

Transforming Conflict: Flags and Emblems



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Preface and Acknowledgements

Research for this report was conducted in August and September 2003 with additional research undertaken in July 2004. The study was funded by the Office of the First Minister and Deputy First Minister and by the Economic and Social Research Council.

In the course of this research the authors contacted a range of organisations which included TIDES Training, Counteract, The Equality Commission for Northern Ireland, the Northern Ireland Housing Executive, the Police Service of Northern Ireland, Save the Children, Groundwork, political representatives and officers from District Councils. Key individuals were also surveyed in relation to specific case studies. The authors also reviewed policy documents from relevant agencies, produced an overview of relevant legislation and undertook a search of newspapers. Feedback on drafts from government departments and other statutory agencies was also received.

We would like to thank all those individuals and organisations for their support and participation in the research. Particular thanks are due to Dr Neil Fleming for work undertaken in section 3 of this report and to Catherine Boone for her assistance in preparing the report for publication.

Despite the large amount of material that exists on this issue we would highlight the need for continued consultation.

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Executive Summary

This report explores issues surrounding the use of flags and emblems in Northern Ireland. It concentrates on disputes over the flying of official and popular flags but also, by association, relates to other practices such as the writing of graffiti, the painting of murals, the erection of arches and bonfires and the creation of memorials.

This report examines two related issues:

- The popular flying of flags in public spaces.
- The flying of flags over official and publicly owned buildings.

The report contains:

- an exploration of the nature of symbols and why they are important;
- a review of the legislative framework into which issues of flags and emblems fall;
- a review of policies on flags and emblems presently carried out by key agencies and District Councils;
- a number of case studies;
- a range of policy options.

Findings – Flags and Displays in Street

The flying of flags at particular periods of the year has long taken place in Northern Ireland and is common throughout the world. More recently, however, there has been a proliferation of this practice with flags often left flying for much of the year. Whilst some of this is 'popular', in that members of the community welcome the appearance of flags, bunting, murals and painted kerbstones, some displays are not. Most significantly, flags are routinely used to mark territory creating a detrimental effect on community relations.

Evidence from the *Northern Ireland Life and Times Survey* of 2003 suggests that 66% of people believe that paramilitary flags should be removed and that 21% of people feel threatened by paramilitary flags and murals and by the painting of kerbstones.

It is a central finding that whilst there may be a need for new legislation or codes of conduct or protocols on the flying of flags and display of emblems, by far the best way of resolving issues is by looking at the context within which conflict arises and, if necessary, to transform that context. This view was held by almost everyone we contacted.

People and communities display flags and symbols for a variety of reasons. If those displays are creating tension between and within communities then the reasons for those displays need to be addressed. There may be a need for the law to make clear that some displays are unacceptable, but the policing of those laws will be extremely difficult unless the underlying causes are addressed.

A significant factor in dealing with this issue is the range of agencies that have some responsibility. These include DRD Roads Service, District Councils, the Northern Ireland Housing Executive and the Police Service of Northern Ireland. None of these agencies has full responsibility although we are aware of examples where all have tried to tackle the problem. In addition, while there is a range of legislation which could be used, none of this legislation specifically relates to the flying of flags.

We make the following key observations:

- The flying of flags is not a peripheral issue in Northern Ireland. The flying of flags on lampposts and buildings is often a reflection of commemoration and celebration within communities.
- It is of the utmost importance that one understands the context within which flags are flown. This requires consultation and imaginative projects to allow communities to reflect their identities in a non-threatening way.
- Nevertheless, the flying of flags plays a significant role in sustaining territorial divisions within Northern Ireland and can do so by intimidating people. The existence of sectarian territory costs

money since it frequently demands duplication of services, and makes the economic development of local areas and the region more problematic.

- The removal of flags is best undertaken as a common project with agencies working in conjunction with communities to improve the local environment for residents but also with a view to economically enhancing areas.
- Whilst there are many examples of good practice, the approach of the statutory agencies remains ad hoc and inconsistent. At present there is no clear management of the problem and a more co-ordinated and consistent approach is required.
- This may necessitate specific new legislation and/or new policies and structures, together with a targeted budget, to enable better problem solving by agencies.
- However, many of the people with whom we spoke made it clear that certain practices, effectively threatening and intimidating individuals and communities, are always unacceptable and should not be tolerated.

Some policy options:

- **Conflict transformation:** Develop projects that transform the social and economic environment in which people live in a more sustainable way.
- **Mediation:** Develop a more co-ordinated approach to the management and resolution of conflict through the use of dedicated fieldworkers. Increase the number of individuals mediating disputes involving symbols as part of social and economic transformation.
- **Co-ordination and multi-agency approaches:** Provide a clear contact point between agencies involved in this arena (District Councils, DRD Roads Service, NI Housing Executive, PSNI). Partnerships that might utilise District Police Partnerships and Community Safety Partnerships could be considered.
- **Funding of festivals and events:** Funding policies should distinguish practices of commemoration from those of territorial marking. Policies should:
 - tackle the display of symbols and emblems in a way that attempts to differentiate acts of celebration and commemoration from those of territorial marking and intimidation;
 - encourage community events that give affirmation to identities within that community;
 - encourage forms of celebration and commemoration that are less threatening to other communities;
 - make clear, including through rigorous policing, that some forms of symbolic representation are unacceptable.
- **Protocols:** Develop protocols that might consider:
 - Whether particular flags should be banned completely.
 - Whether particular areas should be kept free of flags: mixed areas, arterial routes, interface areas.
 - Whether flag flying should be limited to particular times and particular dates.
 - Whether buildings like schools, hospitals and churches should have no flags placed near them.
- **New legislation:** Whilst a range of legislation exists more clearly defined offences might be helpful. A more equitable version of the 1954 Flags and Emblems Act could be considered. In particular such legislation could more clearly identify which agencies are responsible.
- **Bill of Rights:** Given that one of the rights affirmed by the parties to the Multi-Party Agreement was that of freedom from sectarian harassment, the concept of 'harassment' might in the future be invoked with regard to the erection of flags even where a breach of the peace is unlikely.
- **Utilisation of existing legislation:** We know of a case where Article 13(1) of the Terrorism Act has been used to prosecute individuals who had been witnessed putting up paramilitary flags.
- **Policing:** In line with the above there could simply be more vigorous policing by all the agencies involved. Both the District Police Partnerships and Community Safety Partnerships are possible avenues through which this could be approached.
- **Planning permission:** There are a range of possible options that could be considered. For example, Belfast City Council seeks the opinion of people living in a street before Irish street name plates are erected.

The utilisation of some of these options, in conjunction with projects highlighting community development and environmental improvement offer the possibility of developing public spaces that allow community celebration and commemoration without intimidation.

Findings - Official Flags

Conflict surrounding the use of official flags over government and publicly owned buildings remains a significant issue in Northern Ireland and takes up an enormous amount of political energy. Many District Councils fly flags at a range of buildings they control as well as their headquarters.

Is it possible to develop practices that may bring communities together?

Dealing with the conflicts that arise from the use of flags is not just a moral imperative for public authorities it is now a legal duty. Section 75 of the Northern Ireland Act imposes duties upon public authorities to carry out their functions with due regard to the need to promote equality of opportunity and have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial groups. Some District Councils have undertaken Equality Impact Assessments with a range of outcomes considered.

In addition fair employment legislation makes discrimination on the grounds of religious belief and political opinion unlawful both in the work place and in the provision of goods, facilities and services.

The Flags Regulation (NI) 2000 has defined the use of the Union Flag for designated government buildings on designated days, however, it does not apply to District Council buildings.

A range of practices are followed by District Councils around Northern Ireland. These vary from the flying of the Union Flag on a number of council buildings every day of the year, to flying no flags on any building or flying simply the council flag. Other councils have chosen to follow the legislation for government buildings and fly flags on designated days.

A range of alternatives are argued by the political parties in Northern Ireland:

- The flying of flags on all local authority buildings – reflecting the sovereignty of Northern Ireland.
- No flags at all.
- Two flags – the Irish Tricolour and the Union Flag representing the two main national communities in each Council area.
- Flag days that reflect ceremonial but judicious presentation of United Kingdom sovereignty.
- A flag representing the council area.

Legal advice and advice from the Equality Commission would seem to suggest, taking account of each particular context, that the flying no flag, a council flag or the Union Flag on designated flag days at the headquarters of the local council's head office may be legally defensible as a practice.

Options

- **Ceremonial buildings:** It could be argued that there is a difference between flying a flag at the council's headquarters and flying a flag at a place of work or where a service is delivered. Whilst the headquarters is also a place of work the ceremonial status of the building potentially places it in a different category to that of a work place. As such, other buildings should not fly a flag.
- **Designated flag days:** Statutory rules for government buildings could be extended to local authority buildings. Note that this might require councils not flying any flag to fly the Union Flag on 'flag days'.
- **New Flags:** There is an argument that a council represents the people of a given area, not of a nation; therefore the symbols of a council should represent the District Council area.
- **Consensus:** One suggestion is that no flag should be flown unless all the Councillors agree to a policy. In other words good relations is promoted by demanding consensus amongst politicians.

INTRODUCTION

- 1.1 This report explores issues surrounding the use of flags and emblems in Northern Ireland. It concentrates on disputes over the flying of official and unofficial flags but also, by association, looks at other practices such as the writing of graffiti, the painting of murals, the erection of arches and bonfires and the creation of memorials.
- 1.2 Conflict over flags and other emblems are common throughout the world. They are a part of modern politics. But for Northern Ireland they are associated with particular issues that necessitate a search for clear policy responses. Given the various perspectives of the political communities in Northern Ireland differences are often manifested in an exaggerated use, and proliferation, of flags and particular emotional responses to their use. This has personal, social and economic ramifications. The use of flags and emblems can appear to be threatening and discriminatory towards individuals; they can amplify communal differences within society; and consequently have enormous ramifications for national and local governance, for policing, for community development and for inward economic investment. The use of flags is clearly connected to the demarcation of territory through fear and intimidation.
- 1.3 Yet the use of flags and emblems is also an essential part of people's political and cultural identity. Expressions of cultural and political identity are not only the rights individuals should hold but can also be of great economic benefit. In Northern Ireland the flying of flags both in number and variety has traditionally been associated more widely with Unionists and Loyalists rather than Nationalists and Republicans. The success, however, of a number of Ulster County Gaelic football teams in recent years, and the flying of flags in support of these teams, has come to greater prominence with local repercussions.
- 1.4 This report will explore the possibilities for overcoming conflicts over flags and point to the transformative possibilities that might be harnessed through expressions of political and cultural identity. The report will look at the legal environment and explore the policies of District Councils and other key agencies. It will attempt to review any good practice in dealing with 'symbolic conflicts' in Northern Ireland, comparing approaches that utilise legal processes with those deriving from local mediation, community and environmental development. In conclusion, it will offer a series of policy options within the context of section 75 of the Northern Ireland Act 1998 which places statutory obligations on public authorities concerning the promotion of equality of opportunity and good relations.
- 1.5 This report examines two related issues:
- (1) The popular flying of flags in public spaces.
 - (2) The flying of flags over official and publicly-owned buildings.
- 1.6 The report contains:
- a review of relevant material;
 - an exploration of the nature of symbols and why they are important;
 - a review of the legislative framework in which issues of flags and emblems fall including District Council by-laws;
 - a review of policies of flags and emblems presently put forward by key agencies and District Councils;
 - a number of case studies;
 - a range of policy options.
- 1.7 **It is a central finding that whilst there may be a need for new legislation or codes of conduct or protocols on the flying of flags and display of emblems, by far the most effective way of resolving issues is by looking at the context within which conflict arises and, if necessary, transform that context. This view was held by almost everyone we contacted. People and communities display flags and symbols for a variety of reasons. If those displays are creating tension between**

and within communities then the reasons for those displays need to be addressed. There may be a need for the law to make clear that some displays are unacceptable, but the policing of those laws will be extremely difficult unless the underlying causes are addressed.

