parade has taken place in respect of which a Determination has been issued, and state whether there has been a failure to comply with a Determination	
OUTCOME	Agreement between Loyal Orders and Residents Groups If no agreement, good faith certificate required to enable the Loyal Orders to go to Stage 2		Determination on parade with or without restrictions relating to the right to freedom of peaceful assembly		Decision with or without new restrictions imposed on the parade on the grounds of public safety or prevention of disorder		Warning by the Compliance Branch and/or agreement with parade organisers to prevent future infringement of Determinations Chairman of Rights Panel can arrange hearing and possibly impose a sanction	
PRINCIPLE			FUNDAMENTAL RIGHTS					
	Not Negotiable		Should not have to be defended				Not negated by violent / non-violent protests	

APPENDIX 21

Social Democratic and Labour Party response to the review of the Parades Commission

SUMMARY

The SDLP believes that this review is fundamentally flawed and that the clear majority of its recommendations should be rejected outright.

Just over a year before the review was commissioned, the British Government carried out its own review of the Parades Commission. Commenting on it, the then Secretary of State stated—

“I would like once again to pay tribute to the magnificent work the Commission has done, often under extreme pressure . . . They have consistently done so impartially and in the best interests of the whole community in Northern Ireland.”

10 February 2000

Clearly, then the decision to conduct this review was merely a political concession to the UUP at Weston Park. Further, by the British Government’s own yardstick, the case for change has not been made.

The review starts from a false premise—so it is no surprise that it arrives at wrong conclusions. Sir George states that no issue “has the ability to arouse more passion” than parades. In fact, thanks to the successful work of the Parades Commission, parades no longer top the public’s list of concerns. The current system is working—and the SDLP’s strong message to the British Government is if it ain’t broke, don’t fix it. To do otherwise would undo the progress made to date and threaten to reignite controversy surrounding parades throughout the north, particularly at interfaces.

The Parades Commission has rightly pointed out that:

- it has “acquired “valuable expertise and experience in dealing with the issues” and that an “experienced, stable Commission is of considerable benefit to both sides in the parading conflict.”
- “there is a critical mass within the unionist community wishing the Loyal Orders to engage more fully with the current Commission model.”
- “The green shoots of resolution are, it seems, breaking through what was once particularly stony ground.”
- “The contentiousness of parades has steadily dropped as the Commission’s framework has become more familiar and more accepted.”

Quigley does not seriously challenge this. The SDLP is astonished therefore that he should effectively recommend the disbandment of Commission, setting at naught much of this progress.

Dangerously, the review also recommends that the police should decide on public order matters. That is bad for policing and it is bad for the public. Having the police put back at the centre stage of parading would make their position impossible—and would threaten to undo the huge progress made since the Patten report in building an acceptable police service. On at least two occasions the Chief Constable has stated publicly that he does not want to see the police returned to deciding on public order. The SDLP is calling on the British Government to heed his advice and reject this reckless recommendation outright.

The report favours ignoring the impact of parades on community relations generally. It also removes key incentives for loyal orders and residents to engage in dialogue. At a time when promoting dialogue and ensuring good community relations was never more important, this is clearly unacceptable.

The report favours a far more rigid and formal approach to decision making on parades. While the SDLP would like to see greater transparency in Parades Commission decisions, we believe that Quigley’s proposals are impracticable and ill-conceived. In particular, they threaten the free flow of information to the Commission by making it far more difficult to supply information confidentially.

The SDLP does see merit in some of Quigley’s proposals. For example, we favour a facilitation agency. Unfortunately, Quigley also proposes giving the agency some regulatory powers—which will serve only to undermine its standing in facilitation. We welcome the proposal to remove traditionality as a statutory criterion for Parades Commission decision making. We also favour bringing protests within the parades regulation process.

The SDLP agrees that the faultlines revealed by the parades issue reflect a deeply riven society and that addressing people’s inability to live together is the central challenge for our devolved institutions. We are fully supportive of Quigley’s vision of an inclusive open tolerant compassionate society whose members have the self-confidence to embrace diversity and thrive on difference.

We regret, however, that most of the recommendations of this report will contribute nothing to the creation of such a society, nor to the erosion of those faultlines. Indeed, many recommendations threaten to make them worse.

A NEEDLESS REVIEW

Before responding to the proposals of the Quigley review, the SDLP wishes to make clear that this was a needless and disruptive review which has done nothing to resolve the remaining difficulties over parades and, indeed, has threatened to undermine progress already made by encouraging those who do not wish to cooperate with the current system.

In July 2001, the pro-Agreement parties met at Weston Park to consider issues around the implementation of the Good Friday Agreement. Afterwards, the British and Irish Governments issued their joint proposals document. It included a review of the parades commission.

As we made clear at the time, the Parades Commission is not in the Good Friday Agreement. It was not raised with us by any of the parties to the negotiations. Nor can any party claim that it was impeding progress on the full implementation of the Good Friday Agreement. We therefore do not believe that the British Government should have agreed to it.

Further, we do not believe that a review was necessary, given that a review of the Commission had already been conducted in late 1999 and early 2000. The then Secretary of State, speaking in response to that review, stated:

“I would like once again to pay tribute to the magnificent work the Commission has done, often under extreme pressure . . . They have consistently done so impartially and in the best interests of the whole community in Northern Ireland.”

10 February 2000

We can only conclude that this review was a political concession to the UUP. By the British Government’s own yardstick, the review was unnecessary and the case for major change has not been made. We agree—and urge that most of the recommendations of the review be rejected.

SDLP SUBMISSION TO THE REVIEW AND MEETING WITH SIR GEORGE QUIGLEY

While we did not believe that the review was necessary, the SDLP nonetheless cooperated with it.

In our submission to the Review, the SDLP urged a cautious approach. We pointed out the considerable success of the Parades Commission. We argued that because of its work, parading was no longer the contentious issue that once it was. And we expressed the concern that this good work might be undone by the review.

We also argued that:

- a Parades Tribunal would, among other things, encourage an adversarial approach.
- Article 11 of the European Convention on Human Rights was already properly reflected by the Human Rights Act, 1998.
- Section 8(6) of the Public Processions Act did not place an unwarranted emphasis on public order.
- Section 8(6)(e), which allows traditionality of routes to be considered and was not advocated by the North report, should be deleted.
- The Parades Commission should keep its current statutory role, but should appoint a designated agency to carry out its mediation responsibilities. The agency would, however, work closely with the Parades Commission.
- Judicial review provided an adequate control of the Parades Commission, particularly in the light of the Human Rights Act.
- There should be better regulation of stewarding and marshalling, the use of alcohol, paramilitary displays as well as a requirement to post bonds and provide insurance.
- The Commission’s remit should be extended to all forms of public assembly, including demonstrations and protests.

