

**NORTHERN IRELAND POLICING BOARD**  
A REPORT ON THE POLICING OF THE  
**ARDOYNE PARADES**  
**12 JULY 2004**

**REPORT ON THE POLICING OF THE  
12<sup>th</sup> JULY ARDOYNE PARADES**

**Keir Starmer QC  
Jane Gordon**

**EXECUTIVE SUMMARY**

1. Section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000 imposes a duty on the Northern Ireland Policing Board to monitor the performance of the Police Service of Northern Ireland (PSNI) in complying with the Human Rights Act 1998. The Policing Board is under a continuing obligation to discharge this duty unless and until s.3(3)(b)(ii) is amended or repealed.
2. In early 2003 the Policing Board appointed us as its Human Rights Advisors and in December 2003 it published its Framework Document setting out how it proposed to discharge its statutory duty under s.3(3)(b)(ii) for the period 2003-2004.<sup>1</sup> The Policing Board's first report on the performance of the PSNI in complying with the Human Rights Act is due to be published early in 2005.
3. As part of its review of public order policing, the Policing Board committed itself in its Framework Document to monitoring the policing of certain parades in 2004, including the 12<sup>th</sup> July parades that passed the Ardoyne shop fronts (referred to in shorthand in this report

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<sup>1</sup> *Monitoring PSNI Compliance with the Human Rights Act 1998.*

as the 12<sup>th</sup> July Ardoyne parades).<sup>2</sup> To that end, we have had in-depth meetings with senior officers responsible for the planning, preparation and execution of the policing operation at Ardoyne on 12<sup>th</sup> July this year. We have been provided with all the briefing material generated by the PSNI in preparation for the operation and attended briefings at Gold, Silver and Bronze command level. We also attended the Ardoyne shop fronts on 12<sup>th</sup> July as observers on the ground while the parades passed through the area both on the way out in the morning and on the way back in the evening; at other times on 12<sup>th</sup> July we observed the policing operation for these parades from the Silver Command room.

4. As a result of the very serious concerns raised by a number of individuals and groups about certain aspects of the 12<sup>th</sup> July Ardoyne parades this year, we have been asked by the Policing Board to produce this report on the policing of these parades in advance of the publication of our full report on the performance of the PSNI in complying with the Human Rights Act early in 2005. To fulfil that task we have been given access to a great deal of material requested by us from the PSNI. This includes: (i) the briefing documents, operational orders and minutes of all briefing meetings from Gold Command level down; (ii) the 11/1, 11/4 and 11/9 forms giving notice of intention to hold the parades and the police response respectively; (iii) the minutes of the PSNI's meeting with the Parades Commission, and its records of other communications with the Parades Commission; (iv) the Parades Commission determinations and related documents; (v) PSNI schedules of contentious parades and deployment sheets; (vi) the PSNI intelligence picture relating to the 12<sup>th</sup> July Ardoyne parades; and (vii) the Gold and Silver Command logs for the 12<sup>th</sup> July which record all decisions made in relation to the policing

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<sup>2</sup> Framework Document, para.7.7.

operation in question. We were also shown the legal advice provided to the PSNI on human rights issues, including the policing of the 12<sup>th</sup> July Ardoyne parades. We have also been given unrestricted access to the PSNI's video footage of the parades. Much of this material is rightly classified as sensitive and has been treated by us accordingly.

5. It is important that we record the unrestricted access that the PSNI has given us to documents, other material and officers to enable us to compile this report. No limitations were placed on our attendance at preparatory meetings (even at the later stages of the operation), nor was any restriction imposed on our attendance as observers on the ground at Ardoyne or in the Silver Command room on the 12<sup>th</sup> July. Nor has any request made by us for information been refused. If it had been, we would have recorded it here. We are particularly grateful to ACC McCausland (Gold Command), Chief Superintendent Lindsay-White (Silver Command) and Superintendent Boulwood (relevant Bronze Command) who gave us many hours of their time to explain their decisions to us, show us the relevant documentation and answer our questions. We also had extensive discussions with the PSNI human rights lawyer and met the PSNI Parades Commission Liaison Officer.
  
6. It is also important that we record and acknowledge the assistance we have been given by the other individuals and groups that we have met during our preparation of this report. These include Sam Pollock and David Wood on behalf of the Police Ombudsman for Northern Ireland, the North and West Belfast Parades Forum, Martin Morgan, Pat Convery and Margaret Walsh (SDLP Councillors), Alex Attwood MLA (SDLP), Brian Barrington (SDLP legal adviser), Father Troy, and Pdraigin Drinin (solicitor). We also met Sir Anthony Holland (Chairman) on behalf of the Parades Commission before this report

was drafted. Andrew Elliott (Secretary) and Ronnie Pedlow of the Parades Commission then met us to discuss the Commission's comments on the first draft of the report. The Parades Commission also facilitated a meeting between us and its legal adviser.

7. We requested meetings with the Ardoyne Parades Dialogue Group and with Gerry Kelly MLA (SF) but unfortunately neither responded to our request. For that reason, in so far as they may have concerns about the policing of the 12<sup>th</sup> July Ardoyne parades this year that go beyond those raised in this report, we have been unable to address them. If they are raised with us before the Policing Board's full report on the PSNI's compliance with the Human Rights Act, we will endeavour to deal with them in that report. We had also planned to meet the Reverend M. Hamilton, but unfortunately he had to cancel that meeting at short notice.
8. The main issue addressed in our report is whether the policing of the 12<sup>th</sup> July Ardoyne parades this year complied with requirements of the Human Rights Act 1998. Since it is a fundamental principle of the Human Rights Act that any action taken by the police must be lawful, this raises two further issues, namely: (i) whether the PSNI properly policed the determinations made by the Parades Commission in respect of the 12<sup>th</sup> July Ardoyne parades and took appropriate operational decisions to that end within the framework of the applicable law, including the Human Rights Act; and (ii) whether any use of force by PSNI officers was justified.
9. In compiling our report we have taken account of any and all concerns raised with us by those we have met. We have attempted to address those concerns objectively within the limits of the Policing Board's remit under s.3(3)(b)(ii) of the Police (Northern Ireland) Act 2000.

10. Our conclusions are that the policing operation was carefully planned and executed. The human rights implications of all the key decisions were considered at every stage and the advice of the PSNI human rights lawyer was taken on several occasions. Tactical advice was also taken from a fully qualified and experienced tactical advisor. Those responsible for the policing of the 12<sup>th</sup> July Ardoyne parades followed the advice they were given by the PSNI human rights lawyer and the PSNI tactical advisor. However, although in the event it would not have affected the decisions made by those responsible for policing the 12<sup>th</sup> July Ardoyne parades, in our view it would have been preferable if further legal advice had been taken between 9<sup>th</sup> and 12<sup>th</sup> July.
  
11. At all stages of the planning of the policing operation until 9<sup>th</sup>/10<sup>th</sup> July, those responsible for the policing of the 12<sup>th</sup> July Ardoyne parades genuinely considered that the determinations of the Parades Commission applied to followers/supporters of the parades and planned the operation on that basis. We are satisfied that it was legitimate for them to have done so during that period. There are four reasons for this:
  - (a) First, the Parades Commission has issued determinations in the past which were clearly intended to apply to followers/supporters, and the police have policed those determinations. The determinations for the 12<sup>th</sup> July Ardoyne 2003 parades and the 2003 Tour of the North parades are examples.
  - (b) Second, all of the briefing material from Gold Command down refers to scenarios which include a scenario in which supporters/followers breach a determination that applies to them. It seems unlikely that the PSNI would use time and resources to plan for a scenario which could never happen.

(c) Third, when the PSNI met the Parades Commission on 1<sup>st</sup> July 2004, Chief Superintendent Lindsay-White was asked “how it would be if the lodges were allowed without supporters or followers”. The exchange that followed would not have alerted the PSNI to the fact that the Parades Commission may have considered that it had no jurisdiction to issue determinations applying to followers/supporters.

(d) Fourth, the PSNI had legal advice based on an assumption that the Parades Commission determinations applied to followers/supporters. The PSNI acted on that advice.

12. The decision of Mr. Justice Weatherup on 9<sup>th</sup> July 2004 had a profound effect on the policing operation because, from then on, the PSNI could not lawfully rely on the determinations of the Parades Commission as a basis for preventing followers/supporters of the parades from proceeding through the contentious part of the route between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road, unless the behaviour of those followers/supporters went beyond that of following, proceeding with or accompanying the lodges and/or bands on 12<sup>th</sup> July. The Judge did not give examples of what behaviour might constitute participation rather than following/supporting, but presumably mingling in with the lodges and bands would be behaviour going beyond following, proceeding with or accompanying the lodges and/or bands.

13. Thereafter the PSNI only had power to prevent the followers/supporters proceeding along that part of the route if they presented a threat to the peace sufficient to trigger police powers to deal with a breach of the peace. Those powers could not be relied on as a legal basis for holding the group of followers/supporters who had been separated from the lodges at the junction of Woodvale Road and

Woodvale Parade for a prolonged period if that group itself presented no threat to the peace.

14. There is no evidence that the behaviour of those followers/supporters on 12<sup>th</sup> July as they moved up the Woodvale Road in the evening went beyond that of following, proceeding with or accompanying the lodges and/or bands. Accordingly the PSNI had no power under the determinations of the Parades Commission to prevent them proceeding along the contentious part of the route.
  
15. It follows that the decision of the PSNI to allow the followers/supporters to move up the contentious part of the route between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road as they did during the evening of 12<sup>th</sup> July did not breach the determinations of the Parades Commission as interpreted by Mr Justice Weatherup. It also follows that the PSNI policed those determinations lawfully in accordance with the requirements of the Public Processions (Northern Ireland) Act 1998 and in accordance with the objectives the police set themselves in every briefing from Gold Command down.
  
16. As a matter of law, that disposes of the matter. But for completeness, we have recorded the evidence of *how* and *when* the group of followers/supporters were moved through the contentious part of the route between that junction and the junction of Crumlin Road and Hesketh Road. The position is as follows. Five police vehicles preceded the group of followers/supporters along with a number of police officers on foot wearing protective public order clothing. The group of followers/supporters numbered about 250 and were closely bunched together, and there were police officers walking alongside them on the Ardoyne shop fronts side. At the rear of the group were a



number of police officers with dogs, and then about 10 to 12 police vehicles. There were no banners, ceremonial clothes or colours that we could see. However, we did see two flags, which appeared to be union jack flags, or versions thereof. We did not see any paramilitary flags. In addition a number of individuals were wearing novelty union jack hats and there was a union jack umbrella in view. The group was pressed closer together as it went past the screens in front of the Ardoyne shop fronts.

17. The followers/supporters were moved up the contentious part of the route eight minutes after the lodges had proceeded up that part of the route. They did not come into our view standing at the roundabout at the junction of Woodvale Road, Crumlin Road and Twaddell Avenue until the lodges had completed their journey and reached the junction of Crumlin Road and Hesketh Road.
18. On the question of the exercise by the PSNI of their powers to deal with an actual or apprehended breach of the peace, we have pressed the police about the behaviour of the crowd of followers/supporters at the road blocks on Woodvale Road just before they were taken up the road. Chief Inspector Maguire who was on duty at the road block described the crowd as well-behaved, but impatient. There was no violence or threat of violence, nor was there any physical pressure on the police line. The only possible evidence to the contrary is an entry in the PSNI serial 464 record which suggests that some stones were thrown at the police by band supporters in the vicinity of Cambrai Street at about 7.12pm. We asked the PSNI whether this was taken into account and were told that Silver Command attempted to verify the information received at 7.12pm, but the incident was not confirmed

19. There were also other factors. First, that the police were concerned to ensure that police officers, vehicles and equipment were in place in front of the Ardoyne shop fronts for as short a period as possible. If the followers/supporters were taken through the contentious part of the route as soon as possible after the parade passed the second junction most, if not all, police officers, vehicles and equipment could be removed as soon as possible thereafter minimising disruption. Second, there was the duty on the police to protect, as far as they were able to do so, the followers/supporters from attack if at some stage in the evening of 12<sup>th</sup> July they were to be allowed to move through the contentious part of the route. ACC McCausland explained to us that a large group of those protesting in front of the Ardoyne shop fronts moved up the Ardoyne Road when the lodges went past. A window of opportunity to move the followers/supporters up the road in relative safety therefore presented itself and influenced the decision-making. Third was a concern that if the police held the followers/supporters at the junction of Woodvale Road and Woodvale Parade until after most of the police and military officers and equipment had been removed, protestors would occupy the road in front of the Ardoyne shop fronts to prevent the group of followers/supporters moving up the road at some later stage. That had happened in not dissimilar circumstances in 2003.

20. There was also a concern that holding back the group for a prolonged period might increase the risk of disorder at least, or serious violence at worst, if followers/supporters from other parades joined those at the junction of Woodvale Road and Woodvale Parade swelling the numbers from the 200 or so who originally presented at the Woodvale Road/Woodvale Parade junction to a much larger number, possibly even 1,000. It has been suggested to us that the PSNI over-stated this concern, but we have seen a leaflet recovered by the police that urges

East Belfast Orangemen to “delay their return to Templemore Avenue until all Brethren, bands and loyal supporters return safely to Ligonell Orange Hall”. We have also been shown other material which supports the concerns of the PSNI. In addition, the North and West Belfast Parades Forum accepted that there was a distinct possibility that the number of followers/supporters at the junction of Woodvale Road and Woodvale Parade might increase if the original group were prevented from moving through the contentious part of the route and that there might have been a ‘stand off’.

21. We recognise, of course, that if too much emphasis were placed on this last factor, the argument could be made that those who present the greatest threat of violence will ultimately get their way. However, so long as it remained only one factor, in our view it was perfectly legitimate for the PSNI to take it into account.
22. Against that background, we are satisfied that the PSNI properly took all the relevant factors into account in deciding that they could not lawfully exercise their breach of the peace powers to prevent the group of followers/supporters from moving up the contentious part of the route between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road on 12<sup>th</sup> July.
23. It follows that the PSNI decision to allow the followers/supporters up the contentious part of the route was lawful because their judgment that the behaviour of the followers/supporters did not justify holding them for a prolonged period at the junction of Woodvale Road and Woodvale Parade cannot be faulted.
24. On a different question, we are satisfied, having regard to the policing operation overall, and to the resources available to the PSNI on 12<sup>th</sup>

July to police the Ardoyne parades, that the legal duty on the PSNI to take reasonable steps to protect the lodge members and followers/supporters was fulfilled. Notwithstanding the episodes of violence that broke out when the lodges and when the followers/supporters moved through the contentious part of the route, it would have been virtually impossible for the PSNI to have protected them from any possibility of attack without disproportionately interfering with the rights of those who legitimately wanted to protest against the parades.

25. Force was used by the PSNI on five separate occasions. In respect of three of those occasions we are satisfied that, as a general tactic, the use of force was justified. In respect of the other two occasions, we are not able to make any assessment without access to a great deal of further evidence. If individual complaints are made about the use of force, those complaints would fall within the remit of the Police Ombudsman for Northern Ireland.

26. Notwithstanding the conclusions set out above, we have a number of serious concerns. Most importantly, they include a concern that the interpretation by the Parades Commission, and in the judgment of Mr. Justice Weatherup on 9<sup>th</sup> July 2004 in the case of *JR.1*, of those participating in a public procession as excluding those who follow, proceed with or accompany lodges and bands along an entire parade route, will have a profound and detrimental effect on the ability of the PSNI to police parades in the future. The significance of this conclusion cannot be underestimated. It goes to the heart of the legal framework for policing parades in Northern Ireland. In our view, it is critical that the implications of this are fully realised and resolved as soon as possible.

27. A linked concern relates to the question of communications between the Parades Commission and the PSNI. While we recognise the need for both bodies to maintain their independence, it is essential that the PSNI know and understand the basis upon which the Parades Commission is issuing its determinations. If uncertainties arise, it is important that both bodies seek to resolve them as quickly as possible. That requires clear and agreed lines of communication.
  
28. We are also concerned that two roadblocks under the responsibility of the military were ineffective during the evening of 12<sup>th</sup> July. This raises a serious issue about the effectiveness of the arrangements in place for joint operations between the PSNI and the military. In the circumstances, we consider that the arrangements in place for joint operations between the PSNI and the military should be reviewed as soon as possible and amended if amendment is considered necessary.
  
29. Notwithstanding these concerns, we are satisfied that the policing operation as a whole complied with the requirements of the Human Rights Act 1998.

## **REPORT ON THE POLICING OF THE 12<sup>th</sup> JULY ARDOYNE PARADES**

### **Introduction.**

1. Section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000 imposes a duty on the Northern Ireland Policing Board to monitor the performance of the Police Service of Northern Ireland (PSNI) in complying with the Human Rights Act 1998. The Policing Board is under a continuing obligation to discharge this duty unless and until s.3(3)(b)(ii) is amended or repealed.
  
2. In early 2003 the Policing Board appointed us as its Human Rights Advisors and in December 2003 it published its Framework Document setting out how it proposed to discharge its statutory duty under s.3(3)(b)(ii) for the period 2003-2004.<sup>3</sup> The Policing Board's first report on the performance of the PSNI in complying with the Human Rights Act is due to be published early in 2005.
  
3. As part of its review of public order policing, the Policing Board committed itself in its Framework Document to a first hand review of the policing of certain parades in 2004, including the 12<sup>th</sup> July parades that passed the Ardoyne shop fronts (referred to in shorthand in this report as the 12<sup>th</sup> July Ardoyne parades).<sup>4</sup> To that end, we have had in-depth meetings with senior officers responsible for the planning, preparation and execution of the policing operation at Ardoyne on 12<sup>th</sup> July this year. We have been provided with all the briefing material generated by the PSNI in preparation for the operation and attended

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<sup>3</sup> *Monitoring PSNI Compliance with the Human Rights Act 1998.*

<sup>4</sup> Framework Document, para.7.7.

briefings at Gold, Silver and Bronze command level. We also attended the Ardoyne shop fronts on 12<sup>th</sup> July as observers on the ground while the parades passed through the area both on the way out in the morning and on the way back in the evening; at other times on 12<sup>th</sup> July we observed the policing operation for these parades from the Silver Command room.

4. As a result of the very serious concerns raised by a number of individuals and groups about certain aspects of the 12<sup>th</sup> July Ardoyne parades this year, we have been asked by the Policing Board to produce this report on the policing of these parades in advance of the publication of our full report on the performance of the PSNI in complying with the Human Rights Act early in 2005. To fulfil that task we have been given access to a great deal of material requested by us from the PSNI. This includes: (i) the briefing documents, operational orders and minutes of all briefing meetings from Gold Command level down; (ii) the 11/1, 11/4 and 11/9 forms giving notice of intention to hold the parades and the police response respectively; (iii) the minutes of the PSNI's meeting with the Parades Commission, and its records of other communications with the Parades Commission; (iv) the Parades Commission determinations and related documents; (v) PSNI schedules of contentious parades and deployment sheets; (vi) the PSNI intelligence picture relating to the 12<sup>th</sup> July Ardoyne parades; and (vii) the Gold and Silver Command logs for the 12<sup>th</sup> July which record all decisions made in relation to the policing operation in question. We were also shown the legal advice provided to the PSNI on human rights issues, including the policing of the 12<sup>th</sup> July Ardoyne parades. We have also been given unrestricted access to the PSNI's video footage of the parades. Much of this material is rightly classified as sensitive and has been treated by us accordingly.