Conflict and Context

1.8 The display of flags and emblems in Northern Ireland has been a site of contest since the foundation of the State. Many existing public events and most occasions of public presentation have become sites of symbolic competition. They have often represented political fissure rather than any sense of cross community cohesion. Over the last thirty-five years there have been a range of policy initiatives in an effort to develop cross-community or neutral symbols and events. These have explored either utilising the existing cultural repertoire within the North of Ireland or creating a new focus.

1.9 Analysis of the use of symbols must involve an exploration of the way symbols work. The same symbol can be viewed and used in many different ways. There is no innate meaning to a symbol. Humans give symbols meanings. Thus a flag can simultaneously be the marker of official and legal sovereignty and also the marker of local territory. It can be emblematic of democracy but also the harbinger of fear. The display of a symbol can be defended as freedom of speech whilst also be criticised as intimidation. This is particularly evident in Northern Ireland where political divisions over the nature of the polity have often been expressed through violent conflict. The challenge, therefore, is to find ways of allowing for public expressions of identity and freedom of speech in forms that do not threaten others.

1.10 A recent consultation paper *A Shared Future* from the Community Relations Unit of the Office of the First and Deputy First Minister (OFMDFM) provides an overarching aspiration for the future of Northern Ireland.

Our vision for Northern Ireland is of a peaceful society in which everyone can freely and fully participate, achieve their full potential, and live free from poverty. We want a fair and effective system of government, underpinning rights that are guaranteed for all, and responsibilities that all must share. We wish to support dialogue, and to foster mutual understanding and respect for diversity. (para 1.1)

1.11 A response from the Community Relations Council – *A Shared Future: A Consultation Paper on Improving Relations in Northern Ireland* - suggests a number of policy aims including 'developing integrated, mixed and shared communities where people of all backgrounds can live, learn and work together' (p20).

Openly sectarian graffiti, aggressive paramilitary flags and murals, campaigns of intimidation and the inappropriate flying of flags and emblems should be the subject of clear policy and prompt action by responsible bodies. (para 8, p.21)

1.12 It is also worth reviewing the key political and legal instruments within which the issue of symbols needs to be viewed. *The Multi-Party (Belfast or Good Friday) Agreement* of 1998 set a new political context affirming the current position of Northern Ireland within the UK but also recognising the particular circumstances of these six counties. It did this by creating a unique set of political institutions governing power-sharing and the relationship between the United Kingdom and the Republic of Ireland. It states:

All participants acknowledge the sensitivity of the use of symbols and emblems for public purposes, and the need in particular in creating new institutions to ensure that such symbols and emblems are used in a manner which promotes mutual respect rather than division. Arrangements will be made to monitor this issue and consider what action might be required. (p.20)

1.13 Also of fundamental importance is the Human Rights Act 2000 that incorporated most of the European Convention on Human Rights (ECHR) into domestic law. However, a key

piece of legislation providing the context for this report is Section 75 of the Northern Ireland Act 1998. This imposes statutory duties upon public authorities.

Section 75.

- (1) *A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity –*
- a) between persons of different religious belief, political opinion, racial group, age, material status or sexual orientation;*
 - b) between men and women generally;*
 - c) between persons with a disability and persons without; and*
 - d) between persons with dependents and persons without.*
- (2) *Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial groups.*

- 1.14 The Fair Employment and Treatment (Northern Ireland) Order 1998 makes discrimination on the grounds of religious belief and political opinion unlawful both in the work place and in the provision of goods, facilities and services. The Fair Employment Code of Practice states that employers are required to identify any practices that do not provide equality of opportunity (1.1.2). They should:

Promote a good and harmonious working environment and atmosphere in which no worker feels under threat or intimidated because of his or her religious belief or political opinion, e.g. prohibit the display of flags, emblems, posters, graffiti, or the circulation of materials, or the deliberate articulation of slogans or songs which are likely to give offence or cause apprehension among particular groups of employees.
(5.2.2)

The Code of Practice suggests that Employers might take affirmative action by considering:

ending displays at the workplace of flags, emblems, posters, graffiti, or the circulation of materials, or the deliberate articulation of slogans or songs which are likely to give offence to, or cause apprehension among, any one section of the population.

- 1.15 Also of note is the Criminal Justice (No. 2) (NI) Order 2004 which increases the sentences that can be given for so called hate crime. Under this order sentences can be increased for criminal acts aggravated by hatred over race, religion, sexual orientation and disability.

Some of the issues

- 1.16 In spite of all of the political and legal development since the mid 1990s, the *Shared Future* document (2003) points to the following:
- violence at interfaces between communities continues to affect lives, property, business and public service
 - whilst levels of tolerance and respect for diversity within the Protestant and Catholic communities has been improving, there is evidence that they have decreased recently
 - housing has become more segregated over the last 20 years
 - around 95% of children still attend non-integrated schools
 - there are high levels of racial prejudice in Northern Ireland and the situation has recently become worse
 - there is little change in the extent of inter-community friendship patterns
 - in some urban areas further divisions are emerging within local communities
 - people's lives continue to be shaped by community division.

In summary, Northern Ireland remains a deeply segregated society with little indication of progress towards becoming more tolerant or inclusive. (para1.3)

- 1.17 Territorial demarcation is common throughout Northern Ireland. Flags, painted kerbstones and murals all mark out ownership of a particular space. Flags and murals often represent paramilitary groups. There have been frequent disputes over the flying of flags on lampposts as well as the use of symbols in murals and the painting of kerbstones. These disputes cause ongoing tensions. The displays are often viewed as intimidating, and, on occasion lead to violence.
- 1.18 The existence of territories costs money, frequently demands duplication of services, and makes the economic development of local areas and the region more problematic. The every day behaviour of people all over Northern Ireland is dictated by the demarcation of public space through flags, murals and kerbstone painting. Many service providers have to cope with difficulties created by this demarcation of space. 'Symbolic conflicts' are part of the environment in which violent conflict is perpetrated.
- 1.19 Could, or indeed should, the Police Service of Northern Ireland, or the Northern Ireland Housing Authority, the Department for Regional Development, or the local District Council be more proactive in policing such displays? After all, we now have a code of practice backed by legislation demanding of employers that they create a good and harmonious working environment, whilst flags and emblems are often displayed from publicly owned lampposts, walls and kerbstones outside many workplaces.
- 1.20 The context in which displays of flags take place will vary and has ramifications for actions that might be taken by the police or other authorities. There may be widespread support in a particular communities and surrounding for particular displays. There may be widespread support in a small local area but not in surrounding areas and this may raise tension. The display of flags may be close too an interface with another community, or they may be on a main road along which people with a range of backgrounds might pass. Displays of flags may be on private property. It may be that an incident in an area raises tensions making the use of flags less acceptable. The type of flags used might also make a difference. If the flags represent prescribed organisations this makes a difference to the legislation that might be used in their removal. **It cannot be stressed too much that understanding the context in which the popular display of flags takes place is vital.**
- 1.21 Since the Multi-Party Agreement there have been attempts to deal with differences over the display of flags and emblems on public buildings. Most notably, a relatively uncontested emblem has been produced for the new Northern Ireland Assembly whilst highly contested debates took place over the flying of official flags at public buildings and the creation of new symbols to represent the Police Service of Northern Ireland. In the debate over flags, a range of options have been suggested from flying no flags or several flags, to the creation of a new flag. The Flags Order 2000 now designates particular days on which the Union Flag should fly on government buildings but it is still a potentially contentious issue, and the legislation does not apply to local Council buildings where policies vary quite widely. Should there be new symbols and flags to represent Northern Ireland and bodies within Northern Ireland? Should there be an arrangement of flags, two or more, such as the Union Flag, the Tricolour or the flag of the EU, flown from public buildings?

Attitudes

- 1.22 *The Northern Ireland Life and Times Survey* has contained a series of questions over attitudes towards flags and murals since 2000 (Appendix II). One striking statistic from both the 2001 and 2002 surveys is the level of ambivalence in both communities towards both the Union Flag and the Tricolour. When asked in 2002 how they feel when they see the Union flag 43% of Protestants and 77% of Catholics feel neither proud nor hostile towards the flag. The same question asked about the Tricolour produced figures of 42% for Protestants and 70% for Catholics. Similarly, 79% of Protestants and 77% of Catholics said that at no time in the previous year had the felt intimidated by loyalist

murals, kerb painting or flags and 70 % of Protestants and 86% of Catholics said that at no time in the previous year had they felt intimidated by republican murals, kerb painting or flags. However, these figures are revealing in another sense. They suggest that around 1 in 4 or 1 in 5 of the population do feel intimidated. Given that it is likely that people in particular geographical regions are likely to be more affected than others the figures suggest a significant problem.

- 1.23 In 2003 the *Northern Ireland Life and Times Survey* ran a further set of questions on paramilitary flags (Appendix II). These suggested that 66% of people strongly agreed or agreed that the police should remove paramilitary flags throughout Northern Ireland (60% of Protestants and 75% of Catholics). Only 11% disagreed. 25% of people agreed that paramilitary flags are an important expression of culture, 47% disagreed or strongly disagreed (the figures for Protestants and Catholics are very similar). 65% of people supported special laws banning the flying of all paramilitary flags in Northern Ireland, with more support, 72%, amongst Catholics, than amongst Protestants, 58%. Only 10% of people disagreed. When asked if the flying of paramilitary flags should be allowed in some neighbourhoods only 13% agreed (similar for both Protestants and Catholics), whilst 61% disagreed. Around 23% of people thought paramilitary flags should be allowed at certain times of year but again 53% of people disagreed. These figures seem to give quite a clear and consistent attitude within both communities towards paramilitary flags. Since the flying of paramilitary flags is much more common within the Protestant community it is interesting that although negative attitudes towards the flags are not quite as strong as in the Catholic community they are nevertheless significant. It should, however, be pointed out that it is unclear what is considered a paramilitary flag. It may be that some people would consider the Irish Tricolour, in particular contexts, to be a paramilitary flag. Similarly the Union Flag when flying in conjunction with other paramilitary flags could be considered threatening. It may also be that people might not consider certain versions of UVF flags to be paramilitary in nature. Surveys do not reveal some of the nuances of understanding.
- 1.24 The figures indicate quite widespread support for more legislation and stronger enforcement to deal with the flying of paramilitary flags. However, revealingly the *Northern Ireland Life and Times Survey* asked if people thought laws to stop paramilitary flags would be enforceable. 50% of people thought they would not and only 20% thought they would. This would suggest that people are realistic about the difficulties involved in particular communities.

Why are Symbols and Emblems Important?

