

FROM: J M STEELE
AUS (Security)
16 August 1995

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DESK IMMEDIATE

cc PS/Secretary of State (B&L) - B
PS/Michael Ancram (B&L) - B
PS/PUS (B&L) - B
PS/Sir David Fell - B
Mr Legge o/r - B
Mr Thomas - B
Mr Bell - B
Mr Leach - B
Mr Watkins - B
Mr Williams - B
Mr Brooke - B
Mr Wood - B
Mr Stephens - B
Mrs Collins - B
Mr Perry - B
Mr Marsh - B
Mr Maccabe - B
Mr T Smyth - B
Mr Bramley - B
Mr Maitland - B

PS/Sir John Wheeler (B&L) - B

POSSIBLE JUDICIAL REVIEW CASE: PARADES

Madden & Finucane, Solicitors, have written to the Secretary of State on behalf of seven clients, all of the Lower Ormeau Road, Belfast, to request him to "ban all sectarian parades and meetings for three months". The letter indicates that, in the event of an unsatisfactory reply (from their perspective), or a failure to reply by close of business on 16 August, a judicial review will be sought. A copy of the letter is at Annex A.

Ms K... F.

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2. This submission seeks the Minister of State's agreement to my replying to Madden & Finucane in terms of the draft letter at Annex B, rejecting their request.

3. The Minister will also wish to be aware as background, that we understand from the RUC that the organisers of the Black parades on 20 and 26 August have now agreed (following discussions with the police) voluntarily to re-route the parade away from the lower Ormeau Road. This is likely to undermine still further the applicants already weak case should the judicial review go ahead.

Legal Position

4. The powers of the RUC and the Secretary of State in respect of processions and meetings are set out in Part II of the Public Order (NI) Order 1987.

5. The RUC's powers are in Article 4 of the Order. In short, where a senior police officer "reasonably believes" that a public procession may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or that the purpose of the organisers is the intimidation of others, he may impose conditions on parades, including a change of route, but he may not ban them.

6. The power to ban parades lies with the Secretary of State (and, on his behalf, Ministers) under Article 5 of the Order. He can do so where he is of the opinion that police-imposed conditions will be insufficient to achieve the desired result, or if the parade /_

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is likely to cause serious public disorder, serious disruption to the life of the community, or undue demands on the security forces. The Secretary of State may form such an opinion on the basis of information furnished to him by the Chief Constable "or for any other reason"; the Secretary of State can choose to ban a parade in the absence of a recommendation of the Chief Constable. This power goes wider than that in England and Wales, where banning orders can only be made on foot of recommendations from Chief Constables.

Background

7. The Minister is very well aware of the contentious nature of parades in Northern Ireland. Although powers to ban parades were employed in the early 1970s, their use proved controversial and counter-productive. Ministers have since consistently adopted the policy that the handling of parades is a matter best dealt with by the police through direct negotiations with parade organisers and local people and through use of their re-routing powers. The Secretary of State's power under Article 5 has never been used.

8. Loyalist parades along the lower Ormeau Road have been especially sensitive since the Sean Graham bookmakers murders in February 1992. This year a total of 6 loyalist parades have been re-routed by the RUC, leading to stand offs between police, marchers and demonstrators which passed off relatively peacefully. On 12 July the RUC took an operational decision to allow the annual parade by the Orange Order to pass down the lower Ormeau Road. Local residents objected to this decision and subsequently made complaints of being hemmed-in their homes and of police heavy-handedness.

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Mr Perry's minute of yesterday set out the background to the Apprentice Boys parade on 12 August, which led to clashes between police and demonstrators during which 4 plastic baton rounds were fired and 12 RUC officers and 10 civilians were injured.

9. The police had been holding intensive discussions with the organisers of the Black parades on 20 and 26 August to try to reach agreement on a voluntary re-routing which appear to have resulted in a successful outcome.