5. It is important at the outset that we record and acknowledge the unrestricted access that the PSNI has given us to documents, other material and officers to enable us to compile this report. No limitations were placed on our attendance at preparatory meetings (even at the later stages of the operation), nor was any restriction imposed on our attendance as observers on the ground at Ardoyne or in the Silver Command room on the 12<sup>th</sup> July. Nor has any request made by us for information been refused. If it had been, we would have recorded it here. We are particularly grateful to ACC McCausland (Gold Command), Chief Superintendent Lindsay-White (Silver Command) and Superintendent Boulwood (relevant Bronze Command) who gave us many hours of their time to explain their decisions to us, show us the relevant documentation and answer our questions. We also had extensive discussions with the PSNI human rights lawyer and met the PSNI Parades Commission Liaison Officer.
  
6. It is also important that we record and acknowledge the assistance we have been given by the other individuals and groups that we have met during our preparation of this report. These include Sam Pollock and David Wood on behalf of the Police Ombudsman for Northern Ireland, the North and West Belfast Parades Forum, Martin Morgan, Pat Convery and Margaret Walsh (SDLP Councillors), Alex Attwood MLA (SDLP), Brian Barrington (SDLP legal adviser), Father Troy, and Pdraigin Drinin (solicitor). We also met Sir Anthony Holland (Chairman) on behalf of the Parades Commission before this report was drafted. Andrew Elliott (Secretary) and Ronnie Pedlow of the Parades Commission then met us to discuss the Commission's comments on the first draft of the report. The Parades Commission also facilitated a meeting between us and its legal advisers.



7. We requested meetings with the Ardoyne Parades Dialogue Group and with Gerry Kelly MLA (SF) but unfortunately neither responded to our request. For that reason, in so far as they may have concerns about the policing of the 12<sup>th</sup> July Ardoyne parades this year that go beyond those raised in this report, we have been unable to address them. If they are raised with us before the Policing Board's annual report on the PSNI's compliance with the Human Rights Act, we will endeavour to deal with them in that report. We had also planned to meet the Reverend M. Hamilton, but unfortunately he had to cancel that meeting at short notice.

**The issues addressed in this report.**

8. The main issue addressed in this report is whether the policing of the 12<sup>th</sup> July Ardoyne parades this year complied with requirements of the Human Rights Act 1998. Since it is a fundamental principle of the Human Rights Act that any action taken by the police must be lawful,<sup>5</sup> this raises two further issues, namely: (i) whether the PSNI properly policed the determinations made by the Parades Commission in respect of the 12<sup>th</sup> July Ardoyne parades and took appropriate operational decisions to that end within the framework of the applicable law, including the Human Rights Act; and (ii) whether any use of force by PSNI officers was justified. We propose to deal with these issues as they arise, as well as addressing the broader question of whether the policing operation as a whole complied with the requirements of the Human Rights Act.
9. In compiling this report we have taken account of any and all concerns raised with us by those we have met. We have attempted to address

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<sup>5</sup> There is thus a correlation between human rights issues and issues of legality: see below para. 12.

those concerns objectively within the limits of the Policing Board's remit under s.3(3)(b)(ii) of the Police (Northern Ireland) Act 2000.

### **The requirements of the Human Rights Act.**

- 10 The Human Rights Act 1998 came into force on 2<sup>nd</sup> October 2000. It requires all public authorities to act in a way that is compatible with the rights set out in Schedule 1 of the Act, which are taken from the European Convention on Human Rights (ECHR), unless primary legislation requires them to act otherwise.<sup>6</sup> A public authority includes any body exercising functions of a public nature, which includes the PSNI. Individuals who consider that their human rights have been breached can bring legal proceedings against the public authority in question.<sup>7</sup> Courts then have power to grant various types of relief as and when appropriate.<sup>8</sup>
- 11 The Human Rights Act also requires courts to interpret legislation in a way that is compatible with the rights set out in Schedule 1 of the Act. And, in determining any human rights issue, courts must take into account the case law of the European Court of Human Rights.<sup>9</sup>
- 12 The human rights incorporated into our law by this means include the following which are relevant to this report: Article 2 ECHR (the right to life), Article 3 (the prohibition on inhuman treatment), Article 5 (the right to liberty), Article 8 (the right to respect for private and family life and to a home), Articles 9, 10 and 11 (freedom of religion, expression and assembly respectively), and Article 14 (the prohibition on discrimination). Articles 2 and 3 ECHR are different to the other rights mentioned above because they are absolute in the sense that they

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<sup>6</sup> HRA ss.6(1) and 6(2).

<sup>7</sup> HRA s.7(1).

<sup>8</sup> HRA s.8(1).

<sup>9</sup> HRA s.2(1).

cannot be restricted for the public good or for the public benefit. The other rights are qualified in the sense that they can be restricted in the public good or for the public benefit but only where any such restriction can be shown to be: (i) lawful, (ii) legitimate (i.e. genuinely in the public good or for the public benefit – e.g. to prevent crime or disorder or to protect the rights of others), (iii) necessary, and (iv) proportionate.

13 The right to life under Article 2 does not simply mean that public authorities should refrain from the arbitrary killing of those for whom they are responsible. It also means that, in certain well-defined circumstances, public authorities should take positive steps to protect individuals whose lives are at risk.<sup>10</sup> Bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices that must be made in terms of priorities and resources, such an obligation must be interpreted in a way that does not impose an impossible or disproportionate burden on the police.<sup>11</sup> What is required of the police is therefore that they take all steps that could reasonably be expected of them to avoid a real and immediate risk to life about which they know or ought to have known.<sup>12</sup>

14 Article 2 ECHR also controls the use of force, as does Article 3. The requirement they impose is that, if possible, non-violent means should be used to resolve an incident before the force is used and that potentially lethal force can only be used where absolutely necessary and in very limited circumstances such as self-defence or to protect the lives of others.

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<sup>10</sup> Osman v UK [1998] 29 EHRR 245.

<sup>11</sup> Osman v UK [1998] 29 EHRR 245.

<sup>12</sup> Osman v UK [1998] 29 EHRR 245.

15 Article 5 ECHR protects individuals against arbitrary arrest and detention. In the context of this report this means that the PSNI cannot arrest or detain individuals unless there are proper grounds for making a lawful arrest or they are lawfully exercising their powers to deal with an actual or apprehended breach of the peace. Police powers to deal with an actual or apprehended breach of the peace are considered elsewhere in this report,<sup>13</sup> but it is important to appreciate that these powers are more restricted now than they used to be.

16 Article 8 ECHR protects the right to respect for the private and family life of individuals, and the right to a home. It extends to the right of peaceful enjoyment of the home, but like Articles 9, 10 and 11, it is not absolute. That means that it can be restricted so long as any restriction is lawful, legitimate, necessary and proportionate.

17 Articles 9, 10 and 11 ECHR protect the right to manifest a religion, to expression and to freedom of assembly respectively. Taken together they provide a right of protest, but like Article 8, this right is a qualified right and can be restricted so long as any restriction is lawful, legitimate, necessary and proportionate. The right of protest includes a right to march or process,<sup>14</sup> so long as the purpose is peaceful.<sup>15</sup> The mere fact that a protest, march or procession may annoy others, or even offend them, is not a sufficient basis for restricting it.<sup>16</sup> And where there is a threat of disruption or disorder from others, the relevant authorities (including the police) are under a duty to take reasonable steps to protect those who want to exercise their rights

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<sup>13</sup> See below, para. 106-111

<sup>14</sup> *Rassemblement Jurassien and Unite Jurassienne v Switzerland* (1979) 17 DR 138; *Christians Against racism and Fascism v UK* (1980) 21 DR 138.

<sup>15</sup> *Christians Against Racism and Fascism v UK* (1980) 21 DR 138.

<sup>16</sup> *Refah Partisi v Turkey* [2002] 35 EHRR 56.

peacefully.<sup>17</sup> That does not mean that there is an absolute duty to protect those who want to protest, march or process.<sup>18</sup> However, banning a protest, march or procession would only be justified if there was a real threat of disorder that could not be prevented by other reasonable measures.<sup>19</sup>

- 18 The prohibition on discrimination in Article 14 ECHR does not mean that everyone must necessarily be treated the same. It simply means that any differentiation in treatment between two groups of individuals must be reasonable and objectively justified. And to establish differential treatment, individuals must show that they have been treated less favourably than others who are in the same or a similar position to them.

### **The legal relationship between the PSNI and the Parades Commission.**

19. In any assessment of whether the policing of the 12<sup>th</sup> July Ardoyne parades complied with the Human Rights Act, it is vital to distinguish between those decisions that the PSNI had legal responsibility for and those decisions that the Parades Commission had responsibility for. That is because the Public Processions (Northern Ireland) Act 1998 places a duty on the Parades Commission to take key decisions affecting the human rights of those wishing to parade and those who live in the vicinity of those parades. In respect of those decisions, no criticism can properly be levelled at the police for carrying them into effect, even if some individuals or groups may consider the decision in question to be wrong. For that reason it is necessary briefly to set out the functions of the Parades Commission.

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<sup>17</sup> Platform Artze Fur das Leben v Austria [1988] EHRR 204.

<sup>18</sup> Platform Artze Fur das Leben v Austria [1988] EHRR 204.

<sup>19</sup> Christians Against Racism and Fascism v UK (1980) 21 DR 138.

20. The Public Processions (Northern Ireland) Act 1998 came into force on the 16<sup>th</sup> February 1998. It requires anyone proposing to organise a public procession to give notice of that proposal to the police.<sup>20</sup> Notice should be given in writing and in such form as the Secretary of State prescribes<sup>21</sup> not less than 28 days before the date of the proposed procession or as soon as is reasonably practicable.<sup>22</sup> The notice must specify the date and time of the proposed procession, its route, the numbers of people likely to take part, the names of any bands which are to take part in it and the arrangements being made by the organiser to control the proposed procession.<sup>23</sup> The Chief Constable is then under a duty to ensure that a copy of the notice is given immediately to the Parades Commission.<sup>24</sup> The only processions exempt from these notice requirements are funeral processions and processions of a class or description specified by the Secretary of State.

21. Anyone who organises or takes part in a public procession in respect of which no notice has been given or which is held on a date, at a time or along a route which differs from the date, time or route specified in the notice, is guilty of a criminal offence.<sup>25</sup> But a defence is provided to those who did not know and had no reason to suspect that no notice had been given, or that they were taking part in a public procession on a date, at a time or along a route which differs from the date, time or route specified in the notice<sup>26</sup> and/or to those who can show that what they did was agreed with or directed by a police officer not below the rank of inspector, or that circumstances were beyond their control.<sup>27</sup>

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<sup>20</sup> PP(NI)A, s.6(1).

<sup>21</sup> PP(NI)A, s.6(3).

<sup>22</sup> PP(NI)A, s.6(2).

<sup>23</sup> PP(NI)A, s.6(4).

<sup>24</sup> PP(NI)A, s.6(6).

<sup>25</sup> PP(NI)A, s.6(7).

<sup>26</sup> PP(NI)A, s.6(8).

<sup>27</sup> PP(NI)A, s.6(9).

22. The Parades Commission has power to issue a determination in respect of any proposed public procession, imposing on the persons organising or taking part in it such conditions as the Commission considers necessary.<sup>28</sup> There is no express limit on the power of the Commission to impose conditions, but it is clear that the Commission can include conditions as to the route of the procession or prohibiting it from entering any place.<sup>29</sup> The Commission has a power to amend or revoke any determination.<sup>30</sup>
23. It is the duty of the Parades Commission to have regard to its guidelines when considering whether to issue or review a determination.<sup>31</sup> The guidelines require the Commission to have regard to any public disorder or damage to property which may result from the procession, any disruption to the life of the community which the procession may cause, any impact which the procession may have on relationships within the community, any failure to comply with the Code of Conduct and the desirability of allowing a procession customarily held along a particular route to be held along that route.<sup>32</sup> The requirement to have regard to these matters is intended to ensure that decisions of the Parades Commission comply with the requirements of the Human Rights Act 1998 and this is made clear in the guidelines themselves.<sup>33</sup> Furthermore, the Parades Commission is itself a public authority and thus under a duty to act compatibly with Convention rights.
24. Thus it is the Parades Commission that has primary responsibility for ensuring that an appropriate human rights balance is achieved between those wishing to parade, those who oppose any such parade and those

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<sup>28</sup> PP(NI)A, s.8(1).

<sup>29</sup> PP(NI)A, s.8(2).

<sup>30</sup> PP(NI)A, s.8(4).

<sup>31</sup> PP(NI)A, s.8(5).

<sup>32</sup> PP(NI)A, s.8(6).

<sup>33</sup> Parades Commission, Guidelines, paras.1.4 and 1.5.

who live in the vicinity of those parades, by issuing determinations as and when it is appropriate to do so. The responsibility of the PSNI is to police any determination of the Parades Commission and to take appropriate operational decisions to that end within the framework of the applicable law, including the Human Rights Act.

25. Anyone who knowingly fails to comply with a condition imposed by the Commission in a determination commits a criminal offence.<sup>34</sup> But a defence is provided to those who can show that their failure to comply with a condition arose from circumstances beyond their control or from something done by the direction of a police officer not below the rank of inspector.<sup>35</sup>
26. The Chief Constable can apply to the Secretary of State to review a determination made by the Commission.<sup>36</sup> The Secretary of State can then revoke, amend or confirm the determination,<sup>37</sup> having regard to the guidelines issued by the Commission.<sup>38</sup>
27. While the Commission can impose conditions on a proposed public procession by issuing a determination, only the Secretary of State can prohibit a proposed public procession.<sup>39</sup> This power arises if the Secretary of State considers that it is necessary in the public interest to do so, having regard to any serious public disorder or serious damage to property which may result from the procession, any serious disruption to the life of the community which the procession may cause, any serious impact that the procession may have on relationships within the community and any undue demands which the

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<sup>34</sup> PP(NI)A, s.8(7).

<sup>35</sup> PP(NI)A, s.8(7)(a) and (b).

<sup>36</sup> PP(NI)A, s.9(1).

<sup>37</sup> PP(NI)A, s.9(2).

<sup>38</sup> PP(NI)A, s.9(3).

<sup>39</sup> PP(NI)A, s.11(1).



procession may have on the police or military forces.<sup>40</sup> The Secretary of State also has power to prohibit all processions either generally<sup>41</sup> or of a particular class or description<sup>42</sup> for up to 28 days in any given area. Anyone who organises or takes part in a public procession which has been prohibited by the Secretary of State commits a criminal offence.<sup>43</sup>

28. Protest meetings are dealt with differently. Where notice has been given of a proposed public procession, anyone proposing to organise a related protest meeting is required to give notice of that proposal to the police.<sup>44</sup> Notice should be given in writing and in such form as the Secretary of State prescribes<sup>45</sup> not less than 14 days before the date of the proposed meeting or, if that is not reasonably practicable, as soon as is reasonably practicable.<sup>46</sup> The notice must specify the date and time of the proposed meeting, its place, the numbers of people likely to take part and the arrangements being made by the organiser to control the meeting.<sup>47</sup> The Chief Constable is then under a duty to ensure that a copy of the notice is given immediately to the Parades Commission.<sup>48</sup> There are no exemptions from these notice requirements.

29. The only definition of a “protest meeting” in the Public Processions (Northern Ireland) Act 1998 is in s.17(1), where it is stated that “protest meeting” means an open-air public meeting at a place which is on or in the vicinity of the route or proposed route of the public

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<sup>40</sup> PP(NI)A, s.11(1)(a)-(d).  
<sup>41</sup> PP(NI)A, s.11(3).  
<sup>42</sup> PP(NI)A, s.11(2).  
<sup>43</sup> PP(NI)A, s.11(8).  
<sup>44</sup> PP(NI)A, s.7(1).  
<sup>45</sup> PP(NI)A, s.7(3).  
<sup>46</sup> PP(NI)A, s.7(2).  
<sup>47</sup> PP(NI)A, s.7(4).  
<sup>48</sup> PP(NI)A, s.7(5).

procession and at or about the same time as the procession on that route or proposed route. A protest meeting is “related” to a public procession if the purpose (or one of the purposes) of the meeting is to demonstrate opposition to the holding of that procession on its route or proposed route.<sup>49</sup>

30. Anyone who organises or takes part in a protest meeting in respect of which no notice has been given or which is held on a date, at a time or at a place which differs from the date, time or place specified in the notice is guilty of a criminal offence.<sup>50</sup> But a defence is provided to those who did not know and had no reason to suspect that no notice had been given, or that they were taking part in a protest meeting on a date, at a time or at a place which differs from the date, time or place specified in the notice,<sup>51</sup> and/or to those who can show that what they did was agreed with or directed by a police officer<sup>52</sup> not below the rank of inspector, or that circumstances were beyond their control.<sup>53</sup>

31. Power to impose conditions on open-air public meetings, whether they are protest meetings or not, is conferred on the PSNI (not the Parades Commission) by the Public Order (Northern Ireland) Order.<sup>54</sup> It allows a senior police officer to impose conditions on an open-air public meeting if s/he reasonably believes that it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or if s/he reasonably believes that the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an

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<sup>49</sup> PP(NI)A, s.17(1).

<sup>50</sup> PP(NI)A, s.7(6).

<sup>51</sup> PP(NI)A, s.7(7).

<sup>52</sup> Either under Article 4(2) of the Public Order (Northern Ireland) Order 1987 or generally.

<sup>53</sup> PP(NI)A, s.7(8).

<sup>54</sup> See above.

act they have no right to do.<sup>55</sup> The conditions can be imposed on the organisers or those taking part in the meeting and can relate to the place of the meeting, its maximum duration and the maximum number of participants. Such conditions must be given in writing.<sup>56</sup> Anyone who knowingly fails to comply with any such conditions commits a criminal offence.<sup>57</sup>

32. The Public Order (Northern Ireland) Order also allows the Secretary of State to prohibit the holding of open-air public meetings in similar circumstances to those in which s/he can prohibit public processions<sup>58</sup> and again it is a criminal offence to organise or take part in a prohibited open-air meeting.<sup>59</sup>

**The context.**

- 33 Any assessment of the policing of the 12<sup>th</sup> July Ardoyne parades has to have regard to the context in which that policing took place. On 12<sup>th</sup> July 2004 there were numerous parades in Belfast. In the morning, twelve of these were considered to be contentious; in the evening, ten were considered contentious. This has obvious, but important, implications: the resources available to police the 12<sup>th</sup> July Ardoyne parades had to be balanced with the resources needed elsewhere in Belfast. A cursory examination of the deployment schedules that were shown to us reveals the scale of the overall policing operation in Belfast on 12<sup>th</sup> July. There were, of course, other contentious parades elsewhere in Northern Ireland as well as non-contentious parades in Belfast and elsewhere.

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<sup>55</sup> PO(NI)O 1987, Article 4(2).

<sup>56</sup> PO(NI)O 1987, Article 4(4).

<sup>57</sup> PO(NI)O 1987, Article 4(5).

<sup>58</sup> PO(NI)O 1987, Article 5(1).

<sup>59</sup> PO(NI)O 1987, Article 5(5).

34 Another important point about the context of the policing of the 12<sup>th</sup> July Ardoyne parades is that, as noted above, the notice which anyone proposing to organise a public procession is required to give under the Public Processions (Northern Ireland) Act 1998 can be given just 28 days before the date of the proposed procession<sup>60</sup> or, if that is not reasonably practicable, as soon as it is reasonably practicable.<sup>61</sup> That notice triggers a procedure set out in the Parades Commission's procedural rules<sup>62</sup> which includes gathering information which may inform the exercise of the Commission's statutory function, hearing the views of supporters and opposers of the proposed public procession and considering whether to issue a determination.<sup>63</sup> The almost inevitable consequence of this is that a good deal of the planning by the PSNI for the policing of the 12<sup>th</sup> July parades had to be undertaken before the police knew whether a determination would be issued in respect of any given parade and, if issued, what the terms of the determination would be.