- 2.1 We seem to spend a disproportionate amount of time in Northern Ireland displaying and arguing over symbols, which flags to use outside an official building, whether people should be allowed to wear a poppy or a black ribbon at work, or the content of a new mural. For many people such debates seem to be a waste of energy. On the other hand, debates over symbols are also ways of talking about fundamental issues. The Irish Tricolour and the Union Flag are not simply pieces of cloth but represent a whole range of beliefs and identities. If we are to start exploring how to deal with disputes over symbols it is worth exploring how symbols work.

Why do symbols mean what they mean?

- 2.2 Symbols are in themselves, meaningless: they do not have innate meanings. Human beings give them meaning. Symbols are multi-vocal, that is, they have layers of meaning. They do not communicate a single proposition, but rather a collection of propositions, ideas and emotions. Different people will invoke different meanings in the same symbol. A person may see a number of meanings in the same symbol and different people can see very different meanings in the same symbol. The Red Hand of Ulster can be viewed as a Loyalist emblem, a GAA badge, or the crest of the O'Neill family. Both the Union Flag and the Tricolour may be perceived as threatening when displayed in particular contexts (evidence in the Northern Ireland Life and Times Survey – Appendix 2). They are not simply national flags.
- 2.3 **The context in which a symbol is used is all-important.** The same symbol used in different places, or in the context of other symbols, can have its meaning altered. Think of the Union Flag wrapped around Linford Christie's shoulders at the Olympics, or held by a member of the British National Party in Oldham, or flying from a lamppost in Sandy Row or on a flag pole in Dublin during the visit of a UK Prime Minister, or in the corner of the Australian national flag, or on the cover of a Sex Pistols album. Equally, the Irish Tricolour displayed over government building in Dublin, or on an advert for Guinness, or at a north Belfast interface have different meanings. In each case, the context in which symbols are displayed suggest different meanings.
- 2.4 **Interpretations of symbols are not static.** They can change, sometimes dramatically, over time, depending upon how they are used and who uses them. The Red Hand of Ulster is a good example of this. It has moved from representing a 16th century Gaelic aristocratic family in Ulster to representing an Ulster that is no longer nine counties but the six counties of Northern Ireland. Yet it still appears on many Gaelic sports tops. The meanings attached to particular symbols change over time and are dependent upon the context in which those symbols are used.

Symbols or Community and Identity

- 2.5 Symbols can be used to represent, invoke or imagine a diverse community. This is the key to understanding how they are used in modern politics. Because symbols have layers of meaning and have different meanings for different peoples they can be used to represent a diverse group who may share almost nothing in common. This of course is what nations and communities are all about. Symbols therefore condense identities. Many people can share allegiance to a flag without necessarily sharing a common understanding of that flag. Does the Union Flag stand for a heterogeneous pluralist country of many peoples or a white Protestant people that once had an empire? There have even been suggestions in Britain that the blue on the Union Jack should be turned to Black to represent a new multi-cultural society (BBC News Web – 11.06.2003). With the Irish Tricolour the colours appear to change: sometimes people describe it as green, white and gold and at other times correctly, it is green, white and orange.

- 2.6 When representing large diverse communities, symbols work best when they are ill-defined. As soon as a politician or group within a community attempts to *over-define* the symbol, they inevitably begin to exclude those who have a different understanding of its meaning. The result is either a struggle over meaning or one of the groups stops using the symbol. The Union flag and the Irish Tricolour, when used in Northern Ireland are in part defined by political groups and communities. Both are, in some contexts, symbols of party not simply symbols of nation.

Why do people care?

- 2.7 Symbols can evoke great emotion and help motivate people's actions. People will die for their flag or see it as an almost sacred object. As such, many people believe that national flags should be treated with respect. For example, there has been significant controversy in the United States over whether free speech should include the right to burn the flag of the country.
- 2.8 The more a flag or emblem becomes associated with the identities of particular groups of people, the greater potential for an emotive response from those people. Those who use a symbol to define themselves in an exclusive way are likely to see any attack on that symbol as an attack upon themselves, whilst others see it as threatening.
- 2.9 Those with power, particularly those in official positions, are better placed to define the meanings of symbols than those with less power. They can therefore use symbols to legitimise their position. That power can be either derived from having an official position, from popularity or from the ability to propagate ideas through the control of the media and other institutions. Heads of State are in a particularly strong position to take the lead to define and redefine symbols. In Northern Ireland, in spite of the divisions, the Office of the First Minister and Deputy First Minister would be in a relatively good position to define and redefine new and old symbols. This would suggest that a number of political strategies are possible for building a civic political consciousness. **This building process can take time but symbols can grow in value if routinely used in the right context.**
- 2.10 The defining and redefining of symbols is usually done through rituals. Important symbols will be associated with official ceremonies that imbue them with a sense of sacredness. **There is a direct relationship between official displays of flags and the use of them by the populace.**
- 2.11 Large gatherings of ordinary people (another kind of ritual) can act as powerful moments at which symbols can be used against officials. Similarly large displays of symbols can give the impression of power. If a large number of new symbols appear it would suggest that the social context for the use of those symbols has changed. The widespread use of loyalist paramilitary flags after the signing of the Multi-party Agreement suggests that the context in which those loyalists are behaving has changed. Equally the development of St. Patrick's Day has changed the way the Tricolour is used in Belfast City centre. If the role of an organisation or event is changing, symbols may well be used to provide a link with the past or show a presence when the existence of an organisation is effectively under threat. Elaborate displays may be signs of confidence but they can also be a sign of insecurity.
- 2.12 The frequent use of symbols is also recognised as a sign of insecurity. Symbols can offer emotional comfort. The use of the US flag after 11 September 2001 is a clear example. Such practices can, however, appear threatening to others.
- 2.13 That said, the over-use of a symbol can reduce its sense of sacredness as it becomes common place or associated with a more dismal or mundane environment. More limited use of a flag or symbols can give it added resonance. It is frequently noted in Northern Ireland how flags are left to become tatty and therefore appear to be treated with disrespect. The feeling associated with the flags can then become negative rather than positive.

Some Theory

2.14 It is useful to view symbols as containing a stock of symbolic *capital*. Because symbols evoke emotion and influence peoples actions, they are effectively 'political currency' with which you can obtain legitimacy for activities. Symbolic capital can be utilised by a range of people if they are seen as legitimate representatives of the symbols. **The debates over flags and emblems are more than just peripheral to politics. They can act as a proxy for fundamental political discussions and activities.**

2.15 It is possible to set out a very simple model of symbolic conflict and how the symbolic capital is used (see Harrison 1995). Symbols are:

Invented/created. At some point someone has to design/construct/use a symbol and attempt to give it value (symbolic capital). The Irish Tricolour, the Union Flag and the South African flag have all at some point been invented and the use of the Poppy, the green ribbon and the white ribbon are all practices that started at a particular point in time.

Once invented, symbols can be more or less valued. Symbols can have their value increased or decreased. People will undertake strategies to increase the value of a symbol. That strategy may include giving one symbol a greater value than another. For example, if the Office of the First Minister and Deputy First Minister increasingly used the symbol for the Assembly and the Assembly was popularly seen as a good thing, then the status and value of the symbol would rise.

Symbols with value are often appropriated. A symbol with existing capital can be appropriated. Symbols can be utilised by more than one group and be competed over. Sometimes popular symbols are appropriated and then controlled by the State. Sometimes popular use of a symbol takes it away from the state or politicians. In contemporary politics in Northern Ireland we see ongoing battles of ownership over The Red Hand of Ulster, Cuchulainn, and St. Patrick.

Destroyed. Symbols can be destroyed or banned as other political groups expand. It is crucial to understand what space exists in the public sphere for the display of symbols. Religion often provides the best examples. The most obvious recent example is the Taliban restrictions on all other belief systems in Afghanistan. But Hindus and Muslims in India, Jews and Muslims in the Middle East, Christians and Muslims in Southern Spain, Christians and other Christian groups across Europe have attempted to destroy or restrict the symbols of others. A Soviet regime in Russia removed religious symbols and then has itself been removed from the public sphere. Ironically, and iconic-ally, the destruction of an opponent's symbol is in part recognition of its power. If a former symbol of power can simply be left and admired under a new regime it suggests that the power of the new regime is secure. Similarly, attempts to legally restrict the use of symbols can act to increase their status.

2.16 The above strategies are ideal types. Groups may well be using a combination of strategies at the same time. For example, loyalists in Northern Ireland may be giving greater value to the Northern Ireland/Ulster flag than accorded to the Union Flag by putting them on lampposts whilst still defending the use of a Union Flag when officials threaten not to use it on a Council building.

2.17 These strategies are structured by relationships of power, feelings of identity, and senses of (in)security. They are also multi-layered. For example, the Union Flag might be highly valued by Unionists when it is threatened by Nationalists who argue it should not fly over a Council building. At the same time, however, those Unionists may be putting up the Northern Ireland/Ulster flag or even Ulster Independence flags in their own areas where once Union Flags flew. This is because the political strategy used inter-group is different to the intra-group strategy.

Conclusions

2.20 What might all of this tell us about the use of symbols in the politics of Northern Ireland?

- The use of symbols should not be seen as peripheral to political debates but as a fundamental part of people's emotional attachment, as individuals, to political groups and communities.
- We must never lose sight of the idea that symbols are a form of communication.
- Remember that the message intended is not always the same as the message received.
- A whole range of messages might be received.
- There is a complex hierarchy of manipulation involved in the politics of symbols.
- Attachment to symbols therefore has huge emotional resonance and policies dealing with symbols needs to take this into account.
- **Most importantly, the context within which a symbol is used is all important.**

2.21 Understanding how symbols work will not in itself solve symbolic disputes. What it does offer, however, is a chance to look at the dynamics of these disputes and to explore the effects of certain strategies in dealing with the disputes.

3 THE LAW

Relevant Legislation

3.1 There exists a small body of statute law relating to the flying of flags, but there is nothing that deals specifically with flags flown on street lampposts or the painting of wall murals. It is possible, however, that various legal remedies and statute law may be utilised to clarify the positions of those parties who dispute the flying of flags and erection of illegal 'memorials'. It must be borne in mind, however, that lawful legal defences and policy considerations may limit the effectiveness of any possible remedy. Also, in certain situations, the court may examine the practice of specific agencies and conclude that previous inaction may provide a defence (implied licence, see below). What follows is a summary of the law. Due to the considerable dearth in case law, and lack of policy guidance from government agencies and the courts, it is not possible to state with absolute certainty what the position would be should any part of it be utilised.

3.2 A major reason for the lack of prosecutions can be attributed to government policy. On 18 July 2002 the Minister of State for Northern Ireland, Jane Kennedy MP, responded to a question from the Liberal Democrat MP Lembit Opik about the use of legal remedies in relation to paramilitary symbols in Northern Ireland. In reply the Minister stated:

It must be emphasised that contemplating any such prosecution ... is strictly dependent on the individual circumstances of the case. For instance what may intimidate, provoke etc. a particular reaction at an interface, may not have the same effect in the middle of a Loyalist or Republican estate.²

3.3 There are several important legal areas which have to be addressed when considering the flying of flags from lampposts including freedom of expression, freedom to protest, use of offensive images or language, rights of others not to be intimidated and general laws applying to flags. This review will firstly look at the relationship between the law and flags/emblems, and then examine areas of the law that have some bearing on the issue of flying flags and erecting emblems on public property.