The SDLP also met with Sir George Quigley, as on a separate occasion did the SDLP Leader Mark Durkan and Deputy Leader Brid Rodgers. Throughout both meetings, the above points from our submission were also made. The basic message to Mr Quigley was “if it ain’t broke, don’t fix it”. While we favoured some minor changes, we saw no reason for a fundamental reworking of the Parades Commission. We also cautioned strongly against changes that would reignite the parades issue or undermine progress made to date by the Parades Commission.

EVIDENCE OF THE PARADES COMMISSION

The Parades Commission in its evidence summarised by Quigley sets out clearly its successes to date and the reasons for no radical change (pages 141, 315-321).

It correctly points out that:

-
- it has acquired “valuable expertise and experience in dealing with the issues.”
 - an “experienced, stable Commission is of considerable benefit to both sides in the parading conflict.”
 - “there is a critical mass within the unionist community wishing the Loyal Orders to engage more fully with the current Commission model.”
 - “The green shoots of resolution are, it seems, breaking through what was once particularly stony ground.”
 - “Protest . . . is more likely to be peaceful than in the past.”
 - “The contentiousness of parades has steadily dropped as the Commission’s framework has become more familiar and more accepted.”
 - “Outside those closest to the parading dispute, there is not serious concern about public confidence in the Commission.”

FACILITATION

Quigley recommends that there “should be established a facilitation function which is located within the regulatory machinery and directly managed by it” (page 166). The SDLP has considered this recommendation carefully in the light of the need identified both by us, the Parades Commission and others not to disrupt the progress made to date.

We believe that this recommendation can help to build on progress made provided that certain crucial conditions are met.

First, for the reasons set out below, the regulatory machinery in question must remain the Parades Commission. We are vehemently opposed to the establishment of a Parades Tribunal.

Second, those carrying out the facilitation function should be appointed by the Parades Commission itself. They should, as Quigley recommends, operate within appropriate procedures and codes of conduct (page 166), which should be set by the Commission. That way, the change would not be seen as a negative reflection on the work of the Parades Commission to date and would not detract from its authority. In effect, there would be a facilitation agency. As we argued in our submission to the review, such an agency could enable those unhappy with the Commission to begin to engage.

The SDLP is fundamentally opposed to giving the functions of preparing guidelines, procedural rules and codes of conduct to the facilitation agency as Quigley recommends (page 242). It is simply nonsensical to suggest that a facilitation agency should have regulatory functions. The same applies as regards the appointment of monitors.

Third, those involved in facilitation should include some from the existing authorised officer cadre—something Mr Quigley also envisages (page 167). That way, valuable experience and expertise would not be lost.

Fourth, we do not agree, however, that the facilitator at the end of the process should report on the extent to which the parties had acted in good faith towards each other and had participated in a manner that was designed to resolve the issues involved (page 168). Mr Quigley offers no basis for his conclusion that these words would eliminate arguments which have developed around the present concept of “engagement.” To the contrary, we believe that they will only serve to increase controversy by the introduction of new and poorly defined concepts.

Fifth, we vehemently disagree with the argument that “the Report [of the Facilitator] is no more than a recognition of honourable failure . . . to achieve settlement by agreement” and the related dropping in the guidelines of “communication with the local community” (pages 169 and 177). We believe that the extent to which the parties are willing to engage in substantial sustained dialogue is relevant to the merits of the case.

Dialogue is essential to build good community relations and shows respect for the rights of others. Efforts made to engage in dialogue are therefore clearly relevant. Further, if the regulatory machinery cannot take full account of the failure to engage in substantial sustained dialogue, those who have spurned dialogue will have no incentive to change their position. Both the North report and the Parades Commission’s Guidelines have rightly stressed the approach of the parties to reaching accommodation in one form or another. That must remain the case. It would be perverse and outrageous if at a time when government policy is to encourage dialogue and improve community relations, these were to be dropped as considerations in making determinations.

Quigley comments that nationalists are concerned that determinations are used to reward parade organisers for what are not necessarily genuine efforts at local problems regardless of the rights issues underlying the dispute (page 169). It is true that many nationalists share this concern. However, his proposals do nothing to address it. Rather, they merely remove the incentive for loyal orders to engage in dialogue at all.

We agree that agreements reached under the auspices of the facilitation function should be registered and have the same force as a determination (page 171).

FORMAL DETERMINATION ROLE

Quigley proposes making explicit reference to Article 11 of the European Convention on Human Rights in section 8(6) of the Act (page 183). The SDLP is opposed to this. First, it is unnecessary as the Act already has to be interpreted in the light of the European Convention on Human Rights due to the Human Rights Act. Second, it is misleading. It suggests that Article 11 ECHR is the only provision relevant to parades. This is wrong. Other articles are also clearly relevant, such as articles 3, 8 and 10—a point made by Mr Quigley himself (page 186).

Mr Quigley also recommends new Guidelines (page 184). As stated above, we are vehemently opposed to the dropping of the Parades Commission Guideline on communication with the local community. At a time when government policy is to encourage dialogue, this is perverse. Dialogue is essential to good community relations and shows respect for the rights of others.

Further, we cannot agree with the abandonment of relationships within the community as a factor. Bizarrely, Quigley lists as a factor the sensitivity of sites (page 186). Yet sites are only sensitive because of community views of them. How then can Mr Quigley justify considering the sensitivity of sites, but not community views and impact on community relations more generally? Moreover, if community views are not relevant, how is one able to have regard to the honour and dignity of others—as Mr Quigley proposes (page 193)? This proposal is ill-conceived and must be rejected.

Quigley also proposes dropping section 8(6)(e) of the Act. The SDLP agrees with this proposal. We do not believe that the fact that a parade is traditional is significant—nor does international human rights law suggest that it should be. That said, as Quigley points out, traditionality has been neither the dominant nor the determining factor in Parades Commission decisions to date (page 187).

The SDLP agrees that the frequency of parades is relevant and that in the imposition of restrictions traditionality could be a factor in determining priorities as between parades of a similar nature (page 188). But if the parades are not of a similar nature, traditionality would not be relevant. For example, it would be arbitrary to limit a parade against the war in Iraq on the basis of the traditionality of an AOH parade.