35 The Parades Commission's procedural rules make clear that the Commission aims to make its final decision five working days in advance of the notified date of a parade<sup>64</sup> and for the 12<sup>th</sup> July Ardoyne parades that was achieved: the determinations, which are considered in detail below, were issued on 5<sup>th</sup> July, the Monday before the 12<sup>th</sup> July parades. Other determinations for other parades were being made on an almost daily basis in early July.

36 One final point about the context of the policing of the 12<sup>th</sup> July Ardoyne parades is that, technically, there were three proposed

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<sup>60</sup> That being the minimum period.

<sup>61</sup> See above, para.20.

<sup>62</sup> Issued under s.4 PP(NI)A 1998.

<sup>63</sup> Procedural rules, para.2.1.

<sup>64</sup> Procedural rules, para.5.2.

parades in the morning and three proposed parades in the evening. The proposed parades in the morning were the Ligoniel True Blues LOL 1932 parade, the Ballysillan LOL 1891 parade and the Grand Orange Lodge of Ireland LOL 633 parade. The Ligoniel True Blues LOL 1932 and the Ballysillan LOL 1891 parades proposed to return through the Ardoyne area in the evening, along with the Earl of Erne LOL 647 parade, but the Grand Orange Lodge of Ireland LOL 633 parade proposed to return by a different route. Each parade indicated, in its notice of intention to hold a public procession, a different time for the parade to assemble and disperse. In the morning the assembly times varied from 7.45am to 8.45am, and in the evening the dispersal times varied from 8pm to 9.30pm. The PSNI worked with those organising the parades in question to ensure that all three parades proceeded through the contentious part of the route past the Ardoyne shop fronts together, in the hope that this would reduce any disruption likely to be caused.

### **The long-term preparations of the PSNI.**

37 The formal planning for the policing of the 12<sup>th</sup> July parades in the Ardoyne area began in March 2004 when the police started to consult with the interested parties. A Gold, Silver and Bronze Command structure was adopted, with the Gold Commander (ACC McCausland) having overall responsibility for all parades in the urban region that day, the Silver Commander (Chief Superintendent Lindsay-White) having responsibility for policing the specific parades in the Ardoyne area and various Bronze Commanders having responsibility for specific areas on the ground. On 2<sup>nd</sup> June, a Gold Command strategy meeting for parades in the urban region took place. That was followed by a formal meeting between the Gold and Silver Commanders on 18<sup>th</sup> June and a further Gold Command strategy meeting on 28<sup>th</sup> June 2004. Between these formal meetings, there was almost daily contact and

communication between Gold and Silver Command in relation to the 12<sup>th</sup> July Ardoyne parades.

38 The Gold Command strategy meeting on 28<sup>th</sup> June 2004 was attended by Gold, Silver and Bronze Command, other relevant PSNI officers, relevant personnel from the military and also by the PSNI human rights lawyer. Although we did not attend this meeting, as the Policing Board's human rights advisors we were invited to it and had attended the equivalent Gold Command strategy meeting dealing with the No.9 District LOL Annual Whiterock parade, which used similar briefing material and was also delivered by ACC McCausland.<sup>65</sup> We have been provided with all the documents circulated at the 28<sup>th</sup> June meeting and have been shown a copy of the minutes. We have also discussed the meeting with ACC McCausland and with the PSNI human rights lawyer.

39 It is important to appreciate that at the meeting on 28<sup>th</sup> June it was not known whether the Parades Commission would issue determinations in respect of the 12<sup>th</sup> July parades in the Ardoyne area (although that was highly likely and anticipated) or, more significantly, if determinations were issued, what conditions would be attached to them. The briefing documents for that meeting set out the Chief Constable's policy in relation to the policing of public order events, including public processions, in compliance with the Human Rights Act and other international human rights instruments, in the following terms:

“It is our aim to provide a high quality, effective policing service to all the people of Northern Ireland. We will work to achieve this in partnership with the community and in co-operation with other agencies. In policing public events this aim will be to the fore. The human rights of all those affected by such events will be central to all stages of police

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<sup>65</sup> That meeting took place on the 25<sup>th</sup> May 2004.

preparations and subsequent actions. It is recognised that not all human rights are absolute rights and in some instances the rights of individuals must be balanced with those of others, including those of differing and wider communities.”

Article 4.3 of the PSNI Code of Ethics was also set out, which requires that “Police officers responsible for the planning and control of operations where the use of force is a possibility, shall so plan and control them to minimise, to the greatest extent possible, recourse to force and, in particular, potentially lethal force”.

40 The police intentions in respect of all operations were then set out.

They include an intention:

- (a) To police parades/protests in a proportionate but proactive manner, in accordance with PSNI public order manual.
- (b) To protect and uphold the human rights of all individuals involved in the event, including public, protestors, police and military, ensuring that any interference with human rights is lawful, in accordance with a legitimate aim, proportionate and necessary.
- (c) To take account of s.75 of the Northern Ireland Act 1998 in the policing of all aspects of the operation.
- (d) To police the parade/protest in accordance with any Parades Commission determination.
- (e) To reflect the long-term objective of a peaceful summer period.
- (f) To prevent disorder and ensure safety of members of the public, protestors, police and military.
- (g) Where possible to resolve difficulties by consultation/negotiation with local communities.
- (h) To minimise disruption to local communities and vehicular traffic.
- (i) Where negotiation and consultation fails to deliver an acceptable outcome to enforce the law and bring offenders before the court where appropriate, taking into account principles of equality and proportionality.

In relation to (d), it should be noted that the Parades Commission has no power to issue determinations to cover protest meetings.

- 41 The key principles underpinning the Gold Command strategy included the principle that “the police should seek to facilitate in a proportionate manner any lawful and legitimate aims of groups that are present – especially when conflict breaks out. The aim should be to permit the pursuit of lawful aims whilst dealing with groups acting illegally”. Also included was the principle that “the police commander should encourage officers not to treat all crowd members in the same manner ... it is crucial to treat people with respect and win them to your side, not to the side of those already promoting conflict”.
- 42 The Gold Command briefing paper then set out a number of possible scenarios, the strategy for dealing with each scenario and the strengths, weaknesses etc. of that strategy. It is important to note that in respect of each strategy intended to deal with each possible scenario, the impact of the Human Rights Act was taken into account. Included in this impact assessment was a consideration of the rights of those living in the vicinity of proposed parades.
- 43 Appendix 1 to the Gold Command briefing papers set out the human rights engaged in the policing of parades in the urban district. These included Articles 2, 5, 8, 10, 11 and 14 of the European Convention on Human Rights. The absolute necessity test for the use of potentially lethal force under Article 2 ECHR was emphasised, as were the rights under Article 8 ECHR of residents living on the parade route in respect of their family life and homes, and the rights under Articles 10 and 11 ECHR of those wishing to parade peacefully, or to protest peacefully, to express themselves freely. Under Article 14 ECHR, the Gold Command briefing papers committed the police and the military to



carrying out their duties without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin or association with a minority community, property, birth or other status.

**The determinations of the Parades Commission.**

- 44 In respect of the 12<sup>th</sup> July Ardoyne parades, four determinations were made by the Parades Commission. They related to the Ligoniel True Blues LOL 1932 parade, the Ballysillan LOL 1891 parade, the Earl of Erne LOL 647 parade and the Grand Orange Lodge of Ireland LOL 633 parade. The notices of intention to hold a public procession in respect of these parades were dated between 30<sup>th</sup> May and 13<sup>th</sup> June 2004. And although these parades were anticipated by all concerned, the Parades Commission could not begin its information gathering exercise until these notices were received. A notice of intention to hold a proposed procession was also submitted by the Justice and Truth LOL 1239, but that notice was only submitted on 28<sup>th</sup> June and was rejected as being out of time.
- 45 The Parades Commission received evidence from political and community representatives and had a meeting with the PSNI on 1<sup>st</sup> July 2004. In addition, notice was given on 30<sup>th</sup> June 2004 that the Ardoyne Parades Dialogue Group intended to hold a protest meeting on 12<sup>th</sup> July at the Crumlin Road between 8am and 9.30am in the morning and between 7pm and 10pm in the evening. The anticipated number of participants was 500. Although this notice was late, the reason for delay, namely that it was hoped that dialogue would avert the need for protest, appears to have been accepted by the PSNI.
- 46 The four determinations were made on 5<sup>th</sup> July 2004: i.e. one week before the parades, planned for the 12<sup>th</sup> July. The conditions in each of

the determinations were similar. On the outward route, restrictions were imposed on all parades<sup>66</sup> to prevent the playing of music, save for a single drumbeat, between the junction of Crumlin Road and Hesketh Road, and the junction of Woodvale Road and Woodvale Parade. On the return route, a condition was imposed in respect of each parade returning via the Ardoyne shop fronts<sup>67</sup> that:

“... only Lodge members and the notified marshals may process on foot between the junction of Woodvale Road and Woodvale Parade and Crumlin Road and Hesketh Road”.

In addition, there was a condition that no music was to be played on the return route. Curiously the condition imposed on the Earl of Erne LOL 647 parade allowed a single drum beat to be played on this section of the return route.

47 We have had extensive discussions with ACC McCausland, Chief Superintendent Lindsay-White and Superintendent Boulwood about their interpretation of these determinations when they were issued. They told us that they interpreted these determinations as meaning that only lodge members and notified marshals could be part of the parade as it passed between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road in the evening of 12<sup>th</sup> July. It was their understanding that the determinations of the Parades Commission applied to followers/supporters. Their planning proceeded on the assumption that the determinations of the Parades Commission would provide lawful authority for preventing the followers/supporters from travelling through the contentious part of the route with the lodges. We deal with the question of whether this interpretation of the determinations was genuinely held later in this report.

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<sup>66</sup> Save for the Earl of Erne LOL 647 parade whose outward route was not planned to take it past the Ardoyne shop fronts.

<sup>67</sup> The Grand Orange Lodge of Ireland LOL 633 parade planned to return by a different route.

### **On-going PSNI preparations.**

48 As noted above, there had been numerous communications between Gold, Silver and Bronze Command and several strategy and briefing meetings after the Gold Strategy meeting on 28<sup>th</sup> June. These intensified in the week of 5<sup>th</sup> to 9<sup>th</sup> July, as did communication and negotiation between the PSNI and the organisers of the parades and local communities. We were given access to the records made by Gold and Silver Command of those communications and negotiations but it is unnecessary to set out the detail here. Three aspects of the planning, however, do warrant closer attention. The first is the use of trained tactical advisors. The second is the Silver Command meeting on 5<sup>th</sup> July. And the third is the legal advice given to the PSNI.

### **The use of tactical advisors.**

49 Trained tactical advisors are accredited to national standard and hold evidence of their competence. Their use should be considered at the planning and implementation stage of every operation and a decision not to involve a tactical advisor must be documented. The advisors task is to provide information and recommend courses of action/inaction with their potential advantages and disadvantages. But tactical advisors do not make any decision or take any action. The responsibility for the validity and reliability of the advice lies with the advisor, but the responsibility for the use of the advice lies with the commander.<sup>68</sup>

50 Silver Command asked for tactical advice on 30<sup>th</sup> June. The tactical advisor attended a meeting with Silver Command on 1<sup>st</sup> July to find out what areas he needed to cover in his advice. He then attended the Silver Command meeting on 5<sup>th</sup> July and produced a written report on

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<sup>68</sup>

General Order 12/2004.

7<sup>th</sup> July. He also attended the meeting between Silver Command and the PSNI human rights lawyer that day.

51 We have seen the written report prepared by the tactical advisor. It would obviously be inappropriate for us to disclose the details contained in it. However, two important observations can be made. First, the tactical advisor was asked to consider a number of options for policing several key aspects of the 12<sup>th</sup> July Ardoyne parades, and did so. Second, there is nothing to indicate that Gold or Silver Command sought to influence the tactical advisor in respect of his advice on each of the options he was asked to consider.

**The Silver Command planning meeting on 5<sup>th</sup> July.**

52 The Silver Command planning meeting on 5<sup>th</sup> July took place before the PSNI received the determinations of the Parades Commission relating to the 12<sup>th</sup> July Ardoyne parades. We have been provided with all the documents prepared for that meeting. These reiterate the police intentions and principles set out at the Gold Strategy meeting and then again deal with a number of possible scenarios.

53 Instructions in accordance with PSNI policy and the Human Rights Act were given in relation to the deployment and use of baton guns, firearms, water cannon and CS spray. It is unnecessary to set out the full instructions here, save to say that baton guns were to be deployed and used only on the express authority of Gold Command, that a human rights and risk assessment had been carried out in relation to the deployment and use of water cannon and that it was made clear that CS spray would only be issued for individual use and was not to be considered for use as a collective response to public disorder. The newly created PSNI urban region guidelines on the use of police vehicles in public disorder situations were also highlighted.<sup>69</sup>

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<sup>69</sup> Issued on 17<sup>th</sup> June 2004.

54 It was anticipated that a Silver/Bronze Command briefing would take place on Friday 9<sup>th</sup> July and that further briefings would take place on 12<sup>th</sup> July from 6.30am onwards.

**The legal advice given on 7<sup>th</sup> July.**

55. Legal advice was given by the PSNI human rights lawyer at a meeting on 7<sup>th</sup> July 2004 at Antrim Road Police Station with Silver Commander, Chief Superintendent Lindsay-White, Bronze Commander, Superintendent Boulwood, and other Bronze Commanders and operational officers, including the tactical advisor. We have seen the note of the advice given at that meeting and we have discussed it with Chief Superintendent Lindsay-White, Superintendent Boulwood and the PSNI human rights lawyer (and with ACC McCausland who was not present but who was briefed about it soon afterwards).

56. It is clear that, at that stage, it was thought by all present that the determinations of the Parades Commission *did* apply to followers/supporters. The PSNI human rights lawyer advised that to allow the group of followers/supporters to walk up the road before the lodges paraded through that part of the route might appear to be a pre-parade. She therefore advised that any movement of the group between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road should not take place until the lodges had completed their parade between the two junctions. The PSNI human rights lawyer also advised that, so long as the group of followers/supporters was moved up the road by the police and not allowed to proceed up the road at the time and pace of their choice, it would not constitute a second parade in breach of the determinations of the Parades Commission. From that point on, it was always the

intention of the PSNI physically to separate the followers/supporters from the lodges.

57. Other options for dealing with the group of band members and followers/supporters were considered at the 7<sup>th</sup> July meeting, including the option of simply holding the group at the junction of Woodvale Road and Woodvale Parade. On this issue, the PSNI human rights lawyer advised that while the determinations of the Parades Commission might justify holding the group of followers/supporters until the lodges reached the junction of Crumlin Road and Hesketh Road, it would not be lawful simply to hold the group indefinitely. A fear of public disorder might justify holding the group back for a short time, but legally the group could not be held back for a prolonged period if that group was not itself presenting any public order threat. That, she advised, would be disproportionate.

58. On 8<sup>th</sup> July, Chief Inspector Maguire, who had been at the meeting on the 7<sup>th</sup> July, confirmed with the PSNI human rights lawyer by an exchange of e-mails, the legal advice she had given. To the return e-mail, the PSNI human rights lawyer attached extracts from the Public Order (Northern Ireland) Order so that the PSNI could check the legal requirements of imposing conditions on protest meetings. She also made it clear that the legality of holding the group of followers/supporters at the junction of Woodvale Road and Woodvale Parade would depend on the PSNI's assessment of the public order situation at the time and, in particular, whether an imminent breach of the peace was likely.

59. We have considered this advice very carefully. The first point we make is that we consider that it was legitimate for the PSNI human rights lawyer to have proceeded at the time on the basis that the

determinations of the Parades Commission *did* apply to followers/supporters. We deal with this in detail below.<sup>70</sup> Second we agree that to allow the group of followers/supporters to walk up the road before the lodges paraded through that part of the route might appear to be a pre-parade.

60. The question whether the movement of the group of followers/supporters up the road by the police, after the lodges had reached the junction of Crumlin Road and Hesketh Road, constituted a second parade in breach of the determinations of the Parades Commission is more difficult. There is some force in the argument that once the lodges reached the junction of Crumlin Road and Hesketh Road, the determinations of the Parades Commission were exhausted. However, there would be obvious problems of perception if a group of followers/supporters were literally allowed to ‘parade’ up the contentious part of the route of their own free will immediately after the parade proper had reached the junction of Crumlin Road and Hesketh Road.

61. In our view the *manner* in which this group of individuals was permitted to proceed through the contentious part of the route is as important as the *timing*. On that analysis, the advice given by the PSNI human rights lawyer that the group of followers/supporters should be separated from the lodges, and not allowed to proceed up the road at the time and pace of their choice, was right.

62. Equally, for the reasons set out later in this report, the advice of the PSNI human rights lawyer that it would not be lawful simply to hold the group of followers/supporters at the junction of Woodvale Road and Woodvale Parade indefinitely, was also right. A fear of public disorder might justify holding the group back for a short time, but

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<sup>70</sup>

See paras. 82-90 below

legally the group could not be held back for a prolonged period if that group was not itself presenting public order problems. The only possible basis for doing so would be if the PSNI perceived that there was a real and imminent threat to life if the group of supporters were not held at the junction of Woodvale Road and Woodvale Parade. In those circumstances, Article 2 ECHR might provide a lawful basis for the action of the PSNI, but that scenario did not arise in respect of the 12<sup>th</sup> July parades.

63. The PSNI human rights lawyer also advised that, if possible, the PSNI should facilitate a visible protest by those opposed to the parades, but that conditions could be imposed on the protestors by the PSNI so long as the requirements of the Public Order (Northern Ireland) Order were made out. She emphasised that such conditions must be in writing. She also advised that there was nothing unlawful in putting barriers across the Twaddell Avenue to prevent supporters joining the parade as it passed up the Crumlin Road past the Ardoyne shop fronts, or otherwise causing disorder. In our view, this advice was also right.

**Requests for a review of the Parades Commission determinations.**

64. It is important to appreciate that several requests were made between 5<sup>th</sup> and 10<sup>th</sup> July for the Parades Commission determinations to be reviewed. The North and West Belfast Parades Forum made a request to the Parades Commission itself both before and after the judicial review proceedings on 9<sup>th</sup> July. Both were refused by the Parades Commission on the ground that they “did not present sufficient new information to warrant a review being undertaken”.
65. In addition, on 7<sup>th</sup> July, those organising the parades sought to persuade ACC McCausland that the Chief Constable should exercise his power to apply to the Secretary of State to review the



determinations of the Parades Commission. ACC McCausland disagreed because he took the view that, as a matter of general principle, the PSNI should be prepared to police whatever determinations the Parades Commission issued, unless it took the view that it was impossible to do so. It is hard to fault this reasoning.

### **The judicial review proceedings.**

66. A legal challenge to the determinations made in respect of the 12<sup>th</sup> July Ballysillan LOL 1891 parade was brought by an anonymous individual, who was a relative of one of the members of the band. It challenged the determinations on the basis that they were (a) *illegal/ultra vires* in that the Parades Commission had no power to issue a determination binding on a non-participant and that the applicant was not a participant (b) unreasonable and/or (c) a breach of the Human Rights Act.<sup>71</sup> It is not entirely clear when these proceedings were issued and it appears that neither the applicant nor the Parades Commission gave the PSNI notice of the fact that proceedings had been issued, the basis upon which the challenge was made or the date and time of the proposed court hearing.

67. It is right to record that the Parades Commission was under extreme time pressures itself. Its legal advisers were not notified that there might be judicial review proceedings until they received a telephone call to that effect during the afternoon of 7<sup>th</sup> July and some, but not all, papers in the case were first received at about 12.30pm on 8<sup>th</sup> July. The details of the hearing were not known until about 4pm on 8<sup>th</sup> July when the Court list was published. It is also right to record that there is no legal requirement for either the applicant or the respondent in judicial review proceedings to notify interested parties before a leave

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<sup>71</sup> In the Matter of an Application by “JR1” for Leave to Apply for Judicial Review (Ref: WEAA4570).

hearing. However, it remains the case that either party could have informally notified the PSNI of the hearing and that would have enabled the PSNI to consider its position and attend the hearing if so advised. Since many leave hearings transform rapidly into full judicial review hearings (sometimes without any real break), such notification could be extremely important.