Flags and emblems: general

3.4 For political and social reasons the flying of flags, especially from lampposts, is a contentious issue in Northern Ireland. This is partly because of the importance of flags. This importance, or significance, has been recognised by the law in a number of areas, some useful to this study, for example, the laws and rules regulating flags on ships, and the etiquette pertaining to flying national flags. While shipping flags are tightly regulated there appear to be no regulations, as opposed to tradition and etiquette, relating to a citizen flying the Union Flag. Indeed, it was in a response to a question in the House of Lords that the Earl of Crewe clarified the right of every citizen of the Commonwealth to fly the Union Flag on land.³

3.5 The law also regulates the use of particular political or state symbols. No national flag (of any state) may be used in an advertisement (although foreign flags may be displayed without adornment on a single vertical flagstaff).⁴ A Scottish court has held that it is not necessary for such flags to promote products or that they indicate the nature of the goods displayed. It is sufficient that they attract or draw attention to the presence of the

¹ See *Halsbury's Laws*, passim; see also written answer from Jane Kennedy MP (Minister of State for Northern Ireland) to Lembit Opik MP, *Hansard*, 18 July 2002.

² *Hansard*, *ibid.*

³ *Hansard* (Lords), 192 (fourth series), cols. 579–580.

⁴ *Halsbury's Laws*, Town and Country Planning. 3. Control over Development. Control of Display. Exceptions. 510. Class I: National Flags.

defendant's retail premises.⁵ It is doubtful that the use of flags on, for example, paramilitary memorials, could be viewed as advertisements within the meaning of the law, although a wide interpretation of what are, after all, planning laws is not out of the question. The prohibition of the use of royal symbols (or imitations thereof) only applies to trade marks, where it may be seen to imply the approval or use of a product by a member of the Royal Family.⁶

Flags and emblems: Northern Ireland

- 3.6 In the mid-fifties the Northern Ireland Parliament passed the Flags and Emblems (Display) Act (Northern Ireland) 1954. Section 2(1) gave the police the power to order a person who erected an 'emblem' to remove it, or for the officer to remove it, if the officer felt it would lead to a breach of the peace. If the person failed to obey the constable's order they would be guilty of an offence. This proposition was not in itself totally unreasonable, what made the Act controversial and partisan was section 2(4). This states that 'emblem' includes a flag of any other kind except the Union Flag. Thus other emblems and flags were at risk of removal subject to the judgement of the police, while the Union Flag was given negative protection (the fact that it was excluded from the provisions of the Act indicates that there was no prescribed treatment should it be the cause of a breach of the peace). It is worth noting that this Act was, according to Paul Bew et al, enacted following pressure on the government from populist unionism.⁷ Further, it was reported in cabinet that the Inspector General of the RUC was not happy with the 'impossible task' the Act imposed on his officers, and at least two ministers regarded it as 'yielding to the agitation of the extremists.'⁸ The controversial and infamous implementation of this Act was the obvious reason for its repeal in 1987.⁹ Nevertheless, had section 2(4) not made any special provision for the Union Flag, it may well have provided one statutory solution to the current debate, although it would require the belief that a flag's presence would lead to a breach of the peace (for a related legislative provision concerning graffiti see council powers and bylaws below).
- 3.7 The only recent legislation dealing specifically with flags has been the Flags (Northern Ireland) Order 2000 which gives the Secretary of State for Northern Ireland power to make regulations regarding the flying of flags at government buildings (s.3(1)).

⁵ C. John Taylor v. Secretary of State for Scotland (2 Div) 1997 S.C. 179.

⁶ *Halsbury's Laws*, 2. UK Registered Trade Marks (3) Requirements for Registration of UK Trade Marks and for Protection of International Marks (ii) Absolute Grounds for Refusal of Registration/63. Specially protected emblems.

⁷ Paul Bew, Peter Gibbon, Henry Patterson, *Northern Ireland 1921/2001: Political Forces and Social Classes* (London, 2002), p 97.

⁸ *Ibid.*

⁹ Section 27 Public Order (NI) Order 1987.

Flags and Regulations (Northern Ireland) 2000

Flying of flags at government buildings on specified days

2. -(1) The Union flag shall be flown at the government buildings specified in Part I of the Schedule to these Regulations on the days specified in Part II of the Schedule.

2. The Union flag shall be flown on the days specified in Part II of the Schedule at any other government building at which it was the practice to fly the Union flag on notified days in the period of 12 months ending with 30th November 1999.

3. In paragraph (2), "notified days" means days notified by the Department of Finance and Personnel to other Northern Ireland Departments as days for the flying of the Union flag at government buildings during the period of 12 months ending with 30th November 1999.

(4) Where a government building specified in Part I of the Schedule has more than one flag pole, the European flag shall be flown in addition to the Union flag on Europe Day.

- 3.8 In October 2001, this power was challenged in the High Court by the Sinn Fein MLA, Conor Murphy, partly on the basis that the Order was used for political purposes (although Mr Murphy also contended that it was 'not in keeping with the Good Friday Agreement'), and that it was *ultra vires*. Mr Justice Kerr found for the respondent. As for political motivations he declared that such decisions are 'the stuff of politics. It is not subject to judicial review.' Kerr J also dismissed Mr Murphy's argument that the flying of the flag breached section 75 of the Northern Ireland Act 1998 (duty to implement an equality scheme, see below). The Secretary of State, according to Kerr J, is not a public authority within the meaning of the Order, and the flying of the Union Flag is not designed to favour one flag over another, but rather 'it merely reflects Northern Ireland's constitutional position as part of the UK.' Further, the new regulations for flying the Union Flag on public buildings will mean that Northern Ireland will fall into line with the rest of the United Kingdom and that means a reduction in the number of days on which it is flown. It was in Kerr J's opinion that the regulations which require that the Union Flag be flown on government buildings do not treat those who oppose it less favourably: 'The purpose of the regulation is ... to reflect Northern Ireland's constitutional position, not to discriminate against any section of its population.' As to the assertion that it was against the principles of the Agreement ('partnership, equality and mutual respect'), Kerr J felt that by restricting the flying days to those practised in the rest of the United Kingdom the Secretary of State was striking a balance between acknowledging the constitutional position of Northern Ireland and those who opposed it. Accordingly, the regulations were not contrary to the Agreement. He also found that the Secretary of State had not acted *ultra vires*.¹⁰
- 3.9 In May 2002 Belfast City Council obtained the legal opinion of a Queen's Counsel, Mr Nicholas Hanna, in relation to the display of flags, memorabilia and emblems at the City Hall.¹¹ It was his view that the Flags Order 2000 (above) only applies to government buildings and not City Hall for which the Council remained responsible.¹² However, he advised that Council policy must be exercised in a lawful fashion as it is subject to judicial review.

¹⁰ *Re Murphy's Application for judicial review* [2001] N.I. 425 (4 Oct. 2001). Our thanks to Professor John Morison, School of Law, Queen's University, Belfast.

¹¹ This was discussed at a meeting of the Policy and Resources Committee, 18 Apr. 2003. Details taken from the minutes (online) and Belfast City Council, *Report of the Director of Legal Services: submitted to the Policy and Resources Committee 25 May 2003* (also online as appendix B to above).

¹² Government building is defined by article 3(2) as meaning a building wholly or mainly occupied by members of the NI Civil Service.

3.10 In relation to article 19 of the Fair Employment and Treatment (Northern Ireland) Order 1998, which obliges employers to take steps not to discriminate against any person, Mr Hanna felt that the Council would be on safer ground if it restricted the flying of the Union Flag to designated Flag days (presently 15) as is the practice in the rest of the United Kingdom.¹³ There is a risk that if challenged they might be in breach of article 19 if the flag was flown every day. He was clear that in flying the flag the Council would not be in breach of article 28 of the same Order relating to discrimination and the provision of services.¹⁴ This is in keeping with the case of *Johnston v. Belfast City Council* in which it was found that a portrait of the Queen at a council workplace was inappropriate, but that it may be appropriate at certain ceremonial functions.

3.11

Fair Employment and Treatment (NI) Order 1998

art. 28- (1) It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a person who seeks to obtain or use those goods, facilities or services - (a) by refusing or deliberately omitting to provide him with any of them; or - (b) by refusing or deliberately omitting to provide him with goods, facilities or services of the same quality, in the same manner and on the same terms as are normal in his case in relation to other members of the public or (where the person so seeking belongs to a section of the public) to other members of that section.

3.12 Counsel then addressed section 75 of the Northern Ireland Act 1998 which obliges public authorities to prepare an equality scheme showing how they propose to promote equality of opportunity and good relations. Such a scheme applies to the flying of the flag and artefacts within the City Hall. Mr Hanna cites Kerr J's judgement in *Re Murphy* that the reduced number of days was in itself designed to promote good relations while also striking a 'balance between, on the one hand acknowledging Northern Ireland's constitutional position and on the other not giving offence to those who oppose it.' Therefore, if the legislation had authorised the Union Flag to be flown excessively then there may have been a breach of section 75, just as a Council policy that allows for the flag to be flown all year round may also be in breach of section 75. He concludes: 'So long as it is making effective progress within the timescale laid down within the Equality Scheme, it is difficult to see how a complaint that the Council is failing to comply with the Equality Scheme could succeed at the present time.'

3.13

Northern Ireland Act 1998

s. 75. - (1) A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity - (a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; (b) between men and women generally; (c) between persons with a disability and persons without; and (d) between persons with dependants and persons without. - (2) Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group
s. 76. - (1) It shall be unlawful for a public authority carrying out functions relating to

¹³ *Brennan v. Short Brothers plc* (1995): 'A neutral working environment is one where employees can work without contemplating their own or any person's religious belief or political opinions. It is not about the size of flags or the precise manner in which religious beliefs or political opinions are demonstrated – it is about the effect which things have whether intended or not ... It has to be emphasised as often as is necessary that anything which identifies community allegiance needs justification in the workplace'.

¹⁴ 'There is nothing in Article 28 which could be regarded as corresponding with the concept of a neutral working environment which falls to be considered under Article 19.'

Northern Ireland to discriminate, or to aid or incite another person to discriminate, against a person or class of person on the ground of religious belief or political opinion.

- 3.14 Section 76 prohibits a public authority carrying out functions relating to Northern Ireland in a manner which discriminates against a person or class of persons on the grounds of religious belief or political opinion. In Mr Hanna's view it is difficult to see what Council functions would be affected by the flying of flags on the exterior of Council buildings, the risk of breaching section 76 he concludes, is remote. However, there is the possibility, especially considering the statutory obligations imposed by section 75, that the failure by government agencies to take any action about their flags may lead to the public prosecuting the agency involved. This would be a disastrous course of events and should be avoided. But it appears as though the agencies themselves are awaiting guidance from central government.¹⁵
- 3.15 The Equality Commission recently examined the application of section 75 in relation to the erection of Twelfth of July bunting in Lurgan and Portadown by Craigavon Borough Council.¹⁶ The Commission found that red, white and blue bunting is associated predominantly with one community and that it 'may be considered unlawful ... if the Council did not follow the same policy options ... in respect of requests for bunting associated with the other main community in Northern Ireland or indeed other groups wishing to celebrate other types of religious festivals.'¹⁷

Rights and freedoms

- 3.16 The Human Rights Act 1998, which came into force in the UK in October 2000, incorporates the rights in the European Convention on Human Rights into UK Law. They can be enforced in domestic courts, and public authorities cannot act incompatibly with them. In making a decision on cases such as this, a court or public authority will therefore have to fully take into account the Convention rights of all affected, whether the person putting up the flag or local residents or community members. Most Convention rights are not absolute and cannot be exercised in such a way as to (inter alia) unreasonably curtail the rights of others. Where the balancing exercise is particularly difficult legal advice, should be sought by the public authority.
- 3.17 Such freedoms do not give the citizen a *carte blanche* right to express any opinion by citing the Convention, and the Convention recognises that rights must be limited in certain circumstances (see, for example, Article 10(2) below).