THE PROCESS FOR MAKING DETERMINATIONS

Quigley recommends the dropping of Procedural Rule 3.3, which provides that all evidence provided to the Commission will be treated as confidential, and recommends a more formal process whereby:

- objectors are offered the opportunity formally to register their objections;
- the determining body arranges a hearing at which parties would be obliged to present their case. The determining body would have discretion to handle in any way it deemed appropriate and so as to disadvantage none of the principal parties any submissions which were made on a confidential basis.
- a determination would then be offered, evaluating the evidence and showing clearly the reasons for conclusions (pages 206-207).

The SDLP is opposed to this approach which would overly formalise the Commission's procedures and impede the free flow of information to the Commission by failing to provide adequate guarantees of confidentiality. It would also discourage those groups beginning to engage with the Commission on a confidential basis and set back progress being made on parades.

That said, the SDLP believes that the Parades Commission should be more transparent in its decision making and show more clearly the reasons for its conclusions.

We also believe that it would be desirable to conduct more hearings where this is appropriate and practicable. We are conscious that it will often not be practicable and that the great advantage of the Parades Commission has been the flexibility of its procedures. The Parades Commission is not a tribunal, and adoption of tribunal style adversarial procedures would be expensive and time consuming.

We see some scope for relaxing Rule 3(3). However, we are deeply concerned at the Quigley approach which seems to require submissions to be made at an oral hearing. That would cut off the flow of important information to the Commission. Northern Ireland is not Scotland. If people cannot be guaranteed anonymity or are required to present themselves at hearings for their submissions to be admissible, too often out of fear they will stay away and stay silent. In order to ensure the free flow of information to the Commission, it must be able to receive information confidentially and informally. It should be left to the Commission to assess that information sensibly. In particular, the Commission should be able to express unattributed general views at any stage in a way that does not compromise those providing the views.

NOTICE OF INTENTION

Mr Quigley recommends, with the possibility of some leeway, that organisers should be required to notify intention to parade no later than 1 October or 6 months prior to the date of the procession, whichever is the later (page 216).

The SDLP doubts whether this is practical. Further, we would be concerned at excessive restrictions on freedom of assembly for public processions which do not occur annually.

COMPLIANCE

The SDLP agrees that “*systems must therefore be in place to ensure that failure to comply will have consequences*” (page 219). We support the use of bonds and believe that failure to comply should lead to the prohibition of future parades in serious cases. The same process should also apply to protests.

PROTESTS

The SDLP welcomes the proposal to bring protests within the jurisdiction of the parades machinery (page 222).

PUBLIC SAFETY

The SDLP is vehemently opposed to Mr Quigley’s proposal to leave public safety considerations to the police (page 231).

First, this wrongly treats public safety as if it were separate from human rights considerations. There is no justification for this. Public safety considerations are among the human rights considerations to be examined.

Second, the separation of public safety considerations from other human rights considerations will encourage the perception in individual cases that there is a right to parade and that the police are wrongly limiting that right on public safety grounds when in fact there is no such right under the European Convention of Human Rights precisely because of public safety considerations. That will cause dangerous confusion and division.

Third, this proposal is dangerous for policing and for the public. On at least two occasions the Chief Constable has stated publicly that he does not want to see the police returned to deciding on public order. Having the police put back at the centre stage of parading would make their position impossible—and would threaten to undo the huge progress made since the Patten report in building an acceptable police service. The SDLP is calling on the British Government to heed the Chief Constable’s advice and reject this reckless recommendation outright.

Finally, instead of reducing the weight given to the public safety criterion, this approach could in fact increase it. That would, in turn, encourage a culture where might is right—something which the SDLP strongly opposes.

NEW STRUCTURES

Quigley suggests an independent rights panel for parades and protests (page 238). This means disbanding the Parades Commission. The SDLP believes that implementation of this proposal would be totally reckless. At a time when controversy over parades is declining, this would be certain to reignite controversy and undo progress made.

As the Commission rightly pointed out in its evidence:

- an “*experienced, stable Commission is of considerable benefit to both sides in the parading conflict*”
- “*there is a critical mass within the unionist community wishing the Loyal Orders to engage more fully with the current Commission model*”
- “*The green shoots of resolution are, it seems, breaking through what was once particularly stony ground.*”

Quigley does not clearly challenge any of this. We therefore cannot see how he can justify this recommendation.

The review does, however, start from the false premise—asserted without evidence—that no issue “has the ability to arouse more passion” than parades. In fact, there is a widespread conviction that parades no longer top of the public’s list of concerns. The SDLP believes that this is thanks to the work of the Parades Commission.

Our strong message to the British Government is if it ain’t broke, don’t fix it. The Parades Commission must continue its important work.

THE HISTORICAL AND CULTURE CONTEXT

The SDLP agrees that the faultlines revealed by the parades issue reflect a deeply riven society and that addressing people's inability to live together will be the central challenge for our devolved institutions, when restored. We are fully supportive of Quigley's vision of an inclusive open tolerant compassionate society whose members have the self-confidence to embrace diversity and thrive on difference.

We regret, however, that most of the recommendations of this report will contribute nothing to the creation of such a society, nor to the erosion of those faultlines. Indeed, many recommendations threaten to make them worse.

June 2003

APPENDIX 22

Memorandum submitted by the Grand Orange Lodge of Ireland

BACKGROUND

THE PARADES COMMISSION HAS ITS ROOTS IN THE INDEPENDENT REVIEW OF PARADES AND MARCHES. THE NORTH REPORT AS IT BECAME KNOWN WAS COMPLETED IN JANUARY 1997.

The Grand Orange Lodge of Ireland both in an initial submission to the Review body and in a response to their Report detailed our views on Parades and the way forward. Regrettably the points we made in both instances were largely ignored.

INTRODUCTION

IT IS A FACT THAT MANY PEOPLE IN NORTHERN IRELAND INCLUDING MEMBERS OF THE ORANGE INSTITUTION SEE THE PARADES COMMISSION AS PART OF THE PROBLEM RATHER THAN PART OF THE SOLUTION AS WAS PREDICTED IN MAY 1997, BY THE THEN KEN MAGINNIS, MP (NOW LORD MAGINNIS).

Civil Liberties have been denied. Community relations have deteriorated and the threat of violence by protest groups has been rewarded.

It is quite astounding that the Parades Commission have singularly failed to recognise the fact that opposition to Orange Parades has been orchestrated for political purposes by Sinn Féin.

It is well documented how this campaign was established by convicted terrorists to increase tension within the community and not because there was a difficulty per se with Orange Parades.