68. The hearing for leave to proceed with the judicial review proceedings took place before Mr. Justice Weatherup in the morning of Friday 9<sup>th</sup> July. The purpose of that hearing was not to determine the merits of the arguments in favour and against the challenge, but merely to establish whether the applicant was affected by the determinations and, if so, whether she had arguable grounds for making the challenge. Unless the applicant could show that she was affected by the determination, she would not normally be entitled to proceed to a full hearing of the merits of her legal challenge. By their very nature, hearings for leave to proceed with judicial review proceedings are short and summary in nature.

69. From the written copy of Mr. Justice Weatherup's decision on 9<sup>th</sup> July,<sup>72</sup> it appears that the applicant<sup>73</sup> described her intention as being to "follow the parade from Ligoniel Orange Hall to, and back from, the demonstration field",<sup>74</sup> "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"<sup>75</sup> and "as walking with her child alongside the parade from its origins at Ligoniel to the demonstration field and back again".<sup>76</sup> The question for the court therefore was whether someone in *that* position was affected by the

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<sup>72</sup> Which was not available until after 12<sup>th</sup> July 2004.

<sup>73</sup> Who remained (and remains) anonymous by court order.

<sup>74</sup> Mr. Justice Weatherup decision, para.1.

<sup>75</sup> Mr. Justice Weatherup decision, para.3.

<sup>76</sup> Mr. Justice Weatherup decision, para.6.

determination: i.e. whether someone following, proceeding with or accompanying the lodges and/or bands on 12<sup>th</sup> July was affected by the determinations. Although it appears that the case was not brought on an explicit ‘test-case’ basis,<sup>77</sup> it must have been obvious to everyone involved that anyone in the same position as the applicant would have to be treated in the same way as she was to be treated.

70. The position taken by the Parades Commission on this issue at court was critical. It was recorded by Mr. Justice Weatherup in the following terms:

“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.”<sup>78</sup>

Thus the Parades Commission accepted that the applicant, whose stated intention was to follow, proceed with or accompany the lodges and/or bands on their journey to and from Ligoniel Orange Hall on 12<sup>th</sup> July was not affected by the determination.

71. The significance of this cannot be overstated because it inevitably affected anyone with the same intentions as the applicant. This was recognised by Mr. Justice Weatherup where later in his judgment he observed that: “[I]t follows from that 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”.<sup>79</sup> Since the applicant was a “follower”, Mr Justice Weatherup concluded that she

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<sup>77</sup> We specifically asked Mr. Kieran Gamble of Holmes & Moffitt who had conduct of the case for the applicant about this.

<sup>78</sup> Mr. Justice Weatherup decision, para.6.

<sup>79</sup> Mr Justice Weatherup decision para.7.

was “not prevented by the terms of the determination from taking any course of action that she might wish to take” and that “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”.<sup>80</sup> On that basis, the applicant was refused leave to proceed by way of judicial review and the proceedings went no further.

72. In his decision, Mr Justice Weatherup then made an important qualification, namely 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 twenty persons may in the circumstances not be taking part in the parade and may remain followers and not participants.”<sup>81</sup>

Mr. Justice Weatherup gave no examples of the types of behaviour that might result in an individual ceasing to be a follower and becoming instead a participant. However, in the context of this judgment, it must follow that the *mere* fact that an individual is following, proceeding with or accompanying the lodges and/or bands (i.e. doing as the applicant indicated she intended to do) is not enough to transform a follower into a participant. Otherwise the applicant would and should

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<sup>80</sup> Decision of Mr Justice Weatherup, para.8.

<sup>81</sup> Mr. Justice Weatherup decision, para.7.

have been treated as a participant and thus subject to the determination.

**The effect of the decision of Mr. Justice Weatherup.**

73. The effect of the decision of Mr. Justice Weatherup is as follows:
- (a) First that the determinations in question do not apply to anyone in the applicant's position – i.e. to anyone following, proceeding with or accompanying the lodges and/or bands on 12<sup>th</sup> July.
  - (b) Second that, as a result, individuals cannot be prevented under the determinations from walking between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road simply on the basis that they are following, proceeding with or accompanying the lodges and/or bands.
  - (c) Third that some individuals who are following, proceeding with or accompanying the lodges and/or bands *may* become participants in the parade - whether they have become participants will depend on factors such as:
    - (i) whether they intend to be part of the parade;
    - (ii) whether they are in close proximity to the parade; and
    - (iii) whether they are acting in a manner that an observer might reasonably conclude was in common purpose with the parade.
  - (d) However, the *mere* fact that individuals are following, proceeding with or accompanying the lodges and/or bands is not enough to show that they intend to be part of the parade, nor is it sufficiently proximate to establish that they are part of the parade, nor is following, proceeding with or accompanying the lodges and/or bands to be taken as acting in a manner than an observer might reasonably conclude was in common purpose with the parade. Nor are numbers determinative: twenty 'followers' may not be

participating in the parade, where-as one individual might be participating depending on his/her behaviour.

74. We have discussed with the Parades Commission the position it adopted at the hearing on 9<sup>th</sup> July 2004. The Parades Commission first obtained legal advice on the issue in July 2003 from senior counsel. It then obtained further advice on the issue in April 2004. We have been provided with a summary of the July 2003 advice, and a copy of the April 2004 advice. We recognise that the Parades Commission followed that advice not only in respect of the position it adopted at the judicial review on 9<sup>th</sup> July 2004, but also in issuing determinations in 2004. We also recognise that the interpretation of the powers of the Parades Commission in issuing determinations provided in those advices was adopted by Mr. Justice Weatherup, an experienced High Court Judge.

75. Nonetheless we have a number of concerns about the outcome of the judicial review leave hearing on 9<sup>th</sup> July 2004. As noted above, the power of the Parades Commission under the Public Processions (Northern Ireland) Act 1998 is a power to impose conditions on those taking part in a 'public procession' and the only definition of a "public procession" in the Act is in s.17(1), where it is stated that "public procession" means a procession in a public place, whether or not involving the use of vehicles or other conveyances. It follows that individuals may be taking part in a public procession even if they are not taking part in a parade, in the narrow sense in which that word is sometimes used. If a procession is taken to mean a group of people voluntarily and deliberately moving along a specified route with a shared purpose in so doing, it is difficult to see how the group comprising those parading in the narrow sense of the word (i.e. lodge members and bands) and those following or supporting them along the

entire route, does not constitute a procession, particularly when the stated purpose of the individuals in the group as a whole in engaging in this activity is to express their historical, cultural and religious heritage.

76. The decision of Mr. Justice Weatherup has the undesirable effect of removing from the control mechanism of the Public Procession (Northern Ireland) Act 1998 the very group – i.e. followers/supporters – whose behaviour has historically caused most concern to the Parades Commission and to the PSNI in policing the parades. It also has the equally undesirable effect of thrusting sole responsibility on the police for decisions about the movement of this group through contentious areas during parades and defining, on an individual case by case basis, whether the members of this group have become participants. We are not convinced that the Public Procession (Northern Ireland) Act 1998 requires such an interpretation, nor that it has always been given that interpretation in the past.

77. The Code of Conduct issued by the Parades Commission under s.3 of the Public Processions (Northern Ireland) Act 1989 does not deal specifically with the issue. It is said to be guidance for “anyone participating in parades”.<sup>82</sup> Nor do the Procedural Rules issued by the Parades Commission under s.4, nor the Guidelines issued under s.5, of the Public Processions (Northern Ireland) Act 1998 deal specifically with the issue. As with the Code of Conduct, the terminology in each is of “participants”.

78. The Parade Organiser’s Guide, which is not a statutory document but which is published by the Parades Commission “to assist parade organisers with the most important aspects of their duties and

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<sup>82</sup> See, in particular, Annex A.

responsibilities”, is more illuminating. It sets out a number of “common principles”, which include principle 5 that deals with repeat restrictions and reads:

“In areas where there have been significant route restrictions for some years, the Commission will be more likely to allow an occasional relaxation of route restriction where the parade organiser has successfully ensured that those on parade and followers have consistently accepted the restriction peacefully and lawfully ...”

The Parades Commission’s view is that it cannot be inferred from this that the Commission “had full control over followers”, but in our view an ordinary reading of principle 5 suggests that restrictions imposed by the Parades Commission in the past are to be treated as having applied to “followers”. Otherwise the suggestion that repeat restrictions may be relaxed where the followers have consistently accepted the restriction does not make sense.

79. Most significantly, it appears that, in the past at least, the Parades Commission has issued determinations on the basis that it did have power to impose conditions on followers/supporters of parades. Indeed one of the determinations for the 12<sup>th</sup> July Ardoyne parades in 2003 contained the following condition:

“No supporters or followers may accompany the parade on that part of the notified outward route between the junction of Crumlin Road and Somerdale Park and the junction of Woodvale Road and Woodvale Parade.”

Paragraph 17 of the preamble to that determination identified the presence of followers as an ongoing problem for the parade organiser and indicated that the Parades Commission would “see the parade organiser’s response to this problem as a very strong indicator of responsible and sensitive parade control and management”. That would appear to include followers and supporters within the group for which the Parades Commission held the parade organiser responsible.



The significance of this is clear from paragraph K of the guidance set out in appendix A to the determination issued for the 12<sup>th</sup> July 2003 Ardoyne parade which makes clear that parade organisers are responsible for the behaviour of “all participants”.

80. Another example is provided by the determinations made in respect of the Tour of the North Ligoniel True Blues LOL 1932 parade and the Earl of Erne LOL 647 parade on 20<sup>th</sup> June 2003 each included the following condition:

“No supporters or followers of the parade shall be permitted to accompany the parade between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road.”

The PSNI policed to these determinations by separating the lodges and bands on the one hand from the followers and supporters, which in the event led to a stand-off as protestors blocked the road to prevent any attempt to allow followers/supporters up the road at all.

81. It is true that the notices submitted by those organising the 12<sup>th</sup> July Ardoyne parades did not mention followers/supporters. But that is largely because the form 11/1 published by the Parades Commission and used for all four parades did not ask any questions about the identity of those parading, save for a requirement that it be indicated if a band was to accompany the parade, and no details of participants were given. The Ligoniel True Blues LOL 1932 parade, the Earl of Erne LOL 647 and the Grand Orange Lodge of Ireland each indicated that there would be an accompanying band, but it appears never to have been the intention that a band would accompany the Ballysillan LOL 1891 parade.

82. The reason why the form 11/1 published by the Parades Commission does not ask any questions about the identity of those parading is not

immediately clear. But it appears that it may have been intended strictly to comply with the terms of s.6(4) of the Public Processions (Northern Ireland) Act 1998 which does not require the prescribed form to include a request for this information.<sup>83</sup>

83. The form 11/1 submitted in respect of each of the 12<sup>th</sup> July Ardoyne parades indicated the name of the organising body, the purpose, route and timing of the proposed parade, details of marshals etc., and the anticipated number of participants (including band members). The anticipated number of participants for each parade were 65 for the Ligoniel True Blues LOL 1932 parade, 20 for the Ballysillan LOL 1891 parade, 50 for the Earl of Erne LOL 647 and 100 for the Grand Orange Lodge of Ireland.

84. The purpose indicated on each form is important in our view. The stated purpose in each case was as follows:

- (a) The Ligoniel True Blues LOL 1932 parade: “To join main parade at Clifton Street Orange hall”
- (b) The Ballysillan LOL 1891 parade: “Expression of our historical, cultural and religious heritage (12<sup>th</sup> July).”
- (c) The Earl of Erne LOL 647 parade: “Cultural demonstration”.
- (d) The Grand Orange Lodge of Ireland parade: “Expression of orange culture, attendance at annual 12<sup>th</sup> July Boyne celebrations”.

Arguably, therefore, the notice included within it anyone intending to process along the route notified on the date and time indicated if they did so with the stated purpose.

85. We recognise that the proceedings before Mr Justice Weatherup were short and summary in nature. We also recognise that there was no full argument about rival interpretations of the meaning of those “taking

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<sup>83</sup> PP(NI)A, s.6(4).

part” in a “public procession” under the Public Processions (Northern Ireland) Act 1998. However, unless and until the 1998 Act is amended or the issue is revisited in subsequent legal proceedings, the PSNI had no option on 12<sup>th</sup> July, and has no option in the future, but to follow the interpretation arrived at in the decision of Mr Justice Weatherup. In our view, it is critical that the implications of this are fully realised and resolved as soon as possible.

**The PSNI’s interpretation of the determinations of the Parades Commission before the court hearing on 9<sup>th</sup> July.**

86. Against that background we return to the question of the interpretation of the determinations of the Parades Commission held by ACC McCausland, Chief Superintendent Lindsay-White and Superintendent Boulwood before the court hearing on 9<sup>th</sup> July. We do so because a number of concerns have been raised with us about this. In particular, several individuals have questioned whether it was genuinely their impression before 9<sup>th</sup> July that the determinations applied to followers/supporters of the parades (and not some *ex post facto* explanation for the events that followed) and, if so, whether it was legitimate for them to hold that impression. Because of the serious implications raised by these concerns we have explored them in some detail.

87. As we have already indicated, in the fairly recent past the Parades Commission has issued determinations which, on their face, applied to followers/supporters. The determinations for the very same parades in 2003 are an example, as is the determination issued in June 2003 in respect of the Tour of the North parades. In our view these determinations must have engendered a strong belief on the part of the PSNI that the Commission had power to do so and they policed to those determinations.

88. In this respect it is significant that the Gold Command briefing papers for 2004 included, as one of the scenarios that might be faced, an attempt by followers/supporters to breach the terms of a determination. The scenario is undoubtedly taken from the determination issued in respect of the Tour of the North parades referred to above. It seems to us unlikely that the PSNI would prepare and deliver briefings at Gold Command level which involved analysing how to deal with such a scenario if, all along, those responsible for drafting the relevant documents knew that determinations of the Parades Commission did not apply to followers/supporters. Thus the Gold Command briefing papers indicate to us that in June 2004 the PSNI was under the impression that determinations similar to those issued in relation to the Tour of the North parades in 2003 might well be issued in 2004. That impression was strengthened by the PSNI's dealings with the Parades Commission, to which we now turn.

89. We have carefully studied the minutes of the meeting between the PSNI and the Parades Commission on 1<sup>st</sup> July 2004 prepared by the PSNI Parades Liaison Officer. The meeting was attended by Chief Superintendent Lindsay-White, Superintendent Boulwood, the PSNI Parades Liaison Officer and by all the Commissioners, the secretary and other administrative staff on behalf of the Parades Commission. Superintendent Lindsay-White outlined the background to the parades, after which she was asked a series of questions. It is clear from these exchanges that the PSNI were not concerned about the bands accompanying the parades through the Ardoyne area, but were concerned about the followers/supporters.

90. During the meeting, Chief Superintendent Lindsay-White was asked "how it would be if the lodges were allowed without supporters or

followers”. This was taken by her to mean that the Parades Commission was considering issuing a determination prohibiting followers and/or supporters from proceeding along part of the route, which is what the Commission had done in respect of the 12<sup>th</sup> July 2003 Ardoyne parades. The Parades Commission has impressed on us that it is not entirely clear from its record of that meeting whether the question was meant to convey that possibility or not, and we accept that there may be some ambiguity. However, this exchange would not have alerted the PSNI to the fact that the Parades Commission may have considered that it had no jurisdiction to issue determinations applying to followers/supporters.

91. It is also significant that the legal advice given to the PSNI in the week before 12<sup>th</sup> July 2004 was based on an understanding that the determinations issued by the Parades Commission in relation to the 12<sup>th</sup> July Ardoyne parades *did* apply to followers/supporters. As we have explained earlier in this report, we consider that it was legitimate for the PSNI human rights lawyer to have proceeded on this basis at the time that she did and her advice undoubtedly influenced the PSNI.

92. It has been suggested to us that the PSNI ought to have been alerted to the fact that Parades Commission determinations might not apply to followers/supporters because of a previous decision of Mr. Justice Weatherup in a case called *McRoberts*<sup>84</sup> decided in 2003. We have studied that decision with care. Part of the legal challenge in that case was that the determination issued in 2003 in respect of the parade there in question differed from that issued in 2002. In 2002 the Parades Commission had issued a determination based on the premise that organisers have a responsibility, among other things, to ensure that

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<sup>84</sup> In the matter of an application by Mary McRoberts for Judicial Review; ref. WEA B4546T, dated 11<sup>th</sup> July 2003 .

freedom of assembly is not abused by “ ... working and working hard to ensure that any organised parade is discussed with representatives of local residents and *marked by the exemplary conduct of all attending Parades, supporters, the followers and in fact all of the elements that can reasonably be assumed, constitute a parade in its entirety ...*”<sup>85</sup> (emphasis added). The first determination in 2003 stated that: “Organisers have a responsibility to organise all aspects of the parade, including bands, supporters and followers”.<sup>86</sup> This was then amended and a second determination issued. We pause there to observe that these statements in the 2002 and the first 2003 determinations would not have encouraged the view that the determinations of the Parades Commission did not apply to followers/supporters.

93. The part of the judgment in *McRoberts* said to be most relevant deals with the challenge to the second 2003 determination on the basis that the Parades Commission wrongly accepted a view put to it by the police in making that determination.<sup>87</sup> The police view in question was that “in the evening the parade and followers should be allowed to proceed back to the Hall with the parade and should not be stopped on the outskirts of the area” because the police felt they could control matters to a limited extent and that “if the followers are stopped there will be disorder in a different area”.<sup>88</sup> Mr. Justice Weatherup found that it was not unlawful for the Parades Commission to accept that view, even though he described it as “distasteful”.<sup>89</sup> In our view, the judgment implies that the police were suggesting to the Parades Commission that they should not impose a condition on the followers for the reasons referred to. That in turn suggests that police considered such a condition could have been imposed. And, as noted, the police

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<sup>85</sup> Judgment para.7.  
<sup>86</sup> Judgment para.9.  
<sup>87</sup> Judgment para.26.  
<sup>88</sup> Judgment para.26  
<sup>89</sup> Judgment para.26

view was accepted by the Parades Commission and found to be lawful. It is true that Mr Justice Weatherup then said, “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 the parades”.<sup>90</sup> However, that is within a sentence dealing with whether control “might have to extend to the manner in which the followers get into this condition” (meaning drunk and disorderly<sup>91</sup>). On that basis, we do not share the view that the PSNI ought to have been alerted to the fact that Parades Commission determinations might not apply to followers/supporters because of a previous decision of Mr. Justice Weatherup in the case of *McRoberts*.

94. The *McRoberts* case caused the Parades Commission to obtain legal advice on its power to issue determinations dealing with followers and supporters. As stated above that advice was given in July 2003 and April 2004. However this advice was not shared with the PSNI, formally or informally. The Parades Commission have explained to us that its general policy is not to share its legal advice with the PSNI so as to preserve its independence. The unfortunate effect in this instance was that the PSNI were not alerted to the fact that the Parades Commission had doubts about its power to issue determinations dealing with followers and supporters.

95. Against that background we are fully satisfied that it was genuinely the impression of ACC McCausland, Chief Superintendent Lindsay-White and Superintendent Boulwood before 9<sup>th</sup> July that the determinations of the Parades Commission for the 12<sup>th</sup> July Ardoyne parades applied to followers/supporters of the parades. We are also fully satisfied that it was legitimate for them to hold that impression.

