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Parades Review Project Team
19 June 1997

Mr Leach

cc: PS/PUS - O
PS/Sir D Fell - O
Mr Thomas - O
Mr Steele - O
Mr Gray - F
Mr Bell - F
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Mr Stephens - O
Mr Watkins - O
Mr Wood - O
Mr Perry - O
Mr Maccabe - O
Mrs Collins - O
Mr Strain - O
Mr Carter (HOLAB)
Mr Thompson (Court Service)

PA - 633/97

ASSTJ
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CONFIDENCE BUILDING MEASURES: TOUGH ON BANDS - TOUGH ON THE CAUSES OF BANDS?

You asked for possible measures to be offered as a compensatory gesture to the Nationalist community should be decision be taken to allow a parade down the Garvaghy Road this year. You mentioned the Secretary of State was keen on either a "review of band parades" or for active measures to clamp down on them. You asked for background, analysis of the options and some text for a submission tomorrow to Ministers.

Background

2. There are two separate though related issues which the Secretary of State might be getting at here. The first is the behaviour of bands and their members, the second is the phenomenon of "band parades" strictly defined. While many parades organised by the marching orders will be accompanied by a large number of bands, a band parade is a one organised by the bands themselves, sometimes with a competitive element, in which a series of bands will gather and play, often collecting

money from passers by to cover the band's running costs, drinking binges etc. Bands participating in parades organised by the marching orders are supposed to sign up to a code of conduct (Orange Order's form attached for you only). Those participating in band parades have no such restraint. Their behaviour is therefore regulated only by normal public order legislation, including its provisions against provocative behaviour, behaviour designed to arouse hatred etc.

3. There are believed to be around 450 bands in Northern Ireland. The number of band parades is unknown, as the police do not disaggregate figures. Many have however attributed the modest (about 20% in 10 years) increase in the total number of parades in recent years to an increase in the number of band parades. Band parades are however criticised not only by Nationalists but by many Unionists, with those participating accused of sectarian behaviour, and the parades themselves often causing disproportionate traffic disruption, particularly when they take place during shopping hours or rush hours.

4. The majority of band parades take place in areas which are predominantly Protestant. Of the 48 disputed parades in 1996, 10 were band parades. Contested band parades were slightly more likely than marching order parades to lead to violence however. But few of the most contentious parades in the main flashpoint areas are band parades. There were not contested band parades last year in Bellaghy, Dunloy, Castlederg, Londonderry or the Lower Ormeau Road. Only in Newry and Pomeroy did Protestant band parades lead to controversy. The reason for this is that the police have generally curbed band parades' attempts to march in controversial areas some time ago.

5. The question therefore arises what mischief exactly are we seeking to tackle, and how to do it. We have assumed the Secretary of State's main concern is what Mgr Faul calls the need for "less quantity and more quality" in parades, and that the band parades are to be singled out because they are generally the worse behaved, and the least popular type of parade even within their own community.

6. We have identified a number of measures which might be discussed with the Secretary of State. Some of them impact on band parades specifically, some on behaviour of bandsmen more generally. Given the Government's commitment to introduce a new regime with the authority for making decisions on re-routing etc resting with the Parades Commission, we have not chosen to recommend any specific new regime for band parades from next year onwards. Rather, the analysis falls into four areas:

- registration of bands
- the exercise of the Secretary of State and the Chief Constable's existing powers during the 1997 marching season
- stiffening Public Order legislation's provisions against offensive conduct
- other 'confidence building measures'

Registration of Bands

7. The North Report noted strong support for enacting the existing legislative provisions for a registration scheme for bands. This support came from both sides of the community, the police and many within the Loyal Orders. The rationale behind this is presumably that bands seen to have behaved badly in the past would be "de-registered" and thus refused permission to march in future, and the prospect of this sanction would act as an incentive to good behaviour.

8. We believe there is a compelling case against introducing a registration scheme, on the grounds that it could not achieve its objectives, and would succeed only in raising false expectations while seriously antagonising a highly volatile constituency.

9. The most fundamental problem is the idea that a band could be "de-registered". We anticipate ECHR difficulties with the idea that a band could be prevented as a result of past bad behaviour from marching anywhere in the

Province, even in areas where they were entirely welcome. If we were to concede the principle that a band could go where it was welcome, the idea of a 'partial deregistration' presents massive logistical and legal difficulties.