The words of Gerry Adams speaking at a Republican Conference in County Meath (Republic of Ireland) in 1997 stated "Ask any activist in the North did Drumcree happen by accident, and they will tell you "no"—three years of work on the Lower Ormeau Road, Portadown, and parts of Fermanagh and Newry, Armagh and Bellaghy and up in Derry". "Three years work went into creating that situation, and fair play to those people who put the work in".

Statements like this and other documented evidence clearly shows the political nature of opposition to Orange Parades and it is a dangerous fallacy to believe that such opposition can be placated through adjustments made by those on parade. There is a well-orchestrated campaign to destroy our cultural expression and our civil rights.

Civil liberties have been denied. Community relations have deteriorated and the threat of violence by protest groups has been rewarded. It would be our preference that the Commission should therefore be disbanded and the legislation set aside.

THE PARADES COMMISSION AT WORK

In their determination to date the Parades Commission have:-

1. Issued contradictory statements.
2. Been inaccurate.
3. Shown little evidence of research.
4. Taken decisions because of perceived threats from others.
5. Been inconsistent in their determinations.
6. Shown an obvious lack of accountability.

There are many examples of these but in the interests of brevity we intend to highlight only a few.

(A) Contradictory Statements

1. In the determination pertaining to Crumlin on 13 July 1998 it states, “There will be disruption to the life of the community which is an inevitable aspect of a parade on this scale”. However in determinations where parades have conditions imposed it invariably cites disruption to the life of the community as a reason.

2. In relation to parades on the Ormeau Road a determination of 28 June 1998 stated that conditions still did not exist to enable a parade to take place. However a determination of 6 July 1998 (a mere eight days later) approved a parade on the Ormeau Road on 13 July.

3. The 12 July 1999 Orange Parade in Newtownhamilton was restricted “because of the impact on community relations of this traditional parade proceeding along the entirety of the notified route”.

On 17 March 2000 a Nationalist parade in Kilkeel was allowed to parade its full route along the mainly Unionist Greencastle Street—something that had not happened for over 25 years.

(B) Inaccuracies

1. In relation to Ballynafeigh a preliminary consideration claimed there is a lengthy history of opposition to parades on the Ormeau Road but goes on to say that until the early 70’s the Ormeau Road was considered a Protestant area and that there are no records of formal protests at the parades prior to 1992. Where then is the lengthy opposition?

2. In the 1998 Newry determination whilst referring to 12 July 1996 in Newry it states “Later in the day a peaceful protest was mounted in Hill Street in opposition to the main Twelfth Parade”. In fact that was far from peaceful with the marchers subject to sectarian abuse and the police had difficulty in containing the so-called “peaceful protestors”.

3. The 1998 Consideration of contentious Parades in Newry advised that Newry and Mourne District Council had established a committee to discuss arrangements for dialogue between nationalist residents and the loyal orders . . . However we understand . . . the Loyal Orders have failed to respond to this opportunity. Newry Orangemen in fact met several Unionist Councillors together with the Clerk of the Council and a number of Council Officers. In addition, a written submission was made to the committee.

4. In its consideration of the “Tour of the North” Parade in Belfast in June 1998 the Parades Commission refers to the proposed route passing close to the Clifton Tavern the scene of a sectarian attack”. Clifton Tavern is not near the parade route.

Aside from this the Orange Order has always condemned sectarian attacks and it is despicable to use such an attack as an excuse to deny our cultural expression.

(C) Lack of Research

The Commission appears to have fallen into the trap of accepting evidence at “face value”.

1. In the context of Portadown the Parades Commission appear to have concerned themselves with socio-economic conditions as presented by the residents of the Garvaghy Road. There is no evidence of the Commission having attempted to ascertain the facts.

2. Determinations about Portadown have consistently failed to take into account proximity talks etc had taken place.

3. In the Ballynafeigh situation it is noted that talks took place in 1995 and that agreement had not been achieved. However there is no evidence of why this was. Simple research would have shown that the Lower Ormeau Concerned Community grouping backed out of the agreement.

4. The Newry 1998 Determination states “the residents group has challenged loyal order parades through the main commercial centre of Newry”—There are no residents along the parade route in the “commercial centre”.

5. In respect of 12 July 1999 Newtownhamilton determination the Commission states “Dundalk Street is perceived to be nationalist and almost entirely residential in character”. In fact Dundalk Street is a mixed area with both Protestant residents and Protestant businesses (it is accepted that the majority of residents are Roman Catholic). Statements like this from the Parades Commission give credence to apartheid and given the record of ethnic cleansing in South Armagh there is a grave danger of such statements becoming accurate.

6. In the determination for the 12 July 1999 parade in Lurgan the Commission stated “the potential disruption to the life of the community—which it considers would come about as a result of this parade”. When challenged the Commission suddenly realised that “there should be little disruption to the life of the community at 8.15 am” on a Public Holiday.

(D) Threats From Others

1. Determinations for Castlewellan have noted that those on parade have always behaved with dignity and there is very little disruption to the life of the community but the parades have had restrictions imposed because of the threat of confrontation by those opposed to the parade.

2. In Newry, it is recognised that there is no evidence of public disorder brought about by the behaviour of those on parade, but there has been incidents of disorder where some engaged in protest action clashed with the police.

3. In Bellaghy reference is made to the disruption to the life of the community because of police action necessitated by protest against the Parade and subsequently the parades have had restrictions imposed.

4. The determination for an Orange Parade on 12 July 1999 in Strabane states that there has been “minimal disruption to the life of the community” and that the proposed parade “does not of itself constitute either a threat to public order or. to have an adverse impact upon community relations”. However, the parade had restrictions placed upon it because in the view of the Commission there was “potential for serious disorder and damage to property should the parade proceed . . . at the same time as a notified protest is taking place”.

5. In the June 1998 “Tour of the North” determination the Commission states, “we heard no evidence of bad behaviour on the part of . . . participants in the parade. Indeed we were told of efforts made by Orangemen to ensure rigorous stewarding of the parade and of the steps taken to control “hangers on”—. However the Commission concludes by noting the “potential for public disorder arising not from the behaviour of the parade participants but from the reaction the parade will provoke”.

(E) Inconsistency

1. The 1998 Determinations regarding Portadown and the Ormeau Road are inherently inconsistent. It is accepted that in relation to Portadown “It is a Church Parade, it has been demonstrated that it can take place in an orderly fashion and the Garvaghy Road is an arterial route”. The Ballynafeigh determination refers to a history of parades being associated with public disorder, considerable disruption to the life of the community, a significant adverse impact on relationships within the community and that some parades would not have measured up to standards in the Code of Conduct. Yet the Portadown parade had conditions imposed whilst the Ormeau Road parade proceeded. (NB We do not accept the statements ref Ballynafeigh as being accurate.)