Article 10, European Convention on Human Rights:

- 1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent the State from requiring the licensing of broadcasting, television or cinema enterprises.
- 2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

¹⁵ D.M. McKibbin (Chief Exec. of Roads Service) to Neil Fleming, 19 Aug. 2003.

¹⁶ Joan Harbison (Chief Commissioner of Equality Commission for Northern Ireland) to Cllr. M.D. Kelly, 11 July 2003.

¹⁷ Joan Harbison, *ibid.*

- 3.18 Article 17 directly addresses the ability of a state to limit such freedom. It states that the Convention must not be interpreted so as to give any state, group or person the right to engage in activities aimed at limiting other people's rights (this will be relevant in nuisance cases, below). In Hong Kong a recent case addressed freedom of expression in relation to flags.¹⁸ The Court of Final Appeal ruled that destroying the national and regional flags of China and Hong Kong breached Hong Kong law relating to public order, and that this was a lawful restriction of the freedom of expression. In reaching their decision the court acknowledged the political role of flags in implementing the 'one country, two systems' principal.¹⁹ While the details of the case may not be directly applicable to Northern Ireland, this common law case demonstrates that courts can look at the political significance of flags when judging freedom of expression.
- 3.19 The European Convention, like the Convention used in Hong Kong, first confers certain rights and then provides for the restriction of those rights for broad reasons of national security, crime prevention and the protection of the rights of others. In short, 'rights' are what is left after the law has laid down preconditions. Like other signatory states the UK is able to lawfully restrict the exercise of this right, this is especially marked in Northern Ireland. According to Professor Brice Dickson, Chairman of the Northern Ireland Human Rights Commission:
- In Northern Ireland there are more of these preconditions than in other parts of the United Kingdom and as a result the extent of the remaining freedom is not as wide as in Great Britain. This is partly because the freedom has sometimes been abused...*²⁰
- 3.20 This 'abuse' of freedom has not only led to more restrictions, but, from a non-legal standpoint, continues to cause difficulties for the enforcement of any law by regional government agencies. No matter what restrictions the Convention may provide for, some people in Northern Ireland may yet believe that they have an undiluted right to erect flags or other such symbolic totems.

Lawful limitation of Convention rights

- 3.21 Many restrictive laws and rules that preceded the Convention have not (so far) been found incompatible with the rights enshrined in the Human Rights Act. It is nevertheless possible that this may change in the future as lawyers more fully comprehend the limitations and possibilities of utilising the Act on behalf of their clients. It should be acknowledged, however, that British courts have usually erred on the side of caution when interpreting and implementing the Convention. Therefore, much of the law that is discussed below is unlikely to be altered by future common law. What probably will happen is that the courts will use the Convention in dealing with individual cases where a flagrant abuse of the existing law and /or Convention occurs (by the state or a citizen).
- 3.22 Some of the most significant provisions in Northern Ireland which enable the lawful restriction of Convention rights are those dealing with public meetings and processions. Article 4(2) of the Public Order (Northern Ireland) Order 1987 allows the Secretary of State for Northern Ireland to impose conditions upon open-air public meetings in order to prevent property damage, public disorder, community disruption, or 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 act they have a right not to do. The power to impose conditions on public processions rests with the Parades Commission under section 8 of the Public Processions (NI) Act 1998.²¹ Conditions may, for example, restrict the music to be played or the flags and

¹⁸ Article 19 of the International Covenant on Civil and Political Rights 1966, which has been integrated into Hong Kong law, is the same freedom as that contained in the European Convention.

¹⁹ *Hong Kong Special Administrative Region v. Ng Kung Siu* (CFA (HK)) [1999] 8 B.H.R.C. 244.

²⁰ Brice Dickson, 'Meetings and Marches', in Brice Dickson (ed.) *The C.A.J. Handbook: Civil Liberties in Northern Ireland* (3rd ed., Belfast, 1993), p. 140.

²¹ Only the Secretary of State can ban processions and only if he or she considers that it is necessary in the public interest to do so (s.11, Public Processions (NI) Act 1998). Furthermore, the Secretary of State can revoke or amend

banners to be carried by parade participants. The Commission is also required (under s.3 of the Public Processions (NI) Act 1998) to publish a Code of Conduct providing guidance to persons organising a public procession and regulating the behaviour of persons taking part in it. Paragraph G of Appendix A of the Code states:

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

- 3.23 While this provision clearly covers flags such as those often carried in loyalist parades bearing '1912-1914 UVF' insignia, it would appear that the Parades Commission rarely challenges such displays. While the Commission does not have the power to impose fines for breaches of the Code, past compliance with it is one of the statutory criteria which the Commission must take into account when considering whether restrictions are necessary. It is also an offence, punishable summarily up to a maximum of six months in prison or a fine of £5,000, for a person to knowingly fail to comply with a condition imposed by the Parades Commission (including the Code of Conduct).

Intimidation

- 3.24 Section 1 of the Protection of the Person and Property (Northern Ireland) Act 1969 makes it a custodial offence if someone unlawfully causes by force or threatens another to leave their place of occupation, their workplace or job, or to make them do or refrain from doing any act (criminal burden of proof: beyond reasonable doubt). In the case of someone erecting a flag (on public property or property not owned or controlled by the defendant), the prosecution must establish that the flag(s) acted as a threat that caused someone to leave their place of work, or their home, or to refrain them from doing, or compelling them to do, an act not of their choice. It is not hard to see how this can deal with certain situations, however, the defendant will inevitably argue that the 'victim' acted for reasons other than those cited by the prosecution. Therefore, the use of this act in relation to flags is not only of limited application, but also difficult to establish because of the burden of proof.
- 3.25 A much older provision is contained in section 7 of the Conspiracy and Protection of Property Act 1875 which states: 'Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing wrongfully and without legal authority and ... uses violence to or intimidates such other person or his wife or children, or injures his property ... shall be liable on summary conviction to imprisonment ...'

Stirring up hatred or arousing fear

- 3.26

Article 9, Public Order (NI) Order 1987

9. —(1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if—

(a) he intends thereby to stir up hatred or arouse fear; or

(b) having regard to all the circumstances hatred is likely to be stirred up or fear is likely to be aroused thereby.

(2) An offence under this Article may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.

a determination of the Parades Commission following an application by the Chief Constable (s.9 of the Public Processions (NI) Act 1998).

- 3.27 Article 9 of the Public Order (Northern Ireland) Order 1987 (above) makes it a summary offence to use threatening, abusive or insulting words or behaviour, or display any written material which is threatening, abusive or insulting if the accused intends thereby to stir up hatred or arouse fear, or, having regard to all the circumstances, hatred is likely to be stirred up or fear is likely to be aroused thereby. 'Fear' means fear of a group of persons defined by reference to religious belief, colour, race, nationality (including citizenship) or ethnic or national origins. 'Hatred' means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.²² There appears to have been only one successful prosecution of an Article 9 offence in Northern Ireland between 1998 and 2001.²³
- 3.28 For this provision to apply to flags (or indeed wall murals, etc) it must be proven (on the criminal burden) that the accused intends to stir up hatred or arouse fear (using a flag, etc) or that such hatred or fear is likely to be stirred up. For most flags and celebratory wall murals and monuments this will be a difficult burden to establish. And although the Order allows for the offence to be carried out in a public or private place (s.9(2)), it is a defence if the behaviour is inside a dwelling and the accused can establish that he had no reason to believe that his words or behaviour could be comprehended by anyone outside the dwelling (s.9(3)). Put simply, the flag/mural/memorial must be shown to be something that was designed to stir up hatred or arouse fear, or is likely to. Given that the assessment of this will be highly contested and subjective, each case will turn on its own merits unless a court policy is developed. More practically, it will be hard to argue that the Union or Northern Ireland flags are erected to arouse fear, but perhaps easier to make this point for paramilitary flags. Also, if they are put up in areas in which the local population is known to be quiescent or even supportive of their erection, they are more likely to be viewed as celebratory than threatening (as per Kennedy, above). There is a similar provision in article 19(1) of the 1987 Order:²⁴

Article 19, Public Order (NI) Order 1987

.....19.—(1) A person who in any public place or at or in relation to any public meeting or public procession—

- a) uses threatening, abusive or insulting words or behaviour; or
- b) displays anything or does any act; or
- c) being the owner or occupier of any land or premises, causes or permits anything to be displayed or any act to be done thereon, with intent to provoke a breach of the peace or by which a breach of the peace or public disorder is likely to be occasioned (whether immediately or at any time afterwards) shall be guilty of an offence.

- 3.29 In *Brutus v Cozens* (1972), the House of Lords said that behaviour does not qualify as threatening, abusive or insulting just because the behaviour gives rise to anger, disgust or distress. In a more recent case (*Redmond-Bate v DPP*, 1999), it was held that a speaker at a meeting may well say things which others find offensive, but so long as he or she does not "interfere with the rights of others so as to make a violent reaction not wholly unreasonable" his or her conduct should not be restricted.

²² Article 8, Public Order (NI) Order 1987 as amended by section 38 of the Anti-terrorism, Crime and Security Act 2001.

²³ Statistics courtesy of the Director of Public Prosecutions, August 2002.

²⁴ See further Hadfield, B. (1984) 'The Prevention of Incitement to Religious Hatred – An Article of Faith?' 35:3 *N.I.L.Q.* 231-249. Also, Palley, C. (1972) p.436, n.341 citing the Attorney-General at H.C. Deb (NI) vol.78, 3rd February 1971, col.1284.

Harassment

3.30

Article 3, Protection from Harassment (NI) Order 1997

3. — (1) A person shall not pursue a course of conduct —
(a) which amounts to harassment of another; and
(b) which he knows or ought to know amounts to harassment of the other.

(2) For the purposes of this Article, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

- (3) Paragraph (1) does not apply to a course of conduct if the person who pursued it shows —
a) that it was pursued for the purpose of preventing or detecting crime;
b) that it was pursued under any statutory provision or rule of law or to comply with any condition or requirement imposed by any person under any statutory provision; or
c) that in the particular circumstances the pursuit of the course of conduct was reasonable

3.31 The Protection from Harassment (NI) Order 1997, is similar to the English *Protection from Harassment Act 1997*. While neither law defines 'harassment', under their terms a '*course of conduct*' amounting to harassment of another is both a crime and a civil wrong. These laws were introduced because there was little protection for victims who were upset and frightened by a series of incidents, where the behaviour in question nonetheless fell short of being illegal.²⁵ Notwithstanding, in *Thomas v News Group Newspapers Ltd. (2002)* it was held that harassment must not be given an interpretation which restricts the right to freedom of expression, save in so far as this is necessary in order to achieve one of the legitimate aims contained in Article 10 ECHR. **Given that one of the rights affirmed by the parties to the Multi-Party Agreement was that to freedom from sectarian harassment, and given also the Northern Ireland Human Rights Commission's ongoing consultation on a Bill of Rights for Northern Ireland, the concept of 'harassment' might in the future be invoked with regard to the erection of flags even where a breach of the peace is unlikely.**

²⁵ Harris, J., *An Evaluation of the use and effectiveness of the Protection from Harassment Act 1997*, Home Office Research Study 203 (2000), p.2.