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<sup>90</sup> Judgment para.26

<sup>91</sup> See earlier in para.26

96. The Parades Commission emphasised to us that, in fact, the determinations did not mention followers or supporters and we have carefully considered this point. It is right that the text of the determination itself (ignoring the preamble which is not strictly speaking part of the determination) does not mention followers or supporters. It merely states “on the return route, only lodge members and the notified marshals may process on foot between the junction of Crumlin Road and Hesketh Road”. However, the exclusionary character of the condition impliedly prohibits anyone but lodge members and notified marshals from proceeding between the two junctions on the return route. Since it was common knowledge that followers and supporters would accompany the lodge members and notified marshals along the entire route on 12<sup>th</sup> July, in our view an ordinary reading of the condition in question would suggest that it was intended to, and did, prohibit followers and supporters from accompanying the lodge members and notified marshals between the two junctions on the return route.

97. It is also to be noted that the preamble to the determination justifies the imposition of the condition in question on the ground that “some supporters of the parade and some protesters against the parade behaved in a deliberately threatening and provocative manner during the parade on 12 July 2003”. The preamble then records, “[t]he Commission has come to believe that should the parade process the entirety of the notified route without restrictions, there would be an adverse effect on community relations, and a potential for public disorder”. Against that background it seems to us reasonable to assume that the Parades Commission intended to impose restrictions that would minimise any adverse effect on community relations and reduce any potential for public disorder, and it is difficult to see how that



could be achieved unless the restriction was at least capable of addressing the Parades Commission's cause for concern: namely, the behaviour of followers and supporters.

**The impact of the judicial review.**

98. The analysis we have set out above is based on the written decision of Mr Justice Weatherup and it is important to appreciate that this was taken from the transcript of the hearing and was not available in written form until after 12<sup>th</sup> July. During the period 9<sup>th</sup> to 12<sup>th</sup> July the PSNI proceeded on information it gleaned from the Parades Commission and others about the judgment of Mr Justice Weatherup.
99. The starting point is that, on Tuesday 6<sup>th</sup> July, Chief Superintendent Lindsay-White was told that someone was taking legal advice about the effect of the determinations of the Parades Commission. At that stage there was no indication that legal proceedings would follow, nor that any argument would be advanced to suggest that the determinations did not apply to followers/supporters. By 7<sup>th</sup> July, it was generally known that judicial review proceedings might be issued, but not when or on what basis. It was assumed by all concerned that any challenge would be on the basis that the determinations were unlawful precisely because they applied to followers/supporters and thus prevented them moving with the parade between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road. As it happens, that assumption was right.
100. The PSNI Parades Liaison Officer telephoned the Parades Commission on Thursday 8<sup>th</sup> July to find out further details. She was informed that an application for judicial review had been lodged, but not when it would be heard (which may well not have been known at that stage in any event). She telephoned the Parades Commission on Friday 9<sup>th</sup> July

to find out whether there had been any developments and was informed that the matter was already being heard in court. She drove to court but arrived just as the hearing finished. From a brief conversation with those leaving court, she learnt that the application for judicial review had been turned down.

101. During the afternoon of 9<sup>th</sup> July, Chief Superintendent Lindsay-White also learnt very sketchy details of the decision and relayed these to the Chief Constable and to ACC McCausland.
  
102. The Bronze Command briefing meeting for the 12<sup>th</sup> July Ardoyne parades took place at about 3pm on 9<sup>th</sup> July, when the position was not much clearer. We attended this meeting as the Policing Board's Human Rights Advisors. Again the briefing documents re-iterated the Chief Constable's policy in relation to the policing of public order events, the police intentions in respect of all operations and the key principles.<sup>92</sup> The deployment of resources was then dealt with in considerable detail, as were the risk assessments. It is neither necessary nor appropriate for us to disclose those details in this report. The briefing document then dealt with issues such as the use of force, human rights and the communications arrangements. The determinations issued by the Parades Commission were appended to the briefing documents, as was the PSNI policy in relation to the issue, deployment and use of baton rounds in situations of serious public disorder.
  
103. In the evening of 9<sup>th</sup> July Chief Superintendent Lindsay-White met the North and West Belfast Parades Forum. The judicial review was discussed at that meeting, but Chief Superintendent Lindsay-White was reluctant to accept the Forum's interpretation of what had

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<sup>92</sup> See above para. 39-41

happened until she had had the chance to check for herself. She therefore outlined the legal position as she saw it, based on the advice that the PSNI had received from its human rights lawyer. The Forum wanted the police to agree that the followers/supporters could proceed up the contentious part of the route with the lodges. But Chief Superintendent Lindsay-White refused to agree to this. What was agreed was that the bands would travel the contentious part of the return route by bus before the lodges were then allowed to proceed between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road. Chief Superintendent Lindsay-White explained that the followers/supporters would not be allowed to parade up the contentious part of the route with the lodges, but that her advice was that once the lodges had reached the junction of Crumlin Road and Hesketh Road, they would then be dealt with as a 'public order crowd'. By this it was meant that they would be held back for however long was deemed necessary on public order grounds, but not otherwise. She also expressed her hope that the followers/supporters would use buses to travel up the contentious part of the route.

104. It has been suggested to us by a number of individuals that this exchange with the North and West Belfast Parades Forum amounted to an agreement or 'deal' in which the PSNI agreed with the Forum that the followers/supporters would be allowed to move between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road at some stage in the evening of 12<sup>th</sup> July. We have considered this carefully.
105. We have approached the matter on the basis that it was perfectly legitimate for Gold and Silver Command to consult and negotiate with those affected by their policing decisions, so long as they remained

within the law. The PSNI general intentions, referred to above,<sup>93</sup> required them to do so. All that Chief Superintendent Lindsay-White did at the meeting on 9<sup>th</sup> July was to set out the legal framework as she understood it and seek the agreement of the North and West Parades Forum to act within that framework. There was nothing illegitimate about that and, in our view, no illegitimate agreement or ‘deal’ was done.

106. We are fortified in this view by our examination of the Gold Command logs for the period 9<sup>th</sup> to 12<sup>th</sup> July. Those logs disclose that many groups and individuals communicated with the PSNI during that period. In those communications, the stance taken on several occasions by those organising the 12<sup>th</sup> July Ardoyne parades was wholly inconsistent with the notion that an agreement or ‘deal’ had been reached with them that the followers/supporters would be allowed to move between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road at some stage in the evening of 12<sup>th</sup> July.

**Saturday 10<sup>th</sup> July.**

107. On Saturday 10<sup>th</sup> July, the PSNI contacted the Parades Commission to obtain further details of the decision reached by Mr. Justice Weatherup. The PSNI Parades Liaison Officer was told that the Parades Commission would be issuing a press statement to clear up any ambiguity about the hearing.

108. In the meantime, at about 1pm on 10<sup>th</sup> July, Chief Superintendent Lindsay-White received a letter from the solicitors who had acted for the applicant in the judicial review. This indicated that:

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<sup>93</sup> See para.40

“During the course of the hearing, the Parades Commission accepted that it only has legal authority to make rulings in respect of those persons who either organise or take part in a parade. With reference to the applicant in this case (known as “JR1”) who is a young mother who would be attending the parade, following alongside it or behind it, the Commission therefore accepted that the Determination was not binding on her. Therefore nothing in the Parades Commission Determination provides grounds for Police to prevent supporters or other persons who are not taking part in the Parade making their way lawfully up through the restricted area, alongside or behind the parade.

In making his ruling, the Judge, Mr Justice Weatherup, reinforced that Police could not prevent followers or supporters who were not taking part in the Parade from following it on foot of the Parades Commission Determination.”

The letter suggested that the Parades Commission would be able to confirm the remarks of Mr Justice Weatherup.

109. The letter also asked the PSNI to give an immediate assurance that no action would be taken “to prevent supporters or followers of the parades from going about their lawful business in following and supporting this Parade through the restricted area”. A reply was sent on behalf of the PSNI during the afternoon of 10<sup>th</sup> July emphasising that “the police intention on the 12<sup>th</sup> will be to uphold the determination of the Parades Commission” and indicated that the management of any large gatherings of people not forming part of the parade would be dealt with in the same way as any other crowd.

110. ACC McCausland obtained a copy of the Parades Commission press release just before 4pm. It was four paragraphs in length, of which paragraphs two and three are critical:

“... The judgment of Mr. Justice Weatherup confirmed that in the determinations the Commission had placed restrictions on the parade organiser and those taking part in the parade only. No restriction had been placed on followers and supporters of

the parade. On this basis Mr Justice Weatherup concluded that the Commission had not acted outside its powers. He refused leave to apply for a Judicial Review of the determinations which, of course, allowed the members of the Orange Order to parade through the Ardoyne interface but without, at this point, the two bands accompanying them.

The way in which followers and supporters are managed is a matter for the parade organiser and the PSNI and not the Commission. However in his judgment Mr Justice Weatherup noted that, in a case where supporters and followers became so closely identified together that a reasonable person would conclude that they were part of a parade then that parade would be illegal and it would be a matter for the PSNI to enforce the determination of the Parades Commission.”

Despite this press release, it seems that the general impression in the media remained that the followers/supporters were prohibited by the determinations of the Parades Commission from passing between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road during the evening of 12<sup>th</sup> July.

111. The press release by the Parades Commission was (rightly) understood by the police to mean that they could no longer rely on the determinations of the Parades Commission to prevent followers/supporters moving between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road unless they did so as part of the parade; and that the only power left to them in controlling access to that stretch of road by the followers/supporters was the common law power of the police to deal with an actual or apprehended breach of the peace.
112. To assess the decisions that were then taken in respect of the policing of the 12<sup>th</sup> July Ardoyne parades it is important to appreciate the implication of this, particularly since many of the concerns raised with us about the policing operation were based on a misunderstanding of

the legal powers available to the police to deal with an actual or apprehended breach of the peace. For that reason, we summarise those powers in this report.

**The breach of the peace powers of the police.**

113. The common law powers of police officers to deal with an actual or apprehended breach of the peace should be clear and straight-forward, but they are not. The basic principle is that a police officer may take reasonable action to stop a breach of the peace which is occurring, or to prevent one which the police officer reasonably anticipates will occur in the near future. “Any reasonable action” can include arresting a person, entering premises or taking other action such as stopping people moving from one place to another.<sup>94</sup>
114. Establishing a clear definition of a breach of the peace has proved difficult in the past, but there has been some clarification recently and it is now sufficiently established that a breach of the peace is committed when an individual causes harm, or appears likely to cause harm, to a person, or in that person’s presence, to his/her property; and/or when an individual acts in a manner the likely consequence of which would be to provoke violence in others.<sup>95</sup> This last instance in which police powers to deal with a breach of the peace can be exercised is important in the context of this report, but has recently been restricted. Action cannot be taken against individuals on the basis that they are acting in a manner the likely consequence of which would be to provoke violence in others if their conduct is reasonable or the actual or potential violence provoked in others is “wholly unreasonable”.<sup>96</sup> Lawful conduct will rarely, if ever, be other than

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<sup>94</sup> Duncan v Jones [1936] 1 KB 218 and Moss v McLaughlan [1985] IRLR 76.

<sup>95</sup> McLeod v UK [1999] 27 EHRR 493 at para.42.

<sup>96</sup> Percy v DPP [1995] 1 WLR 1382;

reasonable; and, conversely, a violent reaction to the lawful conduct of others will rarely if ever be other than wholly unreasonable.

115. Since 2<sup>nd</sup> October 2000, the exercise by the police of their powers to deal with a breach of the peace must be compatible with the Human Rights Act. That dictates that action can only be taken by the police when they honestly and reasonably believe that there is a real risk of an imminent breach of the peace,<sup>97</sup> reasonably close by.<sup>98</sup> It also requires that any action taken by the police to deal with the threat to the peace must be intended to ensure public safety and/or to prevent disorder or crime and that any such action should be necessary and proportionate.<sup>99</sup> This is a tightening of the common law position, rather than a departure from it.

116. These common law powers are supplemented by statutory powers under the Public Processions (Northern Ireland) Act 1998 and the Public Order (Northern Ireland) Order 1987. Under the Public Processions (Northern Ireland) Act, anyone who hinders, molests, obstructs, offends, abuses or acts in a disorderly way towards those taking part on a lawful public procession is guilty of a criminal offence.<sup>100</sup> And under the Public Order (Northern Ireland) Order anyone who stirs up religious hatred<sup>101</sup> uses riotous or disorderly conduct,<sup>102</sup> or behaviour whereby a breach of the peace is likely to be occasioned is guilty of a criminal offence.<sup>103</sup> Equally anyone who uses threatening, abusive or insulting words or behaviour with intent to provoke breach of the peace is guilty of a criminal offence.<sup>104</sup>

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<sup>97</sup> Meaning proximate in time.

<sup>98</sup> Meaning proximate in place.

<sup>99</sup> R (Laporte) v Chief Constable of Gloucestershire Constabulary [2004] EWCA 253

<sup>100</sup> PP(NI)A, s.14(1).

<sup>101</sup> PO(NI)O 1987, Article 9(1).

<sup>102</sup> PO(NI)O, 1987, Article 18(1)(a).

<sup>103</sup> PO(NI)O, 1987, Article 18(1)(b).

<sup>104</sup> PO(NI)O, 1987, Article 19(1).



117. However all these offences are of limited use as crowd control tactics because they only deal with the behaviour of specific and identifiable individuals, who can (at least in theory) be arrested and prosecuted where sufficient evidence supports that course of action.
118. The common law powers to deal with an actual or apprehended breach of the peace are also supplemented by the duty on the police to take reasonable steps to protect individuals from a real and imminent threat to life under Article 2 ECHR.<sup>105</sup> However, the fulfilment of that duty does not arise on the facts disclosed in this report.

**Further advice.**

119. During Saturday 10<sup>th</sup> July, Chief Superintendent Lindsay-White took further advice from the PSNI tactical advisor about how best to move the group of followers/supporters through the contentious part of the route if the only basis for holding them back was on public order grounds. It is obvious from this that the PSNI appreciated that the legal basis for controlling the movement of the followers/supporters through the contentious part of the route had changed.
120. One question that this raises is why the PSNI did not take further legal advice, in light of the judicial review proceedings, to ascertain the precise limits of their powers in light of Mr. Justice Weatherup's decision. As noted above, the PSNI human rights lawyer had given advice at a meeting on 7<sup>th</sup> July and had confirmed her advice by e-mail exchange the next day. However, she provided no further advice in relation to the 12<sup>th</sup> July Ardoyne parades. Chief Superintendent Lindsay White telephoned the PSNI human rights lawyer at her office late on Friday 9<sup>th</sup> July, but received no reply. Since it was a bank holiday weekend, no further attempts were made to contact the human

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<sup>105</sup>

See para. 13

rights lawyer or any other PSNI legal adviser were made. This concerns us because, as we have noted above, the decision of Mr. Justice Weatherup on 9<sup>th</sup> July had important implications for the policing of the 12<sup>th</sup> July Ardoyne parades.

121. In our view, it would have been preferable for Silver, or even Gold, Command to have taken further legal advice after the decision of Mr Justice Weatherup on 9<sup>th</sup> July. Although no formal ‘on call’ system appears to exist within PSNI legal services department, it is apparently reasonably easy to contact one of the legal advisers out of hours, either at home or on his/her mobile telephone. Most of the legal advisers have experience of giving out of hours advice and no doubt would give any advice requested of them. It may well be that the system needs to be more formalised, if only to ensure that police officers needing advice know how the system operates.

122. We recognise that only sketchy details of Mr Justice Weatherup’s decision were known before mid-afternoon on Saturday 10<sup>th</sup> July. We also recognise that Gold and Silver Command were able to apply the advice given by the PSNI human rights lawyer on 7/8<sup>th</sup> July to the changed situation without any real difficulty. That is because that advice already covered police powers to deal with a breach of the peace. In the circumstances, further legal advice would not have changed the operational decisions that were actually taken, but, nonetheless, in our view, further legal advice could have been extremely useful to the PSNI in confirming those decisions and should have been taken.

#### **The morning parades.**

123. The morning parades past the Ardoyne shop fronts proceeded without real incident. The lodges and bands conformed to the requirement in

the Parades Commission determinations that no music, save for a single drum beat, be played between the junction of Crumlin Road and Hesketh Road and the junction of Woodvale Road and Woodvale Parade. A group of followers/supporters accompanied the lodges and bands, walking alongside them on the pavement and behind them. One unexpected feature was that some members of the lodge and band in respect of which the Parades Commission had not accepted late notice of their intention to parade past the Ardoyne shop fronts on 12<sup>th</sup> July walked with the followers/supporters alongside and behind the other lodges and bands. They would not have been ‘participants’ in the parade within the meaning adopted in the decision of Mr. Justice Weatherup on 9<sup>th</sup> July and, accordingly, they were not in breach of the Parades Commission determination.

124. The policing operation was low profile. Police vehicles were used to provide a rolling barrier between those parading and a small group of protestors who had gathered on the pavement in front of the Ardoyne shop fronts. The police vehicles moved with the parade through the contentious area so that the barrier they created remained in place for as short a time as possible and was removed altogether as soon as the parade had passed the shop fronts. The rolling barrier facilitated a protest by leaving a gap of about 10-15 yards at one agreed point, where police officers on foot stood between those parading and those protesting, some facing those parading, others facing those protesting. That allowed the two groups to see each other and ensured that the protestors banners and placards were visible to those parading.
125. Estimates of the number of followers/supporters who accompanied the lodges and bands passing the Ardoyne shop fronts in the morning vary. The PSNI serial 464 reports record that about 100 lodge and band members went past, with about 150 followers/supporters. But it

appears that these records do not distinguish between members of the lodge and band who were not permitted to parade past the Ardoyne shop fronts because of their late notice to the Parades Commission and ordinary followers/supporters.

**The evening parades.**

126. As the day progressed the PSNI received information about the intentions of various groups and individuals when the parades returned later. This information came from a number of sources. We have been shown all of this information and discussed it with ACC McCausland.
127. As a result of one piece of information which was considered reliable, namely that a large group of protestors was expected at Ardoyne at about 5pm, not all of whom would be easy to control, a decision was taken to deploy police officers and the military at their agreed locations in the contentious area earlier than had originally been planned. Ultimately they were deployed at about 4.45pm.

**Screens, barriers and water cannons.**

128. Screens were used for the evening parades. These were mounted on military vehicles which were parked on the shop front side of the road from a point just before the junction of Woodvale Road, Crumlin Road and Twaddell Avenue to a point just beyond the junction of Ardoyne Road and Crumlin Road. A number of issues have been raised with us about their use, including why the military vehicles on which they were mounted were parked on the shop front side of the road facing up the Crumlin Road, with the effect that the screens faced those parading rather than those protesting.
129. The positioning of the screens on the shop front side of the road with the screens facing those parading was largely dictated by the fact that

the screens are mounted on the off-side of the military vehicles to which they are attached and the driver requires protection. With the vehicles positioned as they were, the police officers deployed on the shop front side of the Crumlin Road could police the protest and protect the driver at the same time. If the vehicles had been positioned so that they were facing down the Crumlin Road, a further group of police officers would have been needed to protect the vehicle drivers on the roadside. That would have further strained resources and further reduced the area of road left for those parading to pass through, particularly since, as noted below, military vehicles and personnel occupied the other footpath to protect the homes of the residents who lived on the Crumlin Road in the vicinity of Mountainview Place and Mountainview Park. The police also took the view that positioning the screens so that they faced the protestors would have increased the likelihood that protestors and residents on the shop front side of the road would have felt hemmed in, which the police were keen to avoid. Against that background, we accept the explanation of Chief Superintendent Lindsay-White and Superintendent Boulwood that, once the decision had been taken to use screens, tactically there was no alternative but to position them as they were positioned.