2. As stated above the 1998 preliminary consideration of parades on the Ormeau Road refers to a history of parades being associated with public disorder—from the behaviour of some parade participants. The 12 July 1999 determination for the Ormeau Road states “there has been no recent history of disorder or damage to property resulting from the behaviour of members of the Orange Order”.

3. The Ballynafeigh determination approving the parade states “there is now a clear emerging sense of deep hurt amongst loyalists which arise from decisions to re-route. This is in danger of spilling over into serious law and order situation, which is harmful to both communities. We therefore cannot ignore the damaging effect that this will have on relationships within the wider community”. Is this not also true of Portadown and a number of other areas?

4. In relation to a parade in Mountfield on 28 June the Commission “noted the potential for disorder” arising from a nationalist protest and “the likelihood of significant disruption to the life of the community”. The determination goes on to state “these factors in isolation do not justify a decision to impose conditions”. In countless other determinations these factors are used to justify the imposition of conditions.

5. The determination for a Church Parade in Pomeroy on 11 July 1999 states “we would generally see Church Parade which are on a smaller scale, as least likely either to cause disruption or to impact adversely on relationships within the community provided they are limited to processing from their normal starting point to the Church in question”. The truth of the matter however is that numerous small Church Parades, most notably in Dunloy and on the Ormeau Road, Belfast, have had restrictions imposed.

(F) Lack of Accountability

The Parades Commission has in the past adopted a dogmatic and condescending approach without fear of rebuke or correction. It has long been our opinion that the Parades Commission should have been made accountable to parliamentary scrutiny, possibly through the Northern Ireland Affairs Committee and we suggested this to Her Majesty’s Government at the time of a previous review.

COMMENTS

Within the framework of the existing legislation the Parades Commission because of its power to issue determinations has effectively destroyed any possibility of it facilitating mediation. The News Letter of 20 December 1997 stated that the Rev Roy Magee had resigned from the Commission “to use his mediation skills”—but on the ground rather than as part of a body being given the clout to ban and re-route contentious parades. It is appreciated that Mr Magee has since then again taken up a position on the Parades Commission.

This power to issue determinations on parades means that the legislation is perceived as being one sided. Parades are much more important to the Protestant/Unionist community as an expression of their culture and identity than to the Nationalist community. The Commission would have at least started from a “level playing field” if it had been established as a cultural commission with the ability to consider all aspects of culture and how they impact upon the community.

It would also have been more effective if it had been established as an advisory committee as suggested by the General Board of the Presbyterian Church in Ireland in June 1996.

It is our opinion that the Commission has incorrectly interpreted the legislation in regard to Clause 7 of the Public Processions Northern Ireland Act 1998 and specifically with regard to “any public disorder or damage to property which may result from the procession”.

Logic surely dictates that only if those on parade are involved in public disorder or damage to property should their civil liberties be infringed. The reality however is that numerous parades have had conditions imposed upon them because of the threat of public disorder etc. from another source. The Independent Review of Parades and Marches stress in Paragraph 50, Point V, of the Executive Summary that legislation must “provide no encouragement for those who seek to promote disorder”. Regretfully that is precisely what has happened. It is essential in the decision making process that the source of violence real or threatened is taken into account as a determining factor.

The Parades Commission has to have regard to any impact which the procession may have on relationships within the community. With one notable exception (Ormeau Road July 1998) the Commission have assumed that relationships are only affected if a “disputed” Orange parade proceeds. It would appear, that the feelings of protestors are viewed with more compassion than those engaging in a peaceful witness for their faith or expression of their culture.

One of the many complaints about the Commission is that its decisions are taken in secret. In common with the concept of open and transparent government the Parades Commission meetings should be open to the press and public. Given that the Commission has restricted the freedoms of the members of the public it would have been beneficial for the public to be aware of its workings.

The current system provides for those organising a parade to give 28 days notice. The Parades Commission announces its determination approximately five days before the stipulated parade. It would appear more logical for an earlier determination enabling, if appropriate, a proper appeal structure.

This appeal could take the form of a Tribunal Hearing which could accept both oral and written submissions. Current planning laws could provide a possible model.

Again the present system only allows dissatisfied parties to seek a Judicial Review. Without the transparency referred to above those seeking such a review are not fully aware of the deliberations resulting in the determination and are therefore disadvantaged. Given the prohibitive cost of a Judicial Review it is not surprising that many are not prepared to “take a chance” on this.

Also in relation to the judicial system we regrettably are not looking at a level playing field in terms of financial assistance. There have been several cases where individuals have tried to apply for legal aid and have been refused on the basis that they are not the only persons affected by the decision. In practice this excludes every member of the parading organisation but does not appear to impact upon for example a resident who may by virtue of their relationship with a “Residents Group” be expected to have the same criteria applied.

THE FUTURE OF PARADES

As an organisation committed to civil liberty we would obviously favour a model based on the freedoms in the American Constitution.

All roads should be open to all law-abiding citizens. No community owns any road, particularly if that road is the most direct route to a town or city centre. No group has any right to impede or harass any other group in the peaceful exercise of their civil rights.

If that state would exercise its lawful power to maintain such basic principles then no party need pretend to any feeling of alienation and all citizens would have equal rights.

The police must be given clear and unambiguous guidelines and these should also be made clear to the general public.

Those organising Parades should be responsible for the provision of marshals or stewards and take precautions to ensure the good conduct of the participants and in as far as possible, supporters. The police however, are ultimately responsible for ensuring that good behaviour in general is maintained 'and this should remain so. The police are also responsible for ensuring the free flow of traffic or necessary diversions. Of course this is also true for other events attended by large numbers of people such as sporting events.

Problems can be posed by parades, which are politically motivated especially when the organisation concerned has not been engaged in, processing along the route before. In such circumstances questions of acceptability and public order should be of greater importance than in respect of long established processions and should only be permitted when it has been determined that the proposed event has not been deliberately designed to provoke resentment or disorder.

If allowed such processions would need to fulfil very strict conditions. Flags, banners, or placards carried should not be such as to cause offence and as far as possible should be restricted to arterial routes and/or commercial districts. Disorder and misbehaviour by persons participating should necessitate further careful consideration by the police as to whether the procession could be repeated. So far as possible they should not pass through residential areas unless the overwhelming majority of the inhabitants are known to support those processing.