- 3.32 More recently the Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003 has provided a statutory definition of harassment.

Harassment

5. After Article 3 of the Fair Employment and Treatment Order insert –

""Harassment" and "unlawful harassment"

3A. -(1) A person ("A") subjects another person ("B") to harassment in any circumstances relevant for the purposes of any provision referred to in Article 3(2B) where, on the ground of religious belief or political opinion, A engages in unwanted conduct which has the purpose or effect of –

(a) violating B's dignity, or

(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) Conduct shall be regarded as having the effect specified in sub-paragraphs (a) and (b) of paragraph (1) only if, having regard to all the circumstances, including, in particular, the perception of B, it should reasonably be considered as having that effect.

(3) For the purposes of this Order a person subjects another to unlawful harassment if he engages in conduct in relation to that other which is unlawful by virtue of any provision mentioned in Article 3(2B)."

Meaning of employment in Northern Ireland

6. -(1) In Article 6 of the Fair Employment and Treatment Order (meaning of employment in Northern Ireland and occupation in Northern Ireland), in paragraph (1), for the words from "unless the employee" to the end, substitute –

Council powers and by-laws

- 3.33 District Councils in Northern Ireland are permitted to make bylaws that regulate activities in public places, subject to approval by the Secretary of State. This, conceivably, could cover the erection of flags etc if that could be defined as an activity in a public place. An obvious difficulty may be the reluctance of some councils, and the enthusiasm of others, to omit, or overly regulate, the erection of flags, etc. In either case the Secretary of State could curtail any overzealous local Council. However, it is much harder to see how, given the dynamics of local politics, a council could act against what some councillors might view as their own electorate. If implemented it might also lead to a situation in which different council areas have different rules, although this is not necessarily a bad thing. Once again implementation is the chief difficulty. The punishment for breaking such a bylaw is a maximum £20 fine, with £2 added each day the offence occurs after conviction (section 92 Local Government Act (Northern Ireland) 1972). Although police and council employees are permitted to enforce bylaws, how many are prepared to interfere with the erection of flags, murals and memorials in areas sympathetic to their erection?
- 3.34 Statutory provisions exist for local councils to remove or obliterate, or serve a notice to be removed or obliterate, any graffiti which, *in the opinion of the council*, is detrimental to the amenity of any land in its district (section 18(1)(a) Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985). The same Order makes a similar provision for 'placards' or 'posters', although in this case the council must decide if the placard or poster contravenes the advertisement regulations.²⁶ There are provisions detailing how notice is to be served on the 'responsible person'.²⁷ For the purposes of article 18 a person is a 'responsible person' if 'in relation to any graffiti, placard or poster, if it is

²⁶ Section 18(1)(b).

²⁷ There are regulations in the Order detailing how the notice is to be served (s. 18(3), (4)).

displayed on land of which he is the owner or occupier'.²⁸ The council may not remove graffiti that is within a building to which there is no public right of access or on land owned or occupied by a body established by or under a statutory authority.²⁹ The Order fails to define graffiti so it is open to speculation if wall murals will come under these provisions. There already exists a general debate surrounding the artistic merit and social problems of more typical forms of graffiti; whatever view is applied in that circumstance may also be applied to murals.³⁰ It is also important to note that the Order is limited in that it prevents any action being taken against a private building with no public right of access and property owned by agencies such as the Department for Regional Development.

Torts – Trespass

- 3.35 Trespass is defined as 'unjustifiable interference with the possession of land'.³¹ Trespass is actionable *per se* whether or not the claimant has suffered any damage, but an action for trespass is not normally brought unless the claimant wishes to deter persistent trespassing or there are disputes over boundaries or rights of way.³² Possession is a relatively simple criteria to fulfil, unless there is some dispute as to who owns the property on which trespass has occurred. Interference has a wide definition, from entering a person's land to throwing things onto it, or placing a ladder against a wall.³³ For trespass the injury must be direct and immediate; if indirect or consequential there may be a remedy in nuisance (below) or negligence.
- 3.36 Placing flags on lampposts or erecting 'memorials' on agency property (assuming there is no 'right of way') has not, as far as we are aware, been dealt with in case law as trespass. However, case law is clear that if a person plants a tree on another's land that is trespass; whereas if a tree on one person's land projects into or over another's land that is a nuisance.³⁴ Moreover, the above situations may amount to a continuing trespass if, after committing the original trespass, the trespassers fail to remove the items from the land on which they have trespassed.³⁵
- 3.37 The problem that government agencies may run into regarding an action in trespass is that defendants could claim a licence to interfere. A licence is 'that consent which, without passing any interest in the property to which it relates, merely prevents the acts for which consent is given from being wrongful'.³⁶ Permission may be both express or, crucially for our purposes, implied (it is for the defence to prove implied consent). The widely-known (and understood) inaction of many agencies towards the removal of emblems and lack of prosecutions against 'trespassers' may be argued as an implied licence. However, while there is no clear principle regarding implied consent, 'the facts must support the implication from the occupier's conduct that he has permitted entry, and not merely tolerated it, for knowledge is not tantamount to consent and failure to turn one's premises into a fortress does not confer a license ...'³⁷ This would indicate that the courts might look sympathetically on the landlord's previous inaction, however, they have on occasion gone to some lengths to imply a licence. And it may be easier for a defendant to claim an implied licence from the policies of agencies, especially when they openly acknowledge their unwillingness to take any action without testing local opinion.³⁸

²⁸ Section 18(10)(a).

²⁹ Section 18(7).

³⁰ See for example Bob Edelson, *New American Street Art – Beyond Graffiti* (London, Art Data, 1999).

³¹ W.V.H. Rogers, *Winfield & Jolowicz on Tort* (14th ed., London, 1994) p. 383.

³² *Ibid.*, p. 384.

³³ *Rigby v. Chief Constable of Northamptonshire* [1985] 1 W.L.R. 1242; *Home Brewery Co. Ltd. v. William Davis & Co. (Leicester) Ltd.* [1987] Q.B. 339.

³⁴ *Smith v. Giddy* [1904] 2 K.B. 448; *Davey v. Harrow Corp.* [1958] 1 Q.B. 60.

³⁵ *Holmes v. Wilson* (1839) 10 A. & E. 50.

³⁶ Rogers, *Tort*, p. 390.

³⁷ Rogers, *Tort*, p. 229.

³⁸ Chief Exec. Roads Service NI to Neil Fleming, 19 Aug. 2003: 'The Roads Service is responsible for the erection and maintenance of street lighting columns. While we would wish to respond as positively as possible to this

- 3.38 Election posters are permitted on agency property for the duration of the campaigns and for a fortnight following the close of polling. According to Sam Foster MLA, at the time Minister for Environment, his department had few problems enforcing this although they relied on reports of any transgression. This may be an option for certain flags at particular times of the year.³⁹
- 3.39 Also of note: 'if a person does something beyond the reasonable use of a highway for the purpose of passing along it and matter incidental thereto, he commits trespass against the person in possession of the soil on which the highway rests.'⁴⁰
- 3.40 The above is common law. What follows arises from section 23 of the Public Order (Northern Ireland) Order 1987 which makes it an offence punishable by 2 years imprisonment to trespass a public building. This might be widely interpreted as any property but the standard of proof will be higher than in a civil action. This might be a more punitive way of enforcing a landowner's rights, however, there is no indication as yet that it has been implemented for such a purpose.

Torts – Nuisance

- 3.41 Nuisance is an area of the law of tort most concerned with 'protection of the environment'. It normally applies to, for example, oil spills and other leakages emanating from one property onto the property of another. It is divided into public nuisance and private nuisance. Private nuisance may be relevant if an activity on one person's land interferes with that of another. It must amount to more than a slight interference, although the court will weigh up the two conflicting interests: the right of one person to use his land as he sees fit and the right of the other to the peaceful enjoyment of his land. Everyone must put up with some degree of noise, etc. The key is that the use to which one person puts his land must be unreasonable for it to be considered a nuisance.⁴¹ Indeed, reasonableness is the test for nuisance cases, and required the court to balance the two interests (as above).
- 3.42 Public nuisance is one 'which materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects who come within the sphere or neighbourhood of its operation.'⁴² The court must decide on the facts if the 'class of persons' has been so affected before making an injunction. Clearly, for our purposes, a class could be one group in the community opposing the symbols of another, or symbols of paramilitaries with which they do not desire to have their neighbourhood associated. The flying of flags, and especially, the erection of illegal memorials/monuments, are likely to be the subjects of an injunction to prevent further nuisance. Indeed this may have been the case in a recent High Court injunction relating to an INLA monument in Maghera.⁴³ The Northern Ireland Housing Executive swore an affidavit that they possessed the names of a substantial number of local residents who opposed it, this being the 'class of persons'. The injunction was granted on 1 August 2003.⁴⁴ This is in keeping with other cases, according to Rogers: 'Public nuisances at common law includes such diverse activities as carrying on an offensive trade, keeping a disorderly house, selling food unfit for

problem, taking into account our statutory obligations including those arising under section 75(2) of the Northern Ireland Act 1998, there are some sensitive aspects to be considered ... work carried out to remove flags, without near unanimous support of local residents, is likely to prove of little value ... [and] we have a duty of care to our staff. Accordingly, our policy is to remove from our property any flags that are considered a danger to road users. IN other instances, where complaints are received and there is no danger to road users, we endeavour to gauge local community reaction to determine the likely success of any efforts to remove flags. This is generally done through consultation with the PSNI and/or local Councillors or other public representatives.'

³⁹ Northern Ireland Assembly, 21 June 2001; 19 October 2001.

⁴⁰ Rogers, *Tort*, p. 387.

⁴¹ Rogers, *Tort*, p. 404.

⁴² Rogers, *Tort*, p. 402.

⁴³ The Northern Ireland Housing Executive has not clarified on what legal grounds the injunction was sought.

⁴⁴ *Belfast News-Letter*, 1 Aug. 2003.

human consumption, obstructing public highways, throwing fireworks about in the street and holding an ill-organised pop festival.⁴⁵

- 3.43 Defences include reasonableness, the nature of the locality, the extent of harm, utility of the defendant's conduct and abnormal sensitivity.⁴⁶ Without a body of case law surrounding emblems it is difficult to know how a court might deal with each of these matters; unless the courts devise a general precedent to make, for example, any paramilitary flags/memorials unreasonable *per se*.
- 3.44 Clearly, the decision to use the law of nuisance or trespass will depend on whether the perpetrator is entering another person's land (and, in the case of continuing trespass, leaving something there) or allowing the use of his own land to effect that of others. For the former it is an action in trespass, for the latter in nuisance. The lines may become blurred if there is a dispute about landownership or implied licenses but these will be matters which lawyers for each case can examine in the light of the law.