Response to Madden and Finucane

10. A draft reply to Madden & Finucane, drafted by the Crown Solicitor, is attached at Annex B for the Minister's approval. The Crown Solicitor's advice is that while Madden & Finucane have not specified the areas in which parades should be banned, we should assume that they are referring to the Lower Ormeau Road, Belfast as this is the area in which their clients reside. He also advises that where a direct request has been made to impose a ban, as in this case, the Secretary of State (or a Minister acting on his behalf) should consult the RUC at a reasonably senior level before making any decision: this can be done through officials. Whilst the legislation does not require Ministers to do so, it is in the Crown Solicitor's view implicit in the Order; the police will be the primary source of information and advice and the Courts will expect Ministers to have consulted the RUC before making any decision. I have therefore, on the Minister's behalf, consulted the Chief Constable, through acting DCC Flanagan; they are both strongly of

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the opinion that a banning order is unnecessary, and indeed would be wholly counter-productive.

11. It is not necessary in the reply to Madden and Finucane to go into the detail of Ministerial policy on parades; the Crown Solicitor advises that it will be sufficient to treat this as a simple request for a banning order with Ministers taking the advice of the RUC. Should the case proceed to Judicial Review then it may become necessary to set out the broader policy on this issue before the Court.

Recommendation

12. Having consulted the RUC, and bearing in mind the policy which Ministers have consistently adopted that parades issues are best left to the RUC, I recommend that the Minister should reject the request to ban parades for a period of three months and agree that I should reply to Madden & Finucane along the lines outlined above.

13. In view of recent developments, Madden & Finucane may well not seek a Judicial Review in this instance. If they do the Crown Solicitor and officials stand ready to defend the decision-making process and the stance Ministers have taken, both in this case and more generally. I will keep Ministers informed of developments.

[Signed]

J M STEELE
SHA Ext 27012

ANNEX

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MADDEN & FINUCANE
SOLICITORS

Patrick J Finucane (1949-1989)
Peter J Madden
Kevin R Winters
Eamann McMenamin
Philip G Breen
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Our Ref JR/18590/NH/Bm

15 August 1995

The Secretary of State for NI
Royston House
34 Upper Queen Street
BELFAST

Dear Sir

Re:



We act for the above named and write to you on their behalf in circumstances of particular urgency.

On 12th July an orange parade was permitted to pass along the Lower Ormeau Road to the great distress and alarm of the residents of the locality, a distress and alarm that was increased by the action of the police in hemming residents in their homes for a lengthy period.

Similarly on 12th August an Apprentice Boys parade was permitted to pass through the same area. This comprised a small number of marchers who were going to Donegall Pass to catch buses to the main Apprentice Boys parade in Derry, yet it caused distress and in some cases serious injury to residents of the area engaged in a peaceful sit-down protest.

These circumstances constitute a basis for concluding beyond any doubt that there is a serious risk of further disorder and/or serious social disruption if further parades are allowed to proceed. We must therefore call upon you to exercise your powers under Article 5 of the Public (NI) Order 1987 to protect our clients and their neighbours from the undoubted and unwelcome detriment of

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sectarian marches during this sensitive period by banning all
sectarian parades and meetings for three months. In view of the
proposed march on Friday August 20th we must ask for your reply by
close of business on August 16th. Our instructions are in the event
of an unsatisfactory reply, or no reply by that date we are to seek
Order 53 relief.

Yours faithfully
MADDEN & FINUCANE

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ANNEX B

DRAFT

Messrs Madden and Finucane
Solicitors
36 Victoria Square
BELFAST
BT1 4QB

Your Ref: JR/18590/NH/Bm

16 August 1995

Dear Sirs



Thank you for your letter of 15 August in which you request that the Secretary of State for Northern Ireland exercise his power under Article 5(1) (A) of the Public Order (NI) Order 1987, to prohibit for three months certain parades and meetings in the lower Ormeau Road area on the basis that they are likely to cause serious public disorder and serious disruption to the life of the community.

After carefully considering the contents of your letter and consulting the Chief Constable of the Royal Ulster Constabulary, the Minister of State, Sir John Wheeler, acting on the Secretary of State's behalf, has formed the opinion that, in all the circumstances, it is not necessary for him to make an order under Article 5(1) (A).

Yours faithfully

J M STEELE

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