No new parade or demonstration should be permitted at a time or place where it is intended to, or may, in fact, clash with a traditional event. The basic principle should be that law abiding citizens should be allowed to parade on their normal routes and not be diverted from them simply because a body of persons threaten violence.

When assessing whether a procession should be allowed on future occasions it should be the behaviour of those processing that is taken into account and this is of particular importance in the case of new routes and/or new bodies holding demonstrations and parades. Strictly speaking anything out with this should be irrelevant.

When there is a measure of acceptance that in a free society men and women can protest, demonstrate and/or parade in a peaceful fashion and receive police protection while so doing then much of the problem would vanish.

This issue has prompted considerable discussion and careful consideration. The following suggestion has been put forward for the categorisation of parades and the general framework for dealing with each category. We believe this to be a very realistic suggestion.

Parade categories

Class A	Traditional Parades by Youth Organisations, Royal British Legion, Fraternal Societies eg Orange, Black, AOH etc.
Class B	Occasional/special parade by Fraternal Societies.
Class C	Political, new routes, new bodies parading.
Class D	Cross community/social/civic/sporting/trade unions.

Parade approval

Class A	The Police must guarantee free passage—possibly after the registration of a parade as traditional. This should include parades that previously have been re-routed and parades which follow a cycle of locations on established days.
Class B	Approval should only be withheld in extreme circumstances.
Class C	Only to be permitted on the circumstances where the Police can be fully satisfied that they are not designed to provoke disorder and/or damage community relations.
Class D	Free passage guaranteed.

Serious misbehaviour by participants in Classes A, B, and C should result in a review of the parade in question by the Police.

In Classes A and B “participants” would be members of the organisation and the attending bands. In Classes C and D it would mean anyone whom the police know to be participating in the parade.

If our desire is to live in a multi-cultural society with mutual respect and toleration then we must uphold the basic rights of free expression and free assembly.

Should the Commission remain or should it be replaced the above model would still be pertinent.

9 October 2003

APPENDIX 23

Supplementary memorandum submitted by the Ulster Unionist Party

Please find attached a copy of the Party's submission to the "Government's Consultation on the Quigley Review of the Parades Commission".

Since compiling our document in response to Quigley, two significant things have happened.

First, Northern Ireland enjoyed its most peaceful summer in a decade. This was not an accident but was generated by people being willing to accommodate the peaceful passing of legitimate parades in previously difficult flash point areas. We welcome the summer and hope that the work done on the ground will continue for future summers.

Second the Government has renewed for a further two years the remit of the Parades Commission. We do not welcome this announcement and consider it to be counterproductive to the type of work done in the summer. The re-appointment of the Parades Commission can only be read in conjunction with the Northern Ireland Office unnecessarily delaying its duty to bring forward substantive legislation and administrative changes which effectively are a replacement of the operation of the Parades Commission.

7 October 2003

THE ULSTER UNIONIST PARTY RESPONSE TO THE CONSULTATION OF SIR GEORGE QUIGLEY'S REPORT ON THE REVIEW OF THE PARADES COMMISSION MAY 8, 2003

The Quigley Report accurately reflects the paramouncy of introducing a better way of consideration in relation to the manner in which the control of all parades is organised.

The Party welcomes the Report's endorsement of the UUP's view that a replacement of the operation of the Parades Commission is vital in order to improve the prospect of fairness and impartiality.

We recognise also that "rights issues" remains at the heart of disputes over certain parades. Therefore we find favour with the Report's assertion that fundamental to the outcomes of decisions, the parade organisers in particular be informed of the reasons why a decision was reached. We would wish to have included in such transparency the assessments given by the PSNI.

The Report is not clear as to how best "long-term disputes" can be resolved through the facilitation recommendations.

It should be borne in mind that where an "indefinite protest stance" is adopted by both the parade organisers and the parade objectors, such as on the Garvaghy Road Route (which has remained unresolved since 1998), the effect will have serious repercussions across Northern Ireland. Likewise for the Ormeau Road parade in Belfast and for the Newtownbutler parade. In such circumstances, the Report falls short in recommending a greater measure of facilitation to deal with disputes deemed thus far incapable or resolution.

However, we do recognise that the Report in general supports correction of the current operation for determinations when it makes the valid and salient point, that: "In the determination proceedings the dispute about rights and responsibilities should be decided on the merits of the case".

As regards the "decision making process", we find favour with the concept of commencing with a formal registration of a parade and then moving to the objections. In most cases, registering earlier than 28 days before the parade causes no problems, but there will be circumstances when this may not be possible and, therefore, provision should be made to facilitate such a need, if and when it arises.

The process detailed on page 207 of the Report, paragraphs (iii) and (iv) is acceptable with an important proviso incorporated, namely that others offering evidence should be vetted on the relevance of their evidence. This should ensure that this facility should be effectively regulated. The current "revolving door circus", mostly for media hype, occurring ritually at the Parades Commission's office must be curtailed. The handling of the determination proceedings as detailed on page 208 paragraph (v) are acceptable.

We have always had major concerns about anti-parade protests organised to manipulate violent reaction which negates the marchers' fundamental right to peaceful association. Therefore, we have reservations over the "engagement" recommendations requiring a period of up to nine months in which law-abiding parade organisers are obliged to converse with potential law breakers who are keen to provoke a disruption of the engagement process.

From our past experiences of direct dialogue with a residents' association, we found that a walk-out by them was all that was necessary to prevent engagement from being favourably considered as both real and genuine by the Parades Commission.

Whilst we would hope that parties to a dispute would respond constructively and positively to each other in good faith, our experience shows this expectation is rarely fulfilled.

It is our opinion that page 169 is the most flawed on the Report in that the recommendation of the certification and facilitation process has to be completed before the rights based determination commences. The recommendation has no substance within International Law nor does it recognise that, subject to appropriate conditions, the right to a parade can be established by the parade organiser. Placing the onus on the parade organiser to show good faith toward the objectors and also to engage in a manner designed to meet the demand of the objectors is susceptible to abuse by the objectors who know that, until their demands are satisfied, the parade cannot proceed. In tactical terms, this means that the objectors have an effective veto in respect of a rights based determination. It is possible that every legitimate parade could be subjected to the demands of the objector, before reaching the determination stage. The facilitation process needs therefore, to be a stand-alone independent function and should not be a pre-condition prior to the commencement of the determination proceedings stage.

The protest notification should not be held back until the formal issue of the determination. Experience shows that in most cases the organisers of a protest and those objecting are virtually identical and with the same intentions. It is important therefore that both the facilitation proceedings and the determination proceedings are made aware in advance of the intentions of the objectors and are given adequate time closely to scrutinise the good faith of those formally objecting to a parade.