130. A different concern was raised with us about the decision to use ordinary crowd control barriers across Twaddell Avenue instead of the perspex barriers which had been used in 2003. It was said that in 2003 the perspex barriers protected Ardoyne residents from the noise of the supporters gathered in Twaddell Avenue and the decision not to use them in 2004 removed that protection. We raised this with Chief Superintendent Lindsay-White and Superintendent Boulwood. They explained that the perspex barriers were neither designed nor intended as noise protection equipment. Their purpose is solely to keep one group of individuals away from another group of individuals. They

also doubted that the perspex barriers would have reduced noise levels in 2003. The decision not to use them in 2004 was based purely on public order considerations, and Saxon military vehicles were kept nearby to block Twaddell Avenue off if necessary.

131. We have also been asked about the positioning of the water cannons during the late afternoon and evening of 12<sup>th</sup> July. They were parked at the side of the road in Woodvale Road, about 30-40 yards from the junction of Woodvale Road with Crumlin Road and Twaddell Avenue, facing that junction. They remained there until they were deployed shortly before 8.30pm, an issue we deal with later.<sup>106</sup> It has been suggested to us that, so positioned, the water cannon were effectively pointing at the shop fronts and the protestors and residents thus increasing the sense that the PSNI took the view that it was this group of individuals who most needed policing. We saw the water cannons ourselves when we were standing at the junction of Woodvale Road, Crumlin Road and Twaddell Avenue between about 6.30pm and 8.30pm. We have also discussed their positioning with Chief Superintendent Lindsay-White and Superintendent Boulwood. The simple fact of the matter is this. The vehicles on which the water cannon are mounted are large and cumbersome. They cannot easily be turned round. Therefore they had to be positioned so that they could be deployed rapidly if needed. That dictated the fact that they needed to be parked facing up, rather than down, the Woodvale Road. The positioning was based on the perception that from the point where they were parked, the water cannon could be moved reasonably swiftly towards Twaddell Avenue, Brompton Park or up the Crumlin Road towards the junction with Hesketh Road if needed.

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<sup>106</sup>

See paras 190-196

**The arrival of the parade at the junction of Woodvale Road and Woodvale parade.**

132. Individuals started arriving at the junction of Woodvale Road and Woodvale Parade at about 7.30pm. One issue raised several times with us was the question of how these individuals arrived and, in particular, whether followers/supporters were mingling with the lodges and band members as they approached this junction to such an extent that they might have crossed the threshold identified by Mr Justice Weatherup between followers/supporters and participants. The point made to us was that if the followers/supporters were in reality participants in the parade as they walked up Woodvale Road, they should have been treated by the police as if the determination of the Parades Commission applied to them and prevented from travelling between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road at any stage during the evening of 12<sup>th</sup> July.
133. The only proper way to approach this issue is to return briefly to the decision of Mr Justice Weatherup. As noted above,<sup>107</sup> that decision established that the mere fact that individuals may be following, proceeding with or accompanying the lodges and/or bands is not enough to show that they are part of a parade. That means that the group of followers/supporters coming up the Woodvale Road towards the Woodvale Parade junction in the evening of 12<sup>th</sup> July would have to be doing something other than merely accompanying or following the lodges and bands for the Parades Commission determinations to apply to them.
134. It also has to be borne in mind that, strictly speaking, the relevant condition in the determination of the Parades Commission only applied between the junction of Woodvale Road and Woodvale Parade

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<sup>107</sup>

Para.72

and the junction of Crumlin Road and Hesketh Road. Therefore the only time that the assessment of whether the followers/supporters had by their behaviour become participants in the parade becomes relevant is on the contentious part of the route between those two junctions. However, the point was made to us that if the followers/supporters were acting in such a way as to have become participants in the parade in the way envisaged by Mr Justice Weatherup immediately before the group as a whole were stopped on the Woodvale Road, it would be overly legalistic to ignore that fact and concentrate only on their behaviour between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road. We accept that and have therefore taken the broader approach urged upon us.

135. It was accepted by those raising this issue with us that once the entire group of lodges, bands and followers/supporters halted at the junction of Woodvale Road and Woodvale Parade there was bound to be mingling because they were being held as a group at that stage and that any such mingling should be discounted. The focus was therefore on how the followers/supporters progressed up the Woodvale Road before stopping. The evidence of this issue is slim. There was no CCTV positioned to record the followers/supporters as they progressed up the Woodvale Road and therefore we only have individual recollections.
136. Members of the North and West Belfast Parades Forum insisted that the followers/supporters were not mingling with the lodges and bands at that, or any other, stage. They said that the parade marshals would not have allowed that to happen. This is corroborated by several police officers who have policed the Ardoyne area in the past and agree that the 12<sup>th</sup> July parades marshals usually do keep lodges and bands separate from followers/supporters.



137. Chief Inspector Maguire who was on duty at the junction of Woodvale Road and Woodvale Parade told us that there were two lines across the road, a police line and a military line, with a sterile area in between. The buses which the PSNI was intending to use for the band members were parked about 50 yards further down the Woodvale Road. One of the bands arrived first, without followers/supporters. That band stopped where the buses were parked, rather than proceeding up to the police line. That was probably because they had agreed to travel the contentious part of the route by bus. Lodges and other band members joined them, as did followers/supporters. The effect was that the entire group was spread out over quite a distance, rather than at the police line. Band members got into the buses and were taken through the police and military lines and up the road. Lodge members were ushered into the sterile area between the police line and the military line and then allowed to proceed up the road, while followers/supporters remained where they were until they were eventually allowed up the road. The entire operation took about 30 minutes. This is supported by an entry in the PSNI serial 464 report which records that at 7.31pm the bands reached the buses and carried on playing waiting for the remainder to catch up.
138. We have checked the account set out above as best we can with video evidence produced by one of the Parades Commission monitors who was at the junction of Woodvale Road and Woodvale Parade at the relevant time. Although this video evidence is not entirely clear, it does not conflict with Chief Inspector Maguire's account and corroborates part of it.
139. Against that, no one has actually provided us with any evidence that the followers/supporters were mingling with those parading as they

proceeded up Woodvale Road, save at the point where everyone stopped, which is irrelevant for the purpose of assessing whether the behaviour or the followers/supporters were participating in the parade in the sense meant by Mr Justice Weatherup.

**The bands.**

140. The bands got into the buses and passed through the police and military road blocks as agreed. There were three buses and a minibus available and it was hoped that some followers/supporters would agree to travel in them along with the bands. However, when it came to it, none were willing to do so and the PSNI could not lawfully force them to do so. The result was that the third bus travelled between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road empty.

141. Following the advice of the PSNI human rights lawyer, Superintendent Boulwood was keen to leave a gap somewhere along the contentious part of the route past the Ardoyne shop fronts where those protesting could see those parading and make their protest. Throughout the evening he liaised with those representing the protestors and suggested two points where a suitable gap could be left: the first at Mountainview Park, where Saxon vehicles were positioned; the second at the corner of the junction of the Crumlin Road and the Ardoyne Road. The first was accepted by those protesting, the second was rejected and the gap closed accordingly.

**The crowd at the junction of Crumlin Road and Hesketh Road.**

142. During the early evening of 12<sup>th</sup> July a crowd began to assemble at the junction of Crumlin Road and Hesketh Road ready to greet the parade and, no doubt, the followers/supporters if and when they made it to that junction. The PSNI had wanted a road block on the Crumlin Road

to prevent that crowd moving down the road. Responsibility for this was with the military, but there was no effective road block until a relatively late stage.

143. Some of the crowd were therefore able to move down the Crumlin Road between the military vehicles parked across the road. It has been suggested to us that some individuals came as far down as the houses opposite the junction of Crumlin Road and Mountainview Place, taunting residents and walking on their garden walls etc. We were in the vicinity for the entire period from 4.30pm to 8.30pm and saw nothing to suggest that the crowd got this far down the Crumlin Road. Nor does the CCTV footage suggest that this happened. However, it is true to say that one or two individuals climbed onto the military vehicles into position on the Crumlin Road just short of the junction with Hesketh Road for a short time. It is also fair to say that residents in the vicinity of Mountainview Place were (rightly) concerned about their safety, and the safety of their homes and community, as the crowd of supporters moved down the Crumlin Road towards them.
144. In an attempt to move the crowd at the junction of Crumlin Road and Hesketh Road back up the road, the PSNI agreed that the buses carrying the band members would progress through and past the crowd, hopefully drawing the crowd with them as they did so. This was partly successful, but some members of the crowd remained on the Crumlin Road south of the junction with Hesketh Road.
145. In our view, the failure to maintain an effective roadblock at the junction of Crumlin Road and Hesketh Road is a real concern because it could have had very serious consequences and because it exposed residents in the vicinity of Mountainview Place to an unnecessary fear for their safety. As we have explained, responsibility for maintaining

the roadblock was with the military, but that, in itself, raises a more profound concern, namely the effectiveness of the arrangements in place for joint operations between the PSNI and the military. This issue was raised in the Framework Document published by the Policing Board in December 2003<sup>108</sup> and requires very close scrutiny, particularly because not dissimilar difficulties arose in respect of the roadblock where violence later broke out in the Ardoyne Road. We will therefore return to this issue when we deal with that outbreak of violence later in this report.

**The lodge members.**

146. We witnessed the passage of the lodges and of the followers/supporters through the contentious part of the route between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road ourselves from our position standing on the Crumlin Road at the junction with Woodvale Road and Twaddell Avenue. We have also studied the CCTV footage closely.
  
147. The lodges started to move up the Woodvale Road on foot shortly after 7.45pm, first coming into our view (standing at the small roundabout at the junction of Woodvale Road, Crumlin Road and Twaddell Avenue), and into the view of the CCTV camera positioned on that roundabout, at 7.49pm. A police van preceded the parades, along with two or three police officers on foot. The lodges were orderly, with their banners held up, but silent. As they passed the roundabout, a number of missiles were thrown over the screens from the vicinity of the Ardoyne shops fronts, presumably by protestors. These missiles included bottles, broken bricks and stones. There may also have been several golf balls, but we did not personally witness that. None of the lodge members appear to have been hit, and none responded to the

missiles being thrown at them. However, some individuals in the crowd of supporters standing at the junction of Twaddell Avenue and Crumlin Road did respond by throwing missiles back over the screen. Again these missiles included bottles, broken bricks and stones.

148. It is impossible to be precise about the number of missiles passing each way. We would guess that about 30-40 missiles were thrown over the screen from the vicinity of the Ardoyne shop fronts and about 20 or so were thrown back the other way. It is fair to say that this episode of violence was short and appeared to be fairly swiftly controlled by police and parade marshals. It may be that marshals working with the protestors also controlled those throwing missiles over the screen from the vicinity of the Ardoyne shop fronts.
149. As the lodges passed the junction of Crumlin Road and Mountainview Place, further missiles were thrown. Again none of the lodge members appear to have been hit, and none responded to the missiles being thrown at them. And again this episode of violence was short and appeared to be fairly swiftly controlled.
150. By 7.56pm, the lodges had completed their passage through the contentious area and reached the junction of Crumlin Road and Hesketh Road, where they were met by the waiting crowd and the band members who had travelled the route in the buses. From our own observations, and from the CCTV footage, it does not appear that any followers/supporters proceeded with the lodges. The only individuals in view who were not lodge members appear to have been journalists.
151. However short the episodes of violence referred to above, and however swiftly they were dealt with, the fact that they occurred at all raises obvious concerns. The North and West Belfast Parades Forum

have stressed to us that the location of these episodes of violence was entirely predictable and questioned how effective the policing operation had been at protecting those parading up the contentious part of Crumlin Road. We have considered this carefully.

152. The requirements of the Human Rights Act have been set out above.<sup>109</sup> They include a duty to take reasonable steps to protect those who wish to exercise their right to march and process peacefully. Having regard to the policing operation overall, and to the resources available to the PSNI on 12<sup>th</sup> July to police the Ardoyne parades, we are satisfied that this duty was fulfilled. It would have been virtually impossible for the PSNI to have protected the lodges from any possibility of attack without moving all those protesting against them (and arguably everyone in the area) out of missile throwing range of the relevant part of the Crumlin Road. Not only would that have been very difficult to have achieved operationally, it would also have constituted a wholly disproportionate interference with the rights of those who legitimately wanted to protest against the parade.

**The followers/supporters.**

153. The followers/supporters were then treated as a crowd of people who wanted to walk up the road. The decision of Mr Justice Weatherup on 9<sup>th</sup> July analysed above meant that they could not be prevented from doing so by reason only of the determinations of the Parades Commission. The only question therefore was whether they could be prevented from exercising their right to walk up the road by the exercise by the police of their powers to deal with an actual or apprehended breach of the peace.

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<sup>109</sup> See paras. 10 -18

154. Both those organising the parades and the PSNI insisted that the followers/supporters should not be wearing any ceremonial clothes or colours and that they should not be carrying flags etc. They were warned about their behaviour and understood that if they presented any threat of disorder or violence they would be held back and not permitted to proceed along the contentious part of the route between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road.
155. We have pressed the police about the behaviour of the crowd of followers/supporters at the road blocks on Woodvale Road just before they were taken up the road. Chief Inspector Maguire who was on duty at the road block described the crowd as well behaved, but impatient. There was no violence or threat of violence, nor was there any physical pressure on the police line. The only possible evidence to the contrary is an entry in the PSNI serial 464 record which suggests that some stones were thrown at the police by band supporters in the vicinity of Cambrai Street at about 7.12pm. We asked the PSNI whether this was taken into account and were told that Silver Command attempted to verify the information received at 7.12pm, but the incident was not confirmed.
156. The first step taken by the police was to allow the crowd to move into the sterile area between the police road block and the military road block. They were then escorted up the road. The way in which the group of followers/supporters moved between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road is important because many individuals have raised with us their concern that the movement of this group along this part of the route was, in effect, a second parade.

157. The position is as follows. Five police vehicles preceded the group of followers/supporters along with a number of police officers on foot wearing protective public order clothing. The group of followers/supporters numbered about 250 and were closely bunched together, and there were police officers walking alongside them on the Ardoyne shop fronts side. At the rear of the group were a number of police officers with dogs, and then about 10 to 12 police vehicles. There were no banners, ceremonial clothes or colours that we could see. However, we did see two flags, which appeared to be union jack flags, or versions thereof. We did not see any paramilitary flags. In addition a number of individuals were wearing novelty union jack hats and there was a union jack umbrella in view. The group was pressed closer together as it went past the screens in front of the Ardoyne shop fronts.

158. The group of followers/supporters first came into our view still standing at the small roundabout at the junction of Woodvale Road, Crumlin Road and Twaddell Avenue, and into the view of the CCTV camera, at 7.57pm. That means that there was a gap of about eight minutes between the lodges passing up the contentious part of the route and the followers/supporters passing up the same route. It also means that by the time the followers/supporters came into view, the lodges had completed their passage through the contentious part of the parade.

159. At about 7.59pm, the group of supporters/followers reached the roundabout at the junction of Woodvale Road, Crumlin Road and Twaddell Avenue. As this group passed the roundabout, a number of missiles were thrown over the screens from the vicinity of the Ardoyne shops fronts, presumably by protestors. These missiles included bottles, broken bricks and stones. Some in the group of



followers/supporters and some individuals in the crowd of supporters standing at the junction of Twaddell Avenue and Crumlin Road responded by throwing missiles back over the screen. Again these missiles included bottles, broken bricks and stones. As with the exchange of missiles when the lodges passed this roundabout, this episode of violence was short and appeared to be fairly swiftly controlled.

160. Further missiles were exchanged when the group passed the junction of Crumlin Road and Mountainview Place. It is not possible to say who threw the first missiles at this stage, but again they included bottles, broken bricks and stones and again this episode of violence was short and appeared to be fairly swiftly controlled.
161. The group of followers/supporters reached the crowd who had gathered on the Crumlin Road and moved down from the Hesketh Road junction at about 8.04pm. At that stage a large number of them jumped up and down in a deliberate show of triumphalism in full view of those positioned on the Ardoyne Road near the Everton complex.
162. By 8.05pm, the lodges, bands, followers/supporters (now including the crowd who had gathered on the Crumlin Road and moved down from the Hesketh Road junction) made up one large group and one or two minutes later they began to move off up the Crumlin Road. Neither from our vantage point on the ground, nor from the CCTV footage is it possible to say how the group moved off and, in particular, whether the followers/supporters were mingling with the lodges and bands.
163. By 8.09pm, everything appeared to be reasonably calm and quiet on the Crumlin Road. About one minute later police vehicles began leaving the area, though many police and military personnel and

vehicles remained in place. At about the same time, violence broke out on the Ardoyne Road, just south of the junction with Alliance Avenue, where a military roadblock was in place. We did not see this first hand because we were still positioned on the Crumlin Road, but we have studied the CCTV footage of it very carefully.

164. Before addressing the question whether the PSNI were right to allow the followers/supporters to move between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road as they did during the evening of 12<sup>th</sup> July, it is necessary to consider the concern raised by the North and West Belfast Parades Forum about the effectiveness of the policing operation in protecting the followers/supporters from attack by those opposed to them. We have set out the requirements of the Human Rights Act in this respect above when we considered this issue in respect of the lodges.<sup>110</sup> There we concluded that there had been no breach by the PSNI of its duty under the Human Rights Act to protect lodge members from attack as they passed through the contentious part of the route. Our conclusion in respect of the followers/supporters is the same. In their case, however, it also has to be recognised that their behaviour in throwing missiles back at those protesting against them and their deliberate show of triumphalism referred to above can only have increased the potential for violence.

**Were the PSNI right to allow the followers/supporters up the road?**

165. The question whether the PSNI decision to allow the followers/supporters to move up the contentious part of the route between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road as they did during the

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<sup>110</sup> See para. 144

evening of 12<sup>th</sup> July was right can only be answered by addressing two distinct issues. First, did that decision breach the determinations of the Parades Commission? Second, assuming that not to be the case, could the PSNI have acted otherwise than to allow the followers/supporters to move up the road as they did between the two junctions? We will address each in turn.

166. As we have made clear, the decision of Mr Justice Weatherup on 9<sup>th</sup> July established that the mere fact that individuals may be following, proceeding with or accompanying the lodges and/or bands is not enough to establish that they are part of the parade. As we have also made clear, there is nothing to suggest that the behaviour of the followers/supporters as they walked up Woodvale Road was such as to make them ‘participants’ in the parade in the sense identified in the decision of Mr Justice Weatherup on 9<sup>th</sup> July. That, in effect, disposes of the first question because unless the group of followers/supporters could be said to have become ‘participants’ at that stage, the Parades Commission determinations did not apply to them and the decision of the PSNI to move the group up the road could not have breached the determinations.

167. The only remaining possibility is that, somehow the group became participants in the parade and thus were brought within the determination because of the way that they were actually moved up that part of the road. Although we recognise the force of this argument – in effect that the followers/supporters became a second parade – in our view, it is unsustainable. That is because it has to be recognised that, as a result of the meaning of participants adopted by Mr Justice Weatherup, had the group of followers/supporters been allowed by the police to follow *immediately behind* the lodges through the contentious area, there would have been no breach of the Parades Commission determinations. As we have made clear, we have grave reservations

about any interpretation of the meaning of participants that has that result, but, as we have equally made clear, unless and until the Public Processions (Northern Ireland) Act 1998 is amended or the issue is revisited in subsequent legal proceedings, the PSNI had no option on 12<sup>th</sup> July, and has no option in the future, but to follow the interpretation arrived at in the decision of Mr Justice Weatherup. Against that background, it is simply illogical to suggest that whereas a decision by the PSNI to allow the group of followers/supporters to follow *immediately behind* the lodges could not be legally faulted, a decision to hold the group back until the lodges had completed their journey through the contentious area did breach the determinations.