Breach of the peace

- 3.45 This does not have any application to flags other than when, if they are in the process of erection, or having been erected, they cause harm to a person or his or her property, or a fear of being so harmed. This is because causing a breach of the peace is not a crime, it is used to allow the police to prevent offences from occurring. And once again, the police have to make a subjective judgement when citing breach of the peace as taking one action may well lead another breach of the peace that is worse in its impact than that which they had originally intended to avoid. There is some case law relevant for our purposes, although it is contradictory. In *Humphries v. Connor* (1864) a policeman removed an Orange lily from a woman walking in a Catholic area on the basis that it would lead to a breach of the peace. As the Orange Order was seriously curtailed in its activities at the time of this case by the Party Processions Act 1850, it is arguable that *Humphries* could be applied to paramilitary emblems today. However, in *Beatty v. Gillbanks* (1882) the police were not allowed to prevent a Salvation Army march even if it caused a breach of the peace.

Support for a proscribed organisation

- 3.46 If it can be proven beyond reasonable doubt that a person through flying a flag or similar activity invites support for a proscribed organisation then they commit a criminal offence under s. 12(1) Terrorism Act 2000. Further, if a person in a public place wears, carries or displays an article, in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation, then he or she is guilty of an offence (s.13(1)). We are aware of one case in Northern Ireland where individuals have been found guilty under s.13(1) after being apprehended putting up flags representing a proscribed organisation.

It is also worth noting the appeal case *James Rankin v Procurator Fiscal, Ayr* (2004) where an individual was prosecuted and lost a subsequent appeal having been arrested at a ferry terminal in Scotland wearing four pieces of jewellery displaying the letters UVF. The appeal judgement noted that 'while the manner and circumstances of the offending in this case may be at the least serious end of the spectrum of conduct against which section 13 strikes, it is not, in our view, out with the range of legislative intent'.⁴⁷

⁴⁵ Rogers, *Tort*, p. 402; *A-G for Ontario v. Orange Productions Ltd.* (1971) 21 D.L.R. (3d) 257.

⁴⁶ Rogers, *Tort*, pp. 405–410.

⁴⁷ *Rankin v Procurator Fiscal, Ayr* [2004] ScotHC 32 (01 June 2004)

This legislation, however, does not apply to national flags. Similar flags, although used by some paramilitaries, have a wider meaning and usage (eg 'The Northern Ireland/Ulster flag').

Section 13, Terrorism Act 2000

13. - (1) A person in a public place commits an offence if he

(a) wears an item of clothing, or

(b) wears, carries or displays an article,

in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation.

Conclusion

- 3.47 The government has largely admitted that it will deal with cases on an individual basis.⁴⁸ A similar attitude is taken by the PSNI. The certainty that statute law might provide to government agencies and the police could be given by the courts, should they choose to do so, by drawing up guidelines or developing a policy. The use of the law of tort may also be more effective in ending the prominent display of emblems. Whereas criminal law will punish the offender it is uncertain if this will prevent others from the same activity; it may even encourage them. The use of injunctions and tort remedies in general are less punitive on the individual and involve the removal of the offending items. Most importantly, the law of tort has the necessary flexibility to deal with a variety of cases in a way that statute law does not.
- 3.48 Specific legislation on flags could prove useful. One option might be a contemporary version of the Flags and Emblems (Display) Act (Northern Ireland) 1954 without any specific exclusion for the Union Flag. However, disputes over flags are just part of a wider conflict that also manifests itself in other ways such as the painting of murals or kerb stones or the erecting of monuments. This would suggest that use of more general public order legislation or around legislation on harassment might prove more useful. But whatever legislation is applied it remains crucial that context in which flags are being flown is dealt with. **Legislation and policing is important for laying down a base-line of acceptable practice but long term solutions must utilise multi-agency approaches and local community development.**

Statutes

Conspiracy and Protection of Property Act 1875.
Fair Employment and Treatment (Northern Ireland) Order 1998.
Flags (Northern Ireland) Order 2000.
Flags and Emblems (Display) Act (Northern Ireland) 1954.
Human Rights Act 1998.
International Covenant on Civil and Political Rights 1966 [not part of UK law].
Local Government Act (Northern Ireland) 1972.
The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985.
Northern Ireland Act 1998.
Party Processions Act 1850.
Protection of the Person and Property (Northern Ireland) Act 1969.
Public Order (Northern Ireland) Order 1987.
Public Processions (NI) Act 1998
Terrorism Act 2000.

Cases

Beatty v. Gillbanks (1882)
Brennan v. Short Brothers plc (1995).
Brutus v Cozens (1972)

⁴⁸ See introduction above.

Davey v. Harrow Corp. [1958] 1 Q.B. 60.
Redmond-Bate v DPP (1999)
Holmes v. Wilson (1839) 10 A. & E. 50.
Home Brewery Co. Ltd. v. William Davis & Co. (Leicester) Ltd. [1987] Q.B. 339.
Hong Kong Special Administrative Region v. Ng Kung Siu [1999] 8 B.H.R.C. 244.
Humphries v. Connor (1864)
Johnston v. Belfast City Council.
Re Murphy's Application for judicial review [2001] N.I. 425 (4 Oct. 2001).
Attorney General for Ontario v. Orange Productions Ltd. (1971) 21 D.L.R. (3d) 257.
Rigby v. Chief Constable of Northamptonshire [1985] 1 W.L.R. 1242
Smith v. Giddy [1904] 2 K.B. 448
C. John Taylor v. Secretary of State for Scotland (2 Div) 1997 S.C. 179.
Thomas v News Group Newspapers Ltd. (2002)

4. STATUTORY AGENCIES: FUNCTIONS AND POWERS

- 4.1 A range of statutory agencies have legislative authority to deal with issues of public symbolic displays such as flags, murals, arches, bonfires and memorials. This section looks at those agencies with specific authority over the display of unofficial flags in public areas. The Parades Commission has clear powers concerning flags that are displayed in parades although the flying of particular flags on a parade route could potentially influence their judgement of the context and nature of a parade. Here we will consider the functions and powers of the Roads Service in the Department for Regional Development (DRD), the Northern Ireland Housing Executive (NIHE) the Police Service of Northern Ireland (PSNI) and District Councils.

The DRD (NI) Roads Service

- 4.2 The DRD (NI) Roads Service responsibilities include –

- road and footpath maintenance
- improvement of the road network
- traffic management and information
- street lighting
- public car parking
- adoption (i.e. taking into public ownership) of roads built by private developers

- 4.3 Roads Service manages the majority of public roads and footpaths in Northern Ireland, though some are the responsibility of the Housing Executive or are still unadopted. Roads Service is also responsible for most road bridges and underpasses. The powers of Roads Service are laid down by the Roads (NI) Order 1993. Article 87 of the Roads Order makes it an offence to attach unauthorised signs and adverts to lampposts, but does not specifically mention flags or bunting.

- 4.4 The Roads (NI) Order 1993 provides:

Art 87(1) "Any person who without lawful authority-

- (a) paints or otherwise inscribes or affixes any picture, letter, sign or mark; or*
- (b) displays any advertisement, upon the surface of a road or upon any structure or other works in or on a road, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale" and*

Art 87(2) "Where any person contravenes paragraph (1), the Department may (whether or not any proceedings are instituted for an offence under that paragraph)-

- (a) remove anything painted, inscribed, affixed, or displayed in contravention of paragraph (1) and make good any damage done to the road or to the tree, structure, or other works in question; and*
- (b) recover from that person any expenses thereby reasonably incurred."*

- 4.5 The Department's duties in relation to street lighting are perceived as sufficient to enable it, as the owner of the lampposts, to remove any flags. The general policy position is that the Roads Service removes flags or attachments that pose a danger to road users (e.g. obscure a sightline, obstruct the passage of vehicles or pedestrians, or compromise the structural stability of the lighting column). Where there is no such danger Roads Service seeks to remove such material only with the advice of PSNI and with strong local support. Like other authorities the Roads Service point out that acting without local support can lead to a proliferation and may put at risk the safety of the operatives removing the material. They also indicate that the removal of flags, graffiti, paint on kerb stones and the repairing of damage to roads after bonfires is a significant drain on resources.

- 4.6 The Roads Service prefers to act in partnership with local communities and Councils. It has worked in partnership with local representatives in a number of areas to safely

remove many flags, graffiti and sectarian paint. From the start of 2003 to date, the Road Service has taken action in relation to over 50 occurrences, and in some cases each instance has required work in up to 10 streets.

- 4.7 Whilst there are good examples of the Roads Service being able to work with local communities there are others where they have judged the risk to their workers to be too great for them to undertake the task.
- 4.8 The Roads Service has indicated that they would prefer to be acting within regional or local agreed protocols and that these protocols might be developed by District Councils. Under such a protocol a multi-agency approach could be developed.

The Housing Executive

- 4.9 Under existing legislation the Northern Ireland Housing Executive has primary responsibility to:

- regularly examine housing conditions and housing requirements;
- draw up wide ranging programmes to meet these needs;
- effect the closure, demolition and clearance of unfit houses;
- effect the improvement of the condition of the housing stock;
- encourage the provision of new houses;
- establish housing information and advisory services;
- consult with District Councils and the Northern Ireland Housing Council;
- manage its own housing stock in Northern Ireland;

- 4.10 Their stated goal is:

'To provide everyone with the opportunity to access decent, affordable housing in safe and sustainable communities, deliver excellent housing services, develop strategies to influence the wider housing market and work with others to foster urban and rural renewal and contribute to improved health and social well-being.'

- 4.11 This goal is undertaken through a core set of values:

- Fairness and equity
- Integrity and Honesty
- Sustainability and protection of the environment
- Responsiveness to our customers needs
- Best Value Services
- Promoting active citizenship
- Valuing and developing our staff
- Openness and accountability

- 4.12 Amongst a list of objectives are:

Objective 1: To ensure that all social housing programmes and services are delivered in a manner which is demonstrably fair and equitable, on the basis of objective assessment of need.

Objective 7: To promote social inclusion by tackling environmental, social and economic problems with the communities affected, and with other agencies, in a co-ordinated programme of urban and rural regeneration using a community development approach.

- 4.13 A key issue for the NIHE has been dealing with the ramifications of segregated housing in Northern Ireland. In 2003 more than 1,200 people were intimidated out of their homes, the NIHE spending £45 million on buying properties from these people. In the *Corporate Plan for 2003-04* it is argued that 'with a highly segregated public housing sector the approach to improving relations must be built on sound foundations. This can only

emerge from shared understandings of the issues and a realistic assessment of the complexity of the task. ...the Housing Executive continues to work to improving relations within and between local neighbourhoods' (p.6). Included in the aims of the NIHE is integrated housing and the promotion of good relations (p.27-28). The Housing Executive is part of the Creating Common Ground Consortium, and has set a new Community Cohesion Team looking at trust and confidence between communities and matters of dispute, including those around flags, graffiti and memorials. Developing projects around community safety, there is also a new Community Safety Unit, and the Common Ground programme, form key performance indicators for the NIHE.

- 4.14 The NIHE has worked on a wide range of environmental and housing projects within which the issues around flags and murals have been dealt with (see *Community Involvement Framework: Annual Report 2003*). These include a number of the case studies discussed in the following section. Like other statutory agencies the NIHE highlights the need to work in partnership with other agencies, and particularly with local communities through community development projects. These projects reflect particular local contexts. This involves recognising the possibilities for successful interventions and what can be achieved within the particular context. The NIHE does not have a general policy or protocol for dealing with flags or murals on their property but the new Community Cohesion team will be looking at the merits of a more generalised or generic approach.