The Ulster Unionist Party, in its submission to the Quigley Review, indicated the pressing need to move beyond the present Parades Commission regime to a “rights-based approach”. The submission noted that, “the Public Processions Act does not adequately reflect the freedom of assembly guaranteed by Article 11” of ECHR. Consequently, we welcome and strongly support the Report’s view that it is necessary that the Public Processions Act “be amended to affirm that everyone has the right to freedom of peaceful assembly”, and that the restrictions placed on this right should be “in line with Article 11 (2)”. It should be a matter of the gravest concern that Parliament adopted legislation which, as the Report states, clearly breached the fundamental rights of citizens: revision of the Public Processions Act, as indicated by the Report, is therefore urgently required. Moreover, any forthcoming Bill of Rights for Northern Ireland should incorporate the right to parade with specifics and limited reservations.

The Report rightly notes that it is “illogical” for protests to be considered under different legislation and under a different regulatory regime from processions. Existing legislation and present practice have been discriminatory, treating certain assemblies (protests) more favourably than other assemblies (processions). We therefore welcome and support the Report’s recommendation that a Determining Body, with a Chairman appointed by the Lord Chancellor, undertakes such a function. It is particularly important that the legislation establishing the Determining Body should adhere to the Report’s recommendations that its ability to place restrictions on the right to freedom of peaceful assembly should be defined solely in terms of Article 11. The Report’s proposal stands in stark contrast to the present remit and operation of the Parades Commission, wherein the issue of rights is of lesser concern than its interpretation of political and social factors. In welcoming the recommendations to create a Determining Body, we would also urge that it should enjoy a status akin to judicial independence. In this regard, while we support the Report’s recommendation that the Chairman “would be required to have legal qualifications and experience and be appointed by the Lord Chancellor” we are compelled to reject the proposal that the two remaining members of the Body—having no similar requirements of legal qualification—would be appointed by the NIO. According to the Report, the Determining Body’s sole function is to consider and pass judgement on the application of Article 11 to specific assemblies. Since the Determining Body is clearly intended to perform a quasijudicial role, NIO appointees with no legal experience should not be passing judgement on the exercise of the fundamental human rights of other citizens.

Consequently, we wish to see all three members of the Determining Body having legal qualifications and experience and being nominated by the Lord Chancellor.

The Report’s recommendation that judgements concerning public safety should not be a matter for the Determining Body, but should be addressed solely by the police, is in need of clearer definition in light of the positive responsibilities of the state (outlined in the Report) to protect and uphold the right to freedom of peaceful assembly. Sir George Quigley states that “the police would simply be required to protect the decision resulting from the rights-based process or to decide in terms of what is necessary in a democratic society that, on public safety grounds, they could not do so, noting that “the police are obliged to have regard to the ECHR”. This “regard to the ECHR” should be more firmly enshrined in the legislation concerning assemblies in order to ensure that the Determining Body is not made irrelevant by routine police decisions contrary to the judgement of the Determining Body; some measure of accountability in order to protect Article 11 rights must be considered. If, on Article 11 grounds alone, the police decide to restrict an assembly contrary to the judgement of the Determining Body, the police must publish a written report to the Determining Body indicating the reasons for this restriction within Article 11 (2).

The Party submission to the Quigley review urged that a new legislative framework, upholding the right to freedom of peaceful assembly, avail itself of the relevant jurisprudence of the United States by incorporating the US Constitution’s commitment not to abridge “the right of the people peaceably to assembly”. The Quigley Report is a step towards political and administrative culture in Northern Ireland which promotes and protects this fundamental right.

It is a Report with shortcomings and in need of amendment. That said, it nevertheless makes an important contribution by its recognition that existing legislation and practice unacceptably breaches the right of the people to peaceably assembly. The steps it takes towards protecting and promoting this right are to be welcomed. They must now lead to substantive legislation and administrative changes to secure the right to freedom of peaceful assembly.

APPENDIX 24

Further supplementary memorandum submitted by the Parades Commission

When the Parades Commission appeared before the Northern Ireland Affairs Committee on 31 March 2004, I indicated that I would send you a document entitled “Scope for Change”.

The document avoids detailed recommendations, as the Commission considers it important that those closest to these issues in MO, PSNI and in other partner bodies have an opportunity to make an input to deliberations. The success or failure of new proposals in this area can depend on getting the detail right and the Commission would now wish to study possible changes further and with great care.

I do hope this is of value to the Committee in its deliberations on the Parades Commission and on the Quigley Review.

SCOPE FOR CHANGE

1. The Parades Commission believes that the operation of the Public Processions Act has improved the overall environment within which parades take place. This is largely because it provides a good framework for the handling of parades disputes in their early stages.

2. The successes that many others—parade organisers, community workers, police, authorised officers and politicians—have had in easing contention at parades is assisted if the underpinning framework is steadily and carefully improved, rather than replaced. A stable system with which people are reasonably familiar is preferable to periodic radical overhauls, which can confuse and alienate.

3. The Commission continuously seeks to improve its systems. For example, it has introduced a procedure whereby letters are issued to parade organisers to inform them where there have been complaints or allegations about parades. It has responded to concerns by reviewing the forms used for the notification of parades (11/1) and for the notification of protests about parades (11/3). These have been introduced this year.

4. The Commission is committed to identifying opportunities for constructive change to existing systems and procedures and this paper sets out some proposals in this regard. The Commission appreciates that some of these proposals will require further work, before any decision to implement them can be made. It is conscious of the need to ensure that any changes would stabilise further the environment within which parades take place in Northern Ireland.

PROTESTS ABOUT PARADES

5. The Commission is conscious that there is a perception of unfairness in that, whilst it has powers to place conditions on parades, it does not have powers to place conditions on static protests about parades. Static protests, whether notified or not, form an important component of the environment within which parades take place. For example, the behaviour of people participating in a protest against a parade can have as big an impact on the human rights of people in and around a parade as the behaviour of people participating in the parade itself.

6. The Commission is keen to investigate, with NIO and PSNI, how best to address this issue.

LINKAGES BETWEEN PARADES

7. Many parades are annual events, and a number of parades may be notified to pass through a contentious location annually. In addition, the impact of a contentious parading situation at one location can occasionally damage community relations, or create public disorder across a much wider area.

8. Despite these linkages, the Commission considers each parade notification individually. It takes account of linkages in its deliberations, but each decision is about a single parade and each is published separately. It does not make decisions that detail an overall pattern of parading that might be appropriate for a particular location in one parading season or across a number of parading seasons.