168. It is also important to recall how the group of followers/supporters were moved up the contentious part of the route. ACC McCausland stressed to us the following factors. First, that the PSNI had been advised that they could not hold the group of followers/supporters at the junction of Woodvale Road and Woodvale Parade unless that group presented a threat of public disorder such that breach of the peace powers could properly be exercised. Second, that the group were not allowed to travel up the road as and when they wanted to; the police decided when, and how, the group proceeded up the road. Third, that police officers with dogs were used at the rear of the group to ensure that none of the group walked at a slower pace than that dictated by the police, or stopped. The police have also emphasised that they would have preferred to have taken the crowd of followers/supporters up the pavement to further indicate that they were not treating them as second parade. But unfortunately the screens prevented any use of the footpath on the shop front side of the road, which would not have been sensible to use in any event, and military vehicles and personnel occupied the other footpath to protect the homes of the residents who lived on the Crumlin Road in the vicinity

of Mountainview Place and Mountainview Park. Taking all those factors into account, we are fortified in our view that there was nothing in the way in which the group of followers/supporters were actually moved up the contentious part of the route that brought them within the meaning of participants in the parade adopted by Mr. Justice Weatherup.

169. It follows that the decision of the PSNI to allow the followers/supporters to move up the contentious part of the route between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road as they did during the evening of 12<sup>th</sup> July did not breach the determinations of the Parades Commission as interpreted by Mr Justice Weatherup. It also follows that the PSNI policed those determinations lawfully in accordance with the requirements of the Public Processions (Northern Ireland) Act 1998 and in accordance with the objectives the police set themselves in every briefing from Gold Command down.

170. We turn then to the second question, namely whether, assuming that the decision of the PSNI to allow the followers/supporters to move up the contentious part of the route during the evening of 12<sup>th</sup> July did not breach the determinations of the Parades Commission, the PSNI could have otherwise prevented them moving up the road as they did between the two junctions?

171. As we have set out above, police powers to deal with an actual or apprehended breach of the peace are more restricted now than they used to be<sup>111</sup> and, ultimately, the question whether the police could lawfully exercise their breach of the peace powers to prevent the group of followers/supporters from moving up the contentious part of the

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<sup>111</sup> See above para. 108

route on 12<sup>th</sup> July depended on how this group presented itself at that stage of the evening.

172. We have assessed such evidence as there is in some detail below.<sup>112</sup>

On the face of it, there is nothing to contradict the police evidence that there was no violence nor threat of violence from the group of followers/supporters who arrived at the junction of Woodvale Road and Woodvale Parade shortly after 7.30pm on 12<sup>th</sup> July. Nor is there any evidence to contradict the assertion that there was no physical pressure on the police line forming the road block at that stage.

173. Obviously the behaviour of the followers/supporters of these parades in the past would have been relevant, but not, in our view, determinative for three reasons. First, because the duty of the PSNI was to assess the threat of disorder from the group that actually presented itself on 12<sup>th</sup> July 2004. Second, because the parading season in 2003 had passed off reasonably peacefully.<sup>113</sup> Third, those organising the 12<sup>th</sup> July Ardoyne parades had made strenuous efforts to ensure, in so far as they were able to do so, that any threat of disorder from the group of followers/supporters in question was minimal.

174. There were also other factors. First, that the police were concerned to ensure that police officers, vehicles and equipment were in place in front of the Ardoyne shop fronts for as short a period as possible. If the followers/supporters were taken through the contentious part of the route as soon as possible after the parade passed the second junction most, if not all, police officers, vehicles and equipment could be removed as soon as possible thereafter minimising disruption. Second,

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<sup>112</sup> See above paras 147-149

<sup>113</sup> See, *Nothing Happened? A review of public order during the summer of 2003* by Neil Jarman, presented to the Policing Board in January 2004.

there was the duty on the police to protect, as far as they were able to do so, the followers/supporters from attack if at some stage in the evening of 12<sup>th</sup> July they were to be allowed to move through the contentious part of the route. ACC McCausland explained to us that a large group of those protesting in front of the Ardoyne shop fronts moved up the Ardoyne Road when the lodges went past. A window of opportunity to move the followers/supporters up the road in relative safety therefore presented itself and influenced the decision-making. Third was a concern that if the police held the followers/supporters at the junction of Woodvale Road and Woodvale Parade until after most of the police and military officers and equipment had been removed, protestors would occupy the road in front of the Ardoyne shop fronts to prevent the group of followers/supporters moving up the road at some later stage. That had happened in not dissimilar circumstances in 2003.

175. There was also a concern that holding back the group for a prolonged period might increase the risk of disorder at least, or serious violence at worst, if followers/supporters from other parades joined those at the junction of Woodvale Road and Woodvale Parade swelling the numbers from the 200 or so who originally presented at the Woodvale Road/Woodvale Parade junction to a much larger number, possibly even 1,000. It has been suggested to us that the PSNI over-stated this concern, but we have seen a leaflet recovered by the police that urges East Belfast Orangemen to “delay their return to Templemore Avenue until all Brethren, bands and loyal supporters return safely to Ligoneil Orange Hall”. We have also been shown other material which supports the concerns of PSNI. In addition, the North and West Belfast Parades Forum accepted that there was a distinct possibility that the number of followers/supporters at the junction of Woodvale Road and Woodvale Parade might increase if the original group were prevented from

moving through the contentious part of the route and that there might have been a ‘stand off’.

176. We recognise, of course, that if too much emphasis were placed on this last factor, the argument could be made that those who present the greatest threat of violence will ultimately get their way. However, so long as it remained only one factor, in our view it was perfectly legitimate for the PSNI to take it into account.
177. Against that background, we are satisfied that the PSNI properly took all the relevant factors into account in deciding that they could not lawfully exercise their breach of the peace powers to prevent the group of followers/supporters from moving up the contentious part of the route between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road on 12<sup>th</sup> July. In the circumstances the police had no alternative but to allow the group up the road and their action in doing so was lawful.

#### **The violence in Ardoyne Road.**

178. It appears that at about 8.11pm, a number of protestors who had been north of the military road block described above, rushed down towards that block. The CCTV footage, which shows the group surging towards the military, gives no clue as to the reason for this. Since there were other protestors on the Ardoyne Road south of the military road block, the effect was to surround that road block.
179. A number of individuals then set about attacking military personnel. It is impossible fully to describe the scene from the CCTV footage but some individuals clearly climbed on to military vehicles and attempted to break the windows with implements including hammers. Others used what appeared to be baseball bats but could have been or



included batons taken from the military to hit military personnel. At one point three individuals made a sustained effort to break the windows of the military vehicles by ramming it with a baseball bat, baton or some similar implement. Others began to use large sticks and small trees to attack the military.

180. This attack lasted about eight minutes. It was an attack of sustained violence aimed both at the military personnel deployed on foot, who at one stage were effectively cornered by the crowd and at the military personnel in their vehicles. In our view, some of the military were clearly at risk of serious injury (one soldier sustained cuts to his face requiring six stitches). If the situation had not been brought under control pretty swiftly there was also a risk to the lives of some military personnel (some, for example, who were isolated, were being attacked by blows to the head from baseball bats/batons or similar implements). Although it is not entirely easy to see from the CCTV footage, it does not appear that any military personnel used force in response to this violence.

181. Although another platoon moved north up the Ardoyne Road at about 8.16pm in an attempt to assist their colleagues, the situation was not brought under control for several minutes thereafter. It is, of course, very difficult to assess from viewing CCTV footage what brought the situation under control. However, it appears to us that the two most influential factors were calls for restraint from individual community representatives among the protestors (including physical intervention at several points to prevent further attacks)<sup>114</sup> and the deployment of PSNI officers down the Ardoyne Road on foot and in vehicles (these officers had been moved into the Ardoyne Road via Hesketh Road when it was clear that support was needed).

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<sup>114</sup> We are not in a position to comment on the role of the individual community representatives among the protestors.

182. At about 8.20pm, some of the military vehicles began to move out of the area (down the Ardoyne Road). At about the same time, PSNI officers pushed down the Ardoyne Road towards the remaining military personnel and vehicles. These officers were on foot, with police vehicles behind them. They pushed through and past the military vehicles at about 8.23pm, pushing the group of protestors down the road. Some of the protestors were continuing to exhibit violence.

183. It is important to appreciate that this marked the first use of force by the PSNI in the policing of the 12<sup>th</sup> July Ardoyne parades. In fact, the PSNI used force on five separate occasions. We have considered each of these carefully and discussed the events surrounding each decision to use force in detail with ACC McCausland, Chief Superintendent Lindsay-White and Superintendent Boulwood. The law in relation to the use of force is as follows. In carrying out their duties, police officers must, so far as possible, apply non-violent means before resorting to the use of force. Police officers must only resort to the use of force if other means remain ineffective and there is no realistic promise of achieving the lawful objective without exposing police officers, or anyone whom it is their duty to protect, to a real risk of harm or injury.<sup>115</sup> Potentially lethal force can only be used where absolutely necessary and in very limited circumstances such as self-defence or to protect the lives of others.<sup>116</sup>

184. As noted above, in the first use of force, police batons were drawn and used to move the crowd surrounding the military vehicles and military personnel down the Ardoyne Road. Having reviewed the CCTV

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<sup>115</sup> See the test laid down in the common law, the Criminal Law (NI) Act 1967 and the Police and Criminal Evidence (NI) Order 1989.

<sup>116</sup> Article 2 ECHR

footage of this use of force and having discussed it with ACC McCausland and Chief Superintendent Lindsay-White, we are satisfied that, as a general tactic, the use of batons by the police was justified and complied with the legal requirements set out above, including those arising under the Human Rights Act.

185. We are not in a position to assess whether, even if the use of batons was generally justified, individual officers used excessive force in certain instances. There is very little to suggest that they did, but we take the view that it would be inappropriate for us to comment in any detail about this since any complaints that may be made by individual protestors would fall within the remit of the Police Ombudsman. We were slightly concerned, however, about the way in which one police officer appeared to be using his baton in pushing back the crowd at about 8.23pm and suggest that the footage of this should be studied by the Chief Constable as soon as possible and appropriate action taken if necessary.

186. By 8.25pm, the last of the military vehicles began to move out of the Ardoyne Road, all having left by 8.34pm. At that stage, PSNI officers maintained a road block without any obvious violence from the crowd and order was restored. At about 8.36pm, the police began to move out – an operation that took several minutes and involved the PSNI vehicles that had followed those officers deployed on foot being reversed north up the Ardoyne Road. At about 8.39pm, it appears from the CCTV footage that one of the vehicles struck an individual who had walked into its path as it reversed. Again we take the view that it would be inappropriate for us to comment in any detail about this since any complaint that may be made about this would fall within the remit of the Police Ombudsman. However, again we suggest that the footage

of this incident should be studied by the Chief Constable as soon as possible and appropriate action taken if necessary.

187. It should be mentioned that the PSNI water cannon had been moved from their position on Woodvale Road to the junction of the Crumlin Road and the Ardoyne Road as a response to the attack on the military. They were at that junction at about 8.24pm, but not used.
188. Before we leave the question of the violence in the Ardoyne Road, it is necessary to return to an issue we raised earlier in this report in respect of the effectiveness of the roadblock across the Crumlin Road at the junction with Hesketh Road,<sup>117</sup> namely the effectiveness of the arrangements in place for joint operations between the PSNI and the military. It appears to us that had the roadblock across the Ardoyne Road been more effective, the violence described above could have been eliminated or at least reduced. The conduct of the military aspects of the overall policing operation on 12<sup>th</sup> July is not within our remit and we do not address it in this report, not least because we have not asked for access to the military officers responsible for taking the relevant decisions, nor have we asked for copies or any material generated and/or relied on by them.
189. However, it is of obvious concern that two roadblocks under the responsibility of the military were ineffective during the evening of 12<sup>th</sup> July and, as we observed earlier in this report, that itself raises a more profound concern about the effectiveness of the arrangements in place for joint operations between the PSNI and the military. That concern is heightened by the acknowledgment that in 2003 there had been a breakdown of communications between the PSNI and the military in the arrangements for protecting those parading from attack

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<sup>117</sup> See above paras 134-137

from protestors in or near the Everton complex. In the circumstances, we consider that the effectiveness of the arrangements in place for joint operations between the PSNI and the military should be reviewed as soon as possible and amended if amendment is considered necessary.

### **The violence at Brompton Park.**

190. As the military and police moved out of the area, a group of protestors moved from the Ardoyne Road onto the Crumlin Road towards the roundabout at the junction of Woodvale Road, Crumlin Road and Twaddell Avenue. As this group got near the roundabout, a number of individuals threw missiles at the crowd of supporters who had remained in Twaddell Avenue. It is not possible to make out these missiles properly, but they included broken bricks and stones. By this time, which was about 8.38pm, the screens had been removed and all that stood between the group moving down the Crumlin Road and the group standing in Twaddell Avenue were crowd control barriers and police officers. This attack intensified for about a minute, before the police were able to push the group down the Crumlin Road, past the roundabout at the junction of Woodvale Road, Crumlin Road and Twaddell Avenue and towards the junction of the Crumlin Road and Brompton Park.
191. This manoeuvre by the police involved the second use of force (albeit a very limited one) by the PSNI on 12<sup>th</sup> July in the policing of the parades through the Ardoyne area. It involved the use of police vehicles and police officers on foot moving the crowd down the road. The vehicles were driven slowly as a unit across the road in a controlled advance, escorted by police officers. The crowd was reasonably compliant. Having reviewed the CCTV footage and having discussed this use of force with ACC McCausland and Chief

Superintendent Lindsay-White, we are satisfied that, as a general tactic, it was justified and complied with the legal requirements set out above, including those arising under the Human Rights Act.

192. From about 8.40pm onwards, the police maintained a line of police officers on foot and police vehicles positioned on the Crumlin Road just north of the junction with Brompton Park to prevent the group of protestors who had moved into Brompton Park re-emerging and advancing towards the group of supporters still standing in Twaddell Avenue. The group who had moved into Brompton Park then began a sustained attack on this police line. Bottles, broken bricks and stones were thrown at the police and some individuals in the group used catapults to fire stones at police officers standing in front of them.
193. After two minutes or so, the police attempted to move the crowd back into Brompton Park, using police vehicles (four across initially, then two rows of five vehicles). At that stage the police vehicles remained in Crumlin Road. Shortly after that the crowd standing in Twaddell Avenue were pushed further back up that road, out of sight and range of any missiles that might be thrown at them.
194. A group of about 10-20 youths in Brompton Park continued to throw missiles at the police and can clearly be seen on the CCTV footage breaking bricks for this purpose. At about 8.44pm, this attack intensified, when a large number of missiles were thrown at the police. There were about 40-50 officers on foot standing in the Crumlin Road at this stage, who were the clear target of the attack.
195. This attack lasted about eight minutes before police vehicles and officers were moved to the mouth of Brompton Park and, at about, 8.48pm, several PSNI vehicles were moved into Brompton Park.

Officers on foot, to the side and rear of these vehicles accompanied them. At that stage, it is not possible to see from the CCTV footage what was happening in Brompton Park. All that can be seen is that a few missiles appear to be thrown up towards the junction with the Crumlin Road.

196. This was third use of force on 12<sup>th</sup> July. However, we are unable to form a firm view as to whether it was justified because we did not personally observe this use of force and it is not possible to see from the CCTV footage what was actually happening in Brompton Park. However, the events leading up to the decision to use force are clear enough and individual complaints that excessive force was used fall within the remit of the Police Ombudsman.
197. Within a minute or two the police vehicles and officers were withdrawn from Brompton Park and re-positioned themselves at the mouth of the junction of Brompton Park and Crumlin Road. A number of young men followed them up Brompton Park and one or two got up onto the bonnets of the police vehicles. Missiles continued to be thrown up Brompton Park towards the police at a rate of 2 or 3 a second. This was about 8.50pm.
198. At 8.51pm, the PSNI water cannons were moved towards Brompton Park and positioned behind the line of police officers and vehicles at the mouth of the junction of Brompton Park and Crumlin Road. At 8.52pm, the water cannon were used for the first time. One jet was used at less than full power over the top of the police line, directed down Brompton Park. Further missiles were thrown up the road and the second jet was used at about 8.53pm, with a stronger jet, again over the top of the police line, directed down Brompton Park.

199. For the next few minutes the water jets were used with short breaks and for a short time the number of missiles being thrown at the police reduced. However, by about 8.56pm there was a marked increase in the volume of missiles being thrown at the police and both water jets were used. At 8.57pm two police vehicles and a number of police officers on foot moved into Brompton Park, two further police vehicles following them. The water jets were used over the top of this advancing group. Shortly thereafter both water jets were turned off. At 8.58pm an attempt was made to move one water cannon into Brompton Park, but this attempt was soon abandoned.
200. The movement of police vehicles and a number of police officers on foot into Brompton Park at about 8.57pm can be treated as the fourth use of force by the PSNI on 12<sup>th</sup> July. As with the third use of force described above, we are unable to form a firm view as to whether it was justified because we did not personally observe this use of force and it is not possible to see from the CCTV footage what was actually happening in Brompton Park. But, again, the events leading up to the decision to use force are clear enough and individual complaints that excessive force was used fall within the remit of the Police Ombudsman.
201. The second water cannon was moved into position near the mouth of Brompton Park at about 8.59pm. This was then moved into Brompton Park and briefly out of view of the CCTV. Within a minute it reversed out of Brompton Park without using its water jets. Both water cannon were then reversed away. All the police officers on foot and police vehicles which had moved into Brompton Park were then withdrawn back to the junction of Brompton Park and Crumlin Road.



202. At 9.04pm, the crowd in Brompton Park advanced towards the police and there was a fresh hail of missiles thrown at the police, including bricks, stones, bottles and beer crates. At 9.05pm, the second water cannon was used again briefly and the crowd moved back. By 9.06pm, the number of missiles being thrown had reduced considerably. It appears that several individuals in the crowd were intervening to control or reduce the violence.
203. The use of the water cannons on the several occasions set out above can be treated as the fifth use of force by the PSNI on 12<sup>th</sup> July. In our view, each instance in which water cannon was used complied with the requirements of PSNI policy on the deployment and use of RCV9000 vehicle mounted water cannon.<sup>118</sup> That policy incorporates the requirements of the Criminal Law (NI) Act 1967, the Police and Criminal Evidence (NI) Order 1989 and the Human Rights Act. On that basis we are satisfied that the use of the water cannons in the circumstances described above was justified.
204. By 9.08pm things were reasonably quiet and, at 9.09pm, the water cannons were moved further away up the Ardoyne Road. Order was effectively restored by about 9.10pm, although a few individuals continued to pelt the police with small missiles.
205. By 9.15pm, the police had withdrawn further and the water cannons were moved out of sight. The crowd that had been in Brompton Park then began to emerge onto Crumlin Road and blocked the road for about 40 minutes. From the CCTV footage, it appears that two individuals in the crowd had injuries, but it is impossible to say how those injuries were caused. A number of individuals continued to

throw missiles and some youths who had climbed onto the roof of the Ardoyne shops fired several fireworks at the police.

206. At about 9.52pm, the crowd began to disperse into Brompton Park and by 9.58pm the first car can be seen travelling down the Crumlin Road past the Brompton Park junction. After that things quietened down and the incident was effectively over.

### **Conclusions.**

207. We have conducted a thorough review of the policing of the 12<sup>th</sup> July Ardoyne parades. We have had unimpeded access to information and documents held and/or generated by the PSNI and we have had unimpeded access to the senior officers responsible for planning the policing operation and carrying it into effect.
208. Our conclusions are that the policing operation was carefully planned and executed. The human rights implications of all the key decisions were considered at every stage and the advice of the PSNI human rights lawyer was taken on several occasions. Tactical advice was also taken from a fully qualified and experienced tactical advisor. Those responsible for the policing of the 12<sup>th</sup> July Ardoyne parades followed the advice they were given by the PSNI human rights lawyer and the PSNI tactical advisor. However, although in the event it would not have affected the decisions made by those responsible for policing the 12<sup>th</sup> July Ardoyne parades, in our view it would have been preferable if further legal advice had been taken between 9<sup>th</sup> and 12<sup>th</sup> July.
209. At all stages of the planning of the policing operation until 9<sup>th</sup>/10<sup>th</sup> July, those responsible for the policing of the 12<sup>th</sup> July Ardoyne parades genuinely considered that the determinations of the Parades Commission applied to followers/supporters of the parades and

planned the operation on that basis. We are satisfied that it was legitimate for them to have done so during that period.