10. Even if de-registration were possible, there is nothing to prevent bands immediately reforming under another name. The only way round this would be to give the courts powers to reject future applications if the membership looks suspiciously similar to that of a deregistered band. But would this apply to bands with identical membership, or with a given percentage of overlap, and if the latter, what percentage would be appropriate? At its most extreme this could lead to bans on individuals being members of any registered band, which is even more fraught in ECHR terms than the general deregistering power.

11. The police recommend adopting similar procedures to the clubs licensing regulations. But a band is not a club. While it is obvious that neighbours and those with businesses etc in the area of a club have a legitimate right to object to its licence being renewed, anyone in an area likely to be affected by a band parade could demand the right to object to an application in the courts. Republicans would probably find the temptation to object to every application from a loyalist band (and vice versa) irresistible, threatening legal gridlock, a point ably made by the Court Service in the note which you have seen. Moreover, the grounds for refusal are highly subjective, and bound to lead to endless appeals.

12. Provision permitting the registration of bands has been on the statute books since 1981. Surprisingly, given their current support for the idea, it has always in the past been the police who have opposed enactment on practical grounds. The police say they are keen for a scheme for registration of bands, but do not want themselves to be seen as a licensing authority, and would prefer this role to be taken by the courts. Not surprisingly, the courts are equally reluctant to take on the responsibility. The Court Service are strongly opposed to the idea, pointing out not only the cost and bureaucracy involved, but the highly sensitive political nature of the decisions, and the subjective basis on which decisions will have to be made. No

scheme for the registration of bands could be introduced without consultation with the Lord Chancellor who would in turn consult the senior judiciary. It seems likely that they would be equally opposed, particularly as being expected to take decisions to withdraw registration from loyalist or republican bands could put the lives of clerks of petty sessions and magistrates at risk.

13. Some of the above difficulties could of course be reduced if the ultimate sanction were not so drastic, that is if the band were not faced with de-registration and a complete ban on marching anywhere in the Province. But equally, reducing the sanctions at the court's disposal would reduce any incentive for good behaviour. Powers one might envisage would be fines, bonds for good behaviour or restrictions on where a band can march. Since the bands do not have corporate identify, however, the first two would either be too insignificant to provide any disincentive, or if they were major, the band could simply dissolve and reform to evade them. Fines could perhaps be imposed on individual organisers, in which case we could expect a fair number of these to volunteer to go to prison rather than pay, creating a new class of martyrs. There is also the general point that bands might defy the legislation and choose to march unregistered, and see if the police were prepared to clamp down on them.

14. To sum up, we could produce a registration scheme for bands, although given the need for amendments to the Public Order Order, time has probably already run out for any such scheme to have any effect during this marching season. The Secretary of State needs however to consult the Lord Chancellor and the judiciary if she were inclined to establish a court based system. Alternatives would be to give the registration scheme to the Commission (rejected by the North Report) or the NIO. Moreover, it would be helpful to clarify what the scheme was intended to achieve, since we strongly believe a full scale power to de-register objectionable bands in the hope of getting them off the streets will not work. And in any case, from next year the Commission will have sweeping powers which will enable them to impose pretty much whatever restrictions they want on processions, bands etc, so it is questionable what added value a registration scheme will have.

Exercise of Chief Constable / Secretary of State's powers this marching season

15. We have examined the scope for a more vigorous use of the Secretary of State and Chief Constable's existing Public Order Order powers. While the police have wide powers, we think there is limited scope to use these to punish bad behaviour by individual bands, since any conditions imposed on a march must be justified as necessary to avoid serious disorder, serious disruption etc. It might be hard to argue that the targeted exclusion of one band which had behaved badly in the past would be necessary but also sufficient to prevent serious disorder at a given parade.

16. If the Secretary of State were minded less to bear down on individual misbehaviour than to reduce the overall phenomenon of band parades, there is considerable scope for this within the existing legislation however. A strong case could be made for saying that many band parades cause serious disruption to the local community. The police would be justified in re-routing them, and possibly even the Secretary of State from banning them, particularly if band parades were happening unreasonably frequently in any given town. Careful drafting needs to be used to avoid the charge that any announcement would be fettering the Chief Constable and also the Secretary of State's discretion. We suggest the following might fit the bill.

"in my discussions with all sections of the community about the parades issue, I have been struck by the strong feelings the proliferation of band parades has caused, not just among Nationalist but among many Unionists too. There is a strong perception that the number of these parades has increased considerably in recent years, and that the disruption they cause is considerable inconvenience to all sides of the community. Both the police and myself already have powers under the Public Order Order to impose conditions or ban parades respectively on the grounds of serious disruption to the local community. Both the Chief Constable and I would want to

consider each case carefully on its merits, but parades causing considerable disruption would be a classic case of the right to march conflicting with others' rights to go around their normal business."