9. The Commission would like to have a clear power to make at least a preliminary determination covering more than one parade. This power, judiciously used, would help to demonstrate more clearly the balance of the Commission's decision-making and might help contribute to increased stability throughout the parading season.

10. The Commission is keen to explore options further with NIO to ensure that any new power would be fully compliant with the Human Rights Act.

FACILITATION OF MEDIATION

11. The Commission recognises that it is important for formal mediation processes to remain separate from the adjudication process. It can and does assist with the identification and provision of suitable mediators, when required by protagonists.

In practice however much of the work that is done requires a different kind of resource. The work of the authorised officers is largely what might be described as informal mediative behaviour, such as conciliation, education and premediation. They have an important role at local level in helping people to understand how the Parades Commission model operates and in helping people find local solutions, many of which do not require a formal mediation.

12. The authorised officers now have very good access to far more of those involved in parading disputes than they would have done two or three years ago. In some areas, the authorised officers have been extremely effective in reducing contention and in operating as a sophisticated conduit between parading interests, protesters, police and others.

13. The Commission considers that this area of work could be further strengthened without legislative change by developing and expanding existing good practice. In essence this would entail broadening the pool of people with the skills to be highly effective authorised officers and therefore providing the Commission with a greater range of talent from which to draw. This has the potential to be cutting edge development work based on international best practice, particularly drawing on the scope for increased linkage between human rights principles and the practice of conflict resolution.

14. The Commission would not wish to engage in this development work directly, but would wish to work in partnership with other bodies, such as the Community Relations Council in order to put appropriate training and development opportunities in place. The pool of people who could potentially become involved in this might include cross-community workers and business and other professional people. This would have an important side-effect of educating a wider group about the operation of the Parades Commission model.

15. The Commission considers that this would represent a wiser use of resources than the setting in place of a new and separate facilitation agency, for which demand may be limited. A complete separation of the work of the authorised officers from that of the Commission would be unhelpful in terms of ensuring informed and sensitive decision-making.

16. The Commission would wish to take the views of a range of stakeholders about this proposal and would also wish to discuss the additional funding requirement with NIO.

TRANSPARENCY AND CONFIDENTIALITY

17. The Commission is conscious of the concerns of many about confidentiality, including some who have given evidence to the Northern Ireland Affairs Committee. It takes these concerns most seriously and understands that there remain considerable risks for those who raise their heads above the parapet on parading issues. Whilst recognising and responding to these concerns, the Commission has also sought to find ways to demonstrate more clearly the transparency of its operations, even though total transparency is impossible, given the requirement for confidentiality.

18. There remains an additional difficulty in demonstrating this transparency to those who have chosen not to engage with the Commission as yet.

19. The Commission will continue to provide reassurances about confidentiality, particularly to those who have concerns about their personal safety in bringing concerns to the Commission. As a measure to improve transparency, it has already begun to communicate in writing with parade organisers to ensure that any allegations or complaints about a particular parade are received in plenty of time for the organiser to respond to the allegation or to seek to correct the problem before the next parade is due to take place. These letters do not distinguish between information received from the police, from monitors, from authorised officers or from other concerned observers and so there is considerably reduced risk for individuals in bringing their concerns to the Commission's attention.

20. The Commission is continuing to invest in this post-parade activity, recognising that as parade organisers begin to respond to the letters with greater frequency and in more depth, it may be necessary to provide increased resourcing for a dedicated compliance and transparency unit, that would have responsibility also for growing and managing the pool of independent monitors.

CODE OF CONDUCT

21. The Commission recognises the importance of reviewing the Code of Conduct from time to time to ensure that it remains fit for purpose and of value to stakeholders in the light of increasing experience of its operation.

22. The Commission would wish to take the views of key stakeholders to see if there is a need to review the Code of Conduct. This provides an opportunity to address a longstanding grievance held by Grand Lodge, which considers that it was inadequately consulted on the drafting of the original Code of Conduct.

REGISTRATION OF BANDS

23. The Commission is aware that there is provision in the Public Procession Act for the registration of marching bands. Many complaints are received about band parades and about bands in other parades. In addition to concerns about sectarianism and paramilitarism, there are wider issues relating to the social and environmental impact of band parades. For example, the Commission hears complaints about the timing of late-night parades, the abuse of alcohol at parades and other anti-social behaviour.

24. The Commission considers that these issues should ideally be tackled in conjunction with other organisations, including band organisations. Simply setting up a register of bands is unlikely, on its own, to resolve these problems. The Commission would wish to explore this issue initially with the PSNI. A central theme is likely to remain the responsibility of the parade organiser for all aspects of the parade—including the bands that are invited to participate in it. A wider range of stakeholders need to be drawn into this debate to begin to focus on quality parading and the need for emphasis to shift towards quality musicianship and presentation and away from offensive and socially unacceptable behaviour.

CONDITIONS THAT MAY BE PLACED ON A PARADE

25. The Commission has clear powers to restrict the route of a parade or to prohibit a parade from entering a particular place. It could be helpful to decision-making to have a more clearly articulated power to re-route a parade along roadways not named in the original notification. The Commission will explore this further with NIO.

USE OF THE “CONTENTIOUS” MARKING

26. The Commission finds the use of the word “contentious” in describing parades to be in itself sometimes contentious. It may be necessary for example to place restrictions on a parade when there has been no negative behaviour of any kind on the part of the parade or the parade organiser. On other occasions, the source of the contention is disputed and organisers may feel aggrieved that when the parade is marked “contentious”, there is an assumption of blame resting with them.

27. The Commission would like to explore the scope to re-design the mechanism whereby parades are flagged up to the Commission for further consideration. It would like in particular to give consideration to the greater use of categories of risk and to employ a simple risk weighting for each parade notified. The Commission would like to engage with PSNI in the first instance about this matter.

MARSHALLS

28. The Commission would like to explore the scope for increased emphasis on the role of marshals in parades in Northern Ireland. It is conscious that the South African legislation places a requirement for a number of marshals proportionate to the size of the parade to be provided by the parade organiser. It would like to explore this further with police and in the light of the Report by the Independent Commission on Policing in Northern Ireland headed by the Rt Hon Chris Patten (Recommendations 67 and 68).

TIMING

29. The Commission is conscious of the number of parades that take place in the late evening and after dark in Northern Ireland. The impact of these parades on local communities and their human rights can sometimes be a negative one, yet they are notified in exactly the same way as other parades. The Commission would like to explore the scope for legislation and the notification process to presume against these parades, unless a special case can be made.

6 May 2004