210. The decision of Mr. Justice Weatherup on 9<sup>th</sup> July 2004 had a profound effect on the policing operation because from then on the PSNI could not lawfully rely on the determinations of the Parades Commission as a basis for preventing followers/supporters of the parades from proceeding through the contentious part of the route between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road, unless the behaviour of those followers/supporters went beyond that of following, proceeding with or accompanying the lodges and/or bands on 12<sup>th</sup> July. Thereafter the PSNI only had power to prevent the followers/supporters proceeding along that part of the route if they presented a threat to the peace sufficient to trigger police powers to deal with a breach of the peace.
211. There is no evidence that the behaviour of those followers/supporters on 12<sup>th</sup> July as they moved up the Woodvale Road in the evening went beyond that of following, proceeding with or accompanying the lodges and/or bands. Accordingly the PSNI had no power under the determinations of the Parades Commission to prevent them proceeding along the contentious part of the route. In assessing whether the followers/supporters at that stage presented a threat to the peace sufficient to trigger police powers to deal with a breach of the peace, the PSNI took all relevant factors into account.
212. It follows that the decision of the PSNI to allow the followers/supporters to move up the contentious part of the route between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road as they did during the

evening of 12<sup>th</sup> July did not breach the determinations of the Parades Commission as interpreted by Mr Justice Weatherup. It also follows that the PSNI policed those determinations lawfully in accordance with the requirements of the Public Processions (Northern Ireland) Act 1998 and in accordance with the objectives the police set themselves in every briefing from Gold Command down.

213. It also follows that the PSNI decision to allow the followers/supporters up the contentious part of the route was lawful because their judgment that the behaviour of the followers/supporters did not justify holding them for a prolonged period at the junction of Woodvale Road and Woodvale Parade cannot be faulted.
214. Having regard to the policing operation overall, and to the resources available to the PSNI on 12<sup>th</sup> July to police the Ardoyne parades, we are satisfied that the legal duty on the PSNI to take reasonable steps to protect the lodge members and followers/supporters was fulfilled. Notwithstanding the episodes of violence that broke out when the lodges and when the followers/supporters moved through the contentious part of the route, it would have been virtually impossible for the PSNI to have protected them from any possibility of attack without disproportionately interfering with the rights of those who legitimately wanted to protest against the parades.
215. Force was used by the PSNI on five separate occasions. In respect of three of those occasions we are satisfied that, as a general tactic, the use of force was justified. In respect of the other two occasions, we are not able to make any assessment without access to a great deal of further evidence. If individual complaints are made about the use of force, those complaints would fall within the remit of the Police Ombudsman for Northern Ireland.

216. Notwithstanding the conclusions set out above, we have a number of serious concerns. Most importantly, they include a concern that the interpretation by the Parades Commission, and in the judgment of Mr. Justice Weatherup on 9<sup>th</sup> July 2004 in the case of *JR.1*, of those participating in a public procession as excluding those who follow, proceed with or accompany lodges and bands along an entire parade route, will have a profound and detrimental effect on the ability of the PSNI to police parades in the future. The significance of this conclusion cannot be underestimated. It goes to the heart of the legal framework for policing parades in Northern Ireland. In our view, it is critical that the implications of this are fully realised and resolved as soon as possible.
217. A linked concern relates to the question of communications between the Parades Commission and the PSNI. While we recognise the need for both bodies to maintain their independence, it is essential that the PSNI know and understand the basis upon which the Parades Commission is issuing its determinations. If uncertainties arise, it is important that both bodies seek to resolve them as quickly as possible. That requires clear and agreed lines of communication.
218. We are also concerned that two roadblocks under the responsibility of the military were ineffective during the evening of 12<sup>th</sup> July. This raises a serious issue about the effectiveness of the arrangements in place for joint operations between the PSNI and the military. In the circumstances, we consider that the arrangements in place for joint operations between the PSNI and the military should be reviewed as soon as possible and amended if amendment is considered necessary.

219. Notwithstanding these concerns, we are satisfied that the policing operation as a whole complied with the requirements of the Human Rights Act.

**Keir Starmer QC, LLB (Hons) First Class, BCL (Oxon)** is a barrister specialising in human rights. He was appointed Queen's Counsel in 2002 and has extensive experience of litigation before the European Court of Human Rights, where he has conducted cases from the UK, France, Spain, Greece, Cyprus, Finland and Macedonia. He also has extensive experience of litigation before the House of Lords and the Privy Council. He is a fellow of the Human Rights Centre at Essex University and lectures at the Human Rights Centre at the London School of Economic in London. He is author of numerous textbooks on human rights, including *European Human Rights Law* (1999), *Blackstone's Human Rights Digest* (2001) and *Criminal Justice, Police Powers and Human Rights* (2001). He was invited to be part of the Judicial Studies Board delivery team for judicial training on the Human Rights Act 1998 and of the Lord Chancellor's delivery team for magistrates' training on the Act during the period 1998-2001. In 2000, he won the Justice/Liberty Human Rights Lawyer of the Year Award, the judges of which included Lord Woolf, the Lord Chief Justice, and Sir Nicolas Bratza QC, the UK judge on the European Court of Human Rights.

**Jane Gordon BA (Oxon), LLM.** After completing her BA (Hons) in Jurisprudence at Wadham College, Oxford, Jane Gordon qualified and worked as a litigation lawyer with Lovells until 1999. Following qualification, she spent time in Kingston, Jamaica working on death row cases. In 2000, Miss Gordon obtained Distinction in the LLM at King's College, London where she specialised in international and domestic human rights law. Since then, she has worked in equality and human rights practice and policy, assisting Professor Christine Chinkin in a People's Tribunal against Japanese Military Sexual Slavery during World War II held in Tokyo in 2001, working as judicial assistant to the Lord Chief Justice and as senior parliamentary legal adviser to Lord Lester at the Odysseus Trust, when she was appointed ad hoc Specialist Adviser to the Joint Committee on Human Rights. Miss Gordon was called to the Bar in November 2001. She worked in the NGO sector as

Deputy Director of the Kurdish Human Rights Project, when she worked extensively on human rights cases before the European Court of Human Rights. Most recently, she has been working as Committee Legal Specialist to the Home Affairs Committee at Westminster. Ms Gordon has recently been appointed Senior Lecturer in Human Rights at Kingston University.



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**DETERMINATION MADE IN RELATION TO THE BALLYSILLAN LOL 1891  
PARADE NOTIFIED TO TAKE PLACE  
IN BELFAST ON MONDAY 12 JULY 2004**

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## **INTRODUCTION**

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1. Section 8(1) of the Public Processions (Northern Ireland) Act 1998, provides that:

“The 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.”

2. The Commission has noted the details provided on the Form 11/1 submitted on 13 June 2004, concerning the Ballysillan LOL 1891 parade in Belfast on Monday 12 July 2004. The Commission has considered the need to issue a determination as outlined above, against the factors described in its Guidelines document.
3. The Commission is conscious of its previous determinations in connection with this parade. The Commission, however, has had special regard to the nature of this parade in the light of the above Act, the Commission’s stated principles (as set out in its annual reports), the Statutory Guidelines and the European Convention for the Protection of Human Rights and Fundamental Freedoms. It has also considered and evaluated all representations received and all information assembled. The Commission has subsequently concluded, considering all relevant factors, that the determination, which it now makes, is the most appropriate for this particular parade at this particular time.

## **BACKGROUND**

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4. The Commission notes the purpose of this event is ‘ expression of our historical, cultural and religious heritage (12<sup>th</sup> July)’.

5. The Commission understands that this part of Belfast has seen much sectarian tension and division. It notes that the Ardoyne Parades Dialogue Group have submitted a protest notification. This is a clear indication that harmonious relationships do not exist throughout the route notified for this parade.
6. This is an arterial route into and out of the city servicing both communities and there is a duty to ensure its free use, notwithstanding that it passes through an interface area at Ardoyne shops at which all sides should behave with sensitivity.
7. The Commission received evidence from political and community representatives across the spectrum and advice from the police. The Commission has seen evidence that indicates that some supporters of the parade and some protestors against the parade behaved in a deliberately threatening and provocative manner during the parade on 12 July 2003. In the circumstances, the lodges and bands behaved in a generally peaceful manner. The Commission noted that as the parade returned, missiles were thrown both by parade supporters and those opposing the parade on the contentious part of the route.
8. The Commission has cause to believe that should the parade process the entirety of its notified route, there will be an adverse effect on community relations and a potential for public disorder.

## **CONSIDERATION**

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9. The Commission is obliged by statute to have regard to the Guidelines issued under Section 5 of the Public Processions (Northern Ireland) Act 1998 and has done so. The Commission has also been alert to its duties as a public authority under Section 6 of the Human Rights Act 1998. The Commission believes that, from the perspective of the parade organisers, the Convention rights engaged are those protected by Articles 9, and 10 and, in particular, Article 11. None of those rights is absolute.
10. Further, the human rights of other persons, to whom the Commission also owes a legal duty, must be equally considered. Those who live, work, shop, trade and

carry on business in the affected locality enjoy rights under Article 8 of the Convention and Article 1 of the First Protocol thereto. In common with Articles 9, 10 and 11, none of these rights is absolute. The Commission has also been mindful to take into account its positive obligations under Article 2 of the Convention. Similarly it has been mindful of the provisions of Article 17 of the Convention.

11. It is not possible for all of those who would claim the benefit of the Human Rights Act 1998 to exercise and enjoy their Convention rights to the fullest extent, where rights are in competition with each other. The Commission, therefore, has had to undertake a balancing exercise, bearing in mind the statutory Guidelines, in an attempt to reach a determination, which is fair and proportionate in all the circumstances. In addition to having regard to the Guidelines the Commission has had regard to the criteria specified in Section 8(6) of the Public Processions (Northern Ireland) Act 1998.
12. The Commission has also had regard to the issue of engagement. One of the seven fundamental principles identified by the North Report is that all those involved should work towards resolution of difficulties through local accommodation. As required by the statutory Guidelines, the Commission has had regard to the seven North principles.
13. As indicated at page 15 of its second Annual Report, the Commission (while avoiding an excessively prescriptive approach) considers the essence of engagement to be attempts at genuine communication between protagonists to a particular parading dispute. A series of 'pointers' to what constitutes genuine engagement is listed on page 16 of that report.
14. As stated in paragraph 4.4 of the Guidelines, the Commission takes into account any communications between parade organisers and the local community or the absence thereof. Further, the Commission will assess the measures, if any, offered or taken by parade organisers to address genuinely held relevant concerns of members of the local community.
15. The Commission is aware of the recent formation of a North and West Belfast Parades Forum within the loyalist and unionist community, which it has been told

is committed to finding a way to reach agreement on this parade as well as others in North and West Belfast. The Commission has been assured that Orange Order members will be present and will be actively represented on this Parades Forum and that the Orange Order members will be participating in meetings with the residents. The Forum has the potential to play a significant role in ensuring only peaceful and lawful assembly in this sensitive part of North Belfast.

16. The Commission has heard of the desire of the Parades Forum to engage with Ardoyne residents representatives in a series of meetings, over the coming months in an effort to reach agreement on future parades through this area. The Commission accepts this intention to engage is genuine and expects the Parades Forum to honour these commitments.
17. The Commission sees this parade as a significant test of the loyalist and unionist community to adhere to the law and deliver a peaceful and lawful procession on the day. In particular it expects the community to ensure that no grouping of followers assembles in a way that would suggest to Ardoyne residents that a second un-notified parade might be taking place. The further restrictions on this parade are also intended to reassure residents close to this main thoroughfare, that the Commission takes their concerns seriously too. The Commission looks to community and political leaders on the nationalist side to ensure that only a peaceful and lawful protest takes place in the interface area. The violence associated with protests in this area make it more difficult for the Commission to challenge any bad behaviour in the parade.
18. In the present case the Commission is not aware of any meaningful engagement having taken place.
19. In making its determination, the Commission has accepted that there is a right of lawful and peaceful protest vested in those who legitimately object to the notified parade. However, there is neither right nor justification for unlawful or violent protest. The Commission further considers that, in all the circumstances, there is an obligation on representatives of the Ardoyne Parade Dialogue Group and local community and political leaders to use their good offices and/or take reasonable steps as appropriate to prevent violent and/or unlawful protest and, further, to state strongly and unequivocally that any protest should be exclusively peaceful and

lawful. This will be to the positive advantage of the local population, as it will reduce the risk of any possible impairment of their rights and freedoms stemming from such protests.

20. The Commission has also taken into account the possibility that if a large scale policing operation is required the disruption to the local community and the possible infringement of protected Convention rights will increase commensurately. The Commission believes that if any protest is peaceful and proportionate in size to this parade then this should form the basis for a commensurate reduction in the policing operation.
21. The Commission emphasises that it is the responsibility of those organising an event whether it be a parade or protest to ensure that all participants conduct themselves in a responsible, orderly and peaceful manner. The Commission has taken into account the behaviour of those accompanying the parade over the past number of years and there is an obligation on the parade organiser to take steps to prevent provocative and unruly behaviour or violence.
22. The Commission has had regard to the nature of this parade, the purpose of which is described earlier in the determination.
23. Having considered all the evidence, information and advice available to it, the Commission takes the view that it is necessary to impose conditions on part of the parade's notified route. This decision is set against the background of continuing local community tension. It recognises the real possibility of damaging community relations with a consequent effect on the likelihood of public disorder should the parade proceed along the entirety of its notified route without restriction. Whilst recognising the fundamental importance of the right to freedom of assembly, the Commission finds it necessary to exercise its powers under Section 8 of the Public Processions (Northern Ireland) Act 1998 to place restrictions on the parade.
24. The Commission pursues the legitimate aims laid down in Article 10(2) and 11(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, of seeking to prevent disorder and to protect the rights and freedoms of others.

25. In determining whether the conditions are necessary in a democratic society and proportionate, the Commission has regard to the criteria set down in Section 8(6) of the Public Processions (Northern Ireland) Act 1998 and to its own Guidelines made under Section 5 of the Act and to which under Section 8(5) it shall have regard when making a determination.
  
26. Having regard to the factors set out above, the Commission considers that the conditions it now imposes are necessary and proportionate to the aim pursued. The conditions are not such as to affect significantly the individual's right to assemble. The Commission believes that the conditions it imposes strike a fair balance between the needs of the community and the rights of the individual.

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## DETERMINATION

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The Parades Commission's determination is that the following conditions are placed on the organiser and all persons taking part in the parade by Ballysillan LOL 1891 on Monday 12 July 2004.

- A. On the outward route in the morning, only those persons notified on the Form 11/1 as taking part in the parade shall process that part of the notified morning route between the junction of Crumlin Road and Hesketh Road and the junction of Woodvale Road and Woodvale Parade.**
- B. 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.**
- C. No music is to be played, morning or evening, between the junction of Crumlin Road and Hesketh Road and the junction of Woodvale Road and Woodvale Parade.**
- D. Between the junction of Crumlin Road and Hesketh Road and the junction of Woodvale Road and Woodvale Parade, there shall be no colour parties of any type, or flags, clothes, instruments, badges or emblems, displayed which could be seen as associated with any paramilitary organisation.**
- E. The parade organiser shall ensure that the parade shall begin and disperse promptly.**
- F. When the parade is in progress there shall be no undue stoppages or delays. Where practicable, the parade shall stay close to the near side of the road at all times to minimise disruption and to facilitate the passing of vehicular and other traffic.**
- G. The organiser shall arrange for the presence of an adequate number of stewards to ensure that all persons taking part in the parade act in an orderly**

**manner.**

**H. The parade organiser shall bring to the attention of stewards the guidance for all persons taking part on the parade contained in Appendices A and B of the Commission’s Code of Conduct. For ease of reference, Appendices A and B are attached.**

**I. The parade organiser shall ensure that all stewards and all persons taking part in the parade obey any direction given by the police in relation to this parade.**

**J. The parade organiser shall ensure that these conditions are drawn to the attention of all persons taking part in the parade.**

Signed: .....  
(On behalf of the Commission)

Date: .....



## APPENDIX A

### Guidance for Anyone Participating in Parades

#### A. Behaviour

##### **All participants in parades should:**

- **behave with due regard for the rights, traditions and feelings of others in the vicinity;**
- **refrain from using words or behaviour which could reasonably be perceived as being intentionally sectarian, provocative, threatening, abusive, insulting or lewd;**
- **obey the lawful directions of parade organisers and stewards at all times, from assembly to dispersal;**
- **abide by the conditions of this Code of Conduct;**
- **comply with police directions and in accordance with legislation.**

#### B. Dress

**No paramilitary-style clothing is to be worn at any time during a parade.**

#### C. Parade

**Whenever possible, the parade should be positioned on one side of the carriageway so as to allow for the free flow of traffic, or as otherwise stipulated by police.**

#### D. Route

**Participants should keep to the designated route as directed by the police.**

#### E. Alcohol

**Alcohol should not be consumed immediately prior to, or during a parade. An organiser or steward, who believes a participant to be under the influence of alcohol, should take the necessary measures to remove that person from the parade.**

#### F. Bands and Music

**Each band must clearly display its name. Restrictions on the playing of music will be in accordance with the conditions as set out in Appendix B of this Code. No musical instrument will bear any inscription or mark of a proscribed organisation.**

#### G. Flags etc.

**Flags and other displays often have a legitimate historical significance, but in no circumstances should such items relating to a proscribed organisation be displayed.**

H. Stewards

**The names of stewards will have been notified to the police and the Parades Commission at the time of notifying the proposed parade.**

**Stewards should:**

- **be properly trained;**
- **be briefed by the organisers prior to the parade;**
- **carry proof of their status at all times during the event, and provide this information to police on request;**
- **be fully aware of their responsibilities and role;**
- **be highly visible by means of jackets, singlets, armbands, etc.**
- **not consume alcohol before or during the parade;**
- **co-operate with the police;**
- **be prepared to identify to the police any persons in the parade who may be committing any offence against criminal law.**

I. Policing

**Organisers of parades must co-operate with the police from the time of submission of the notice of intention to parade until the parade disperses.**

J. Dispersal

**When a parade has concluded, all those taking part must disperse immediately. It will be the responsibility of the organisers to ensure compliance with instructions in this regard.**

K. Abiding by Conditions

**Organisers must ensure that all participants in any parade have been informed of any conditions imposed. As a general principle, the organiser is responsible for the behaviour of all participants and for ensuring compliance with the Code of Conduct.**

## APPENDIX B

### Guidance for Anyone Participating in Parades in the Vicinity of Sensitive Locations

#### A. Places of Worship

**Only hymn tunes should be played.**

**When church services are taking place, no music should be played.**

**There should be no irreverent behaviour.**

**Marching should be dignified.**

#### B. War Memorials and Cemeteries

**Only hymn tunes should be played.**

**Behaviour should be respectful.**

**Marching should be dignified.**

#### C. Where the Majority Population of the Vicinity are of a Different Tradition, and in Interface Areas

**Behaviour should be respectful.**

**There should be no excessively loud drumming.**

**Participants should refrain from conduct, words, music or behaviour which could reasonably be perceived as intentionally sectarian, provocative, threatening, abusive, insulting or lewd.**

**Marching should be dignified.**

# ROAD LAYOUT

## ARDOYNE

## SHANKILL



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