Other Changes to Public Order Legislation

17. The most direct way to seek improved behaviour of band members would be to strengthen individuals' accountability for their actions. The sort of behaviour we are looking to combat is intimidatory, sectarian and provocative conduct, which already constitute offences, notably in Articles 8 and 19 of the Public Order Order. The sentences for these offences are stiff enough, up to 6 months on summary conviction or 2 years on indictment. The problem is getting convictions. For example, there have been a derisory 10 convictions for using threatening, abusive, insulting words or behaviour between 1987 and 1996, 5 for displaying anything provocative and 14 for doing a provocative act. Prosecutions under Article 8 are similarly rare.

18. North did not address these issues in his report. In discussions with the police, they have agreed that proving intent is difficult, but suggested that most of those they would wish to prosecute are prosecuted for disorderly conduct anyway. But it is possible to envisage many sectarian acts for example, taunting at Catholic churches in Protestant areas which would not necessarily be covered by the provisions on disorderly behaviour, since a breach of a peace is unlikely to be occasioned when those being targeted are in the minority, and thus in no position to respond violently. We might therefore suggest the Secretary of State expresses a determination to clamp down on this sort of behaviour, and to review the legislative powers against them, expressing dissatisfaction with the effect they have had so far. We have already discussed with legal advisors one possible way of reducing the burden of proof for intent which was not however found favour. We have identified an alternative approach, which we have not been able to clear at this short notice. For these reasons we do not believe it would be wise for the Secretary of

State to make a firm commitment that the legislation will change at this stage. The following text might be useful.

“The issue of marching goes right to the heart of this divided community. There are no quick fixes. But infamous acts of bad behaviour like those outside the Sean Graham bookmakers on the Ormeau Road can often sour community relations and heighten tensions for years ahead. Existing legislation contains many fine provisions outlawing intimidation, provocative conduct or behaviour likely to stir up hatred or arouse fear. I am extremely conscious that these powers have not led to the number of convictions ordinary people might have expected. I am to consult urgently with the police and others to see whether tougher powers are needed to ensure minimum standards of behaviour on our streets in this tense time. Any such changes would joint the wider provisions implementing the North Report in the forthcoming Parades Bill”.

General Remarks and Other Confidence-building Measures

19. The above texts may go some way towards meeting the Secretary of State's concerns about tackling band parades. But Terry and I also thought it necessary to question here whether it is wise to seek to make an announcement on bands as a sort of trade off for Drumcree. The two issues are unrelated, indeed as described above, the issue of band parades has little relevance in the main flashpoint areas. Surely an announcement of this sort would in presentational terms it looks like a sop, merely emphasising the Government's irresolution and weakness. Would we not do better to justify our decision on its merits, rather than offer concessions which will be dismissed as inadequate and indeed irrelevant by one community, while antagonising a volatile constituency on the other. The risk seems particularly unnecessary if the bold action we threaten now is not ultimately to be backed up by any major change in practice.

20. If we are to offer a concession, it should be measured and appropriate. If we are to allow a parade down the Garvaghy Road, the obvious counterweight to this would be to pick up a point made by many Garvaghy Road residents, including Fr. Stack. While the appropriate quid pro quo for Drumcree might be a Nationalist march in a Protestant area of Portadown, there is undoubtedly no justification for barring Nationalists parades from the town centre. The Secretary of State might make her views on this clear, while being careful not to infringe the Chief Constable's operational independence. The following text might prove useful.

"I have not taken this decision lightly, but I believe it is a reasonable one and takes due account of the rights of both sections of the community. I hope the decision will be recognised as such, and that those disappointed by it will not seek to defy the rule of law to overturn it. In particular, I hope that those in the Protestant community who have stressed the importance of the right to march will recognise both that it comes with responsibilities, and that it is a right shared by all in the community, not just by one side. Many have pointed out the contrast between the calls for a march down the Garvaghy Road and the resistance by some to Nationalist marches even in neutral areas like town centres. I agree with these criticisms. Those who oppose such marches are seeking to deny others the rights they demand for themselves. I believe the Nationalist community in Portadown has a right to expect generosity and tolerance in the town which they share with their Protestant neighbours"

Signed

Stephen Webb

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