The Police

- 4.15 The range of legislation under which the police might act has been discussed in the previous section. They have recently acted using the Terrorism Act (2000) but would more usually be looking at the range of public order legislation. The PSNI do not have any particular stand alone policy for dealing with conflicts over flags. Each incident is looked at on merit taking into account the particular context. Under recent reforms to the Police Service operational decisions are largely devolved down to the District Command level.
- 4.16 Existing legislation does provide them with legal instruments with which to take action, particularly public order legislation, and in 2004 a prosecution, presently at appeal, was undertaken under the Terrorism Act against individuals putting LVF flags on lampposts. Yet there remain significant difficulties in the decision making process for taking action. It is not always clear that the displayed flags or emblems amount to support for a prescribed organisation. Some flags are claimed to be historical in meaning. Also, if action is to be taken by the police to prevent a breach of the peace there needs to be clear evidence that a breach will be committed in the immediate future. In addition, the removal of flags may carry risks for police officers and as with other duties health and safety assessments have to be made.
- 4.17 Police officers we have spoken to have underlined the importance of making judgements based on broad human rights principles, policies of community policing and taking into account the specific context of each incident. As such, problem solving should utilise local knowledge and involve the Districting Policing Partnership boards (see *Newsletter* 1.10.04).
- 4.18 After an incident in Larne in July 2004 a PSNI spokesperson suggested:
- Many of the issues surrounding the flying of flags cannot be resolved by a policing solution. They can only be resolved by the whole community being prepared to work together to find an acceptable answer.*⁴⁹
- 4.19 After 150 paramilitary flags were removed in the greater Belfast area by agreement after the Twelfth in July 2004 Assistant Chief Constable Duncan McCausland said

⁴⁹ http://news.bbc.co.uk/go/pr/fr/-/1/hi/northern_ireland/3875875.stm

*We are fully committed to our strategy which works to ensure that paramilitary flags are not flown in communities across the Belfast region.*⁵⁰

District Councils

- 4.20 District Councils clearly have an important role in the economic and social development of their specific geographical area. District Councils in Northern Ireland derive their various powers from specific legislation. However, whilst they have power to remove graffiti under Article 18 of the Local Government (Miscellaneous Provisions) (NI) Order 1985, there is no specific legislation covering the display of flags or emblems in streets. Of course, if the flags are on council property, and this will often include parks and playgrounds, then they can act in their capacity as owner and manager of the property. Councils also have limited powers to make by-laws. But the key point is that there is no discrete statutory power for a District Council to deal with the popular flying of flags.
- 4.21 Councils, as a public authority, fall under section 75 of the Northern Ireland Act 1998, and therefore must carry out their functions with due regard to the need to promote equality of opportunity and to the desirability of promoting good relations. As we have discussed in this report, this clearly has implications for the flying of official flags on council property and for other flags that might be put on council property that might influence the use of that property. However, as mentioned above, the managing of the popular flying of flags is not a function of the Council. And indeed, as we make clear in the section 5 of this report no District Council in Northern Ireland appears to have a specific policy on popular flag flying.
- 4.22 This said, many local councils are involved in good relations and environmental improvement projects that have resulted in changes of practice within communities in relation to the flying of flags. We discuss some of these projects in details in section 6. Just as significantly, individual councillors do get involved in these issues. In many respect councillors are the key elected local representatives.

Conclusions

- 4.23 The Roads Service, the Northern Ireland Housing Executive, the Police Service of Northern Ireland and the District Councils all have roles to play in dealing with public displays of flags and emblems. All of these agencies recognise their responsibilities and the need to be proactive. All of these agencies highlight the need for working with local communities to solve problems. Each of the agencies recognises the need to work in partnership with other agencies. Representatives of each of these agencies stress the need to understand the context in which the flying of flags is taking place and that action taken should be appropriate to that context. Each agency stressed that they were aware of the risks to their employees in undertaking action in certain circumstances.
- 4.24 This overview of the roles of these agencies, however, does suggest significant problems:
- There is no clear lead agency for developing partnerships or problem solving.
 - None of the above agencies currently has a clearly laid out public policy or protocol for dealing with these issues.
 - Whilst there are many examples of good practice, the general approach to the issue of flags is still *ad hoc*.
- 4.25 So, for example, displays of flags along a main road that carries the support of the key elements of the surrounding community but which some road users may find intimidating would not necessarily fall under the immediate attention of any of these agencies.

⁵⁰ <http://u.tv/newsroom/indepth.asp?id=48290&pt=n>

5. THE POLICIES OF DISTRICT COUNCILS

District Councils - Policy Overview on Official and Popular Flags

5.1 Listed below is an overview of the policies and practices of the 26 District Councils in Northern Ireland in regard both to the flying of official flags and to the way they deal with popular flags. Each Council Chief Executive was written to and asked to confirm that our understanding of their existing policy, as of July 2004 is correct. Information in italics refers to responses received via telephone conversation in 2003 where no written reply was received in 2004.

5.2 District Councils and their policies:

Antrim Borough Council

The Union Flag is flown every day at Council Headquarters and at the Antrim Forum. Flagpoles exist at most council properties but few of these are used.

There is no written policy in relation to flying of flags in the in the Council area, however, there may be developments in thinking in the next period. The Council is working proactively with both communities in a low key approach on the sensitive issues of flags, emblems, murals and kerb stone painting. Council Community Relations and Community Development units and elected members of the Council are working with community leaders on the issues of delineation of territory by flags and other symbols.

Ards Borough Council

The Union Flag is flown at Council Headquarters every day. The Union Flag is also flown at the war memorial in the Square, Comber and the Memorial in Ballygowan every day.

There is no written policy with regard to the display of flags within the Council area. An Equality Officer will take up post in August 2004 and will establish an Equality User Focus Group which will examine issues such as flags disputes.

Armagh City and District Council

The Union Flag is flown on designated flag days at Council Headquarters only. Council is put an Equality Impact Assessment out to public consultation on the issues of flag and emblems. The recommendation in the Assessment, yet to be approved, is that the Council will maintain its policy of flying the Union Flag on designated days as outlined by the Lord Chamberlain's Department. The Assessment also contains some useful proposals for the use of council property by different political organisations.

The Equality Impact Assessment also makes recommendations on the flying of national flags by communities. It suggests that:

- Each of the two main communities could voluntarily agree to restrict the flying of flags *for* (sic) 4 weeks in the year;
- The council will chair a 'liaison forum' comprising business leaders, church and political leaders and representatives of the loyal orders and GAA.
- The Council will look to develop a common festival through which the concept of reflecting flags might be developed.

Ballymena Borough Council

The Union Flag is flown on Council Headquarters and the Town Hall every day.

There is no written policy on the popular flying of flags in the Council area. The Council has used Counteract to help resolve disputes which have involved flags. The Borough Council's Policy Unit document, *A Shared Environment - Developing Good Relations in*

Ballymena: An Integrated Approach (2003), however, noted eight key theme areas that would assist the transition from merely promoting community relations to a more strategic Good Relations programme. Two of these areas were 'Territory Marking' where the council noted that it intended to, 'consult with communities and address all detrimental environmental matters' and 'Councillor Relationships' aiming to promote, 'an ethos of Civic Leadership and reduce confrontation.' There has been a significant reduction in the number of paramilitary flags flown in the area in recent times.

Ballymoney Borough Council

The Union Flag is flown at Council Headquarters, the Town Hall and Leisure Centre on designated days (In 2004 15 days designated by Flags Regulations plus 12 July and Christmas Day).

There is no policy on the popular flying of flags in the council area.

Banbridge District Council

The Union Flag is flown in the grounds of the Council Civic Building, Tourist Information Centre and Old Town Hall, Banbridge every day. Council policy is currently under review.

No information was provided with regards to the popular flying of flags in the Council area.

Belfast City Council

The Union Flag is flown on the City Hall every day. The Union Flag is also flown at the Duncrue Complex and the Ulster Hall on 15 designated days plus New Year's Day, Easter Day, 12 July and Christmas Day. The Union Flag is not flown on any other Council property. The Council recently carried out an Equality Impact Assessment on its existing policy and following discussion has agreed to make no change to that policy.

The Council's Good Relations Steering Panel has given consideration to the drawing up of principles for the display and removal of flags in the council area. It was decided not to progress this work until the Equality Impact Assessment on the flying of flags on council property had been completed. The Steering panel will consider the wider issue of the display of flags in the Council area further in the winter and spring of 2004/05.

Carrickfergus Borough Council

The Union Flag and Northern Ireland flag are flown at the Town Hall and Leisure Centre. The Union Flag alone is flown at Bentra Golf Club and Sullatober Depot. These flags are flown on these particular buildings every day.

No written policy at present on popular flying of flags. Council intends to conduct an Equality Impact Assessment in 2005-6 which will relate to this issue. The council has used the services of Counteract in the past as a useful independent mediation service. A Citizens' Panel established in September 2003 deals with equality and good relations issues and their suggestions are reported back to Council.

Castlereagh Borough Council

The Union Flag, Northern Ireland Flag and the Council Coat of Arms are flown on Council Headquarters every day.

There is no written policy on illegal flags. The Council has used Counteract in connection with Section 75 issues. The Council has been working closely with DRD Roads Service and the PSNI to have illegal flags removed.

Coleraine Borough Council

The Union Flag is flown on Council Headquarters and three Town Halls. The Union Flag is flown on Council Headquarters every day the building is in use as well as on designated flag days. At Coleraine Town Hall the Union Flag is flown every day. At Portrush and Portstewart Town Halls, in the months of July and August and on designated flag days.

The Council has supported longer-term efforts to reduce the display of paramilitary flags and manage the display of other flags. The Council participated in a PSNI initiated multi-agency discussions with community groups in recent months to emphasise the difference in law between the display of illegal flags and legal flags and encourage community representatives to manage the display of legal flags more proactively in terms of location and duration. Council's role here was in support of communities. This and other initiatives have seen a significant reduction in the display of paramilitary flags in 2004. Council has taken a similar role in relation to bonfires and graffiti.

Cookstown District Council

No flags are flown on Council property on any occasion.

There is no written policy on the popular flying of flags in the Council area, however, an unofficial policy exists whereby flags should be taken down as soon as possible after the date of the event being celebrated. This policy appears to have become more effective over the last few years. Complaints which do arise tend to go to individual councillors.

Craigavon Borough Council

The Union Flag is flown at Council Headquarters on designated flag days. Additionally, subject to an equality impact assessment, the Union Flag will in future be flown on specific civic occasions such as a visit by a member of the Royal family to the Borough. Additionally, the Union Flag would be flown at half-mast for a number of days following the death of a member of the Royal family, Prime Minister, First or Deputy First Minister, Craigavon councillor or a time of designated national disaster.

No information was provided with regard to the popular flying of flags in the Council area.

Derry City Council

No flags or emblems are displayed at any council facility. However, on the occasion of a visit of a cruise ship to Derry the city flag and flag of Londonderry Port are flown at the Council Offices along the quays.

At festival times festival type flags are erected around the Guildhall (the only place permitted for hire of any political or religious event). In any space in the Guildhall the organisers of a function are not prohibited from displaying flags and emblems at that function inside the Guildhall.

Down District Council

The Council flag is flown at Council Headquarters every day. No other flag is flown.

As a result of work at local level council officers have been successful in encouraging organisations to remove flags on the day after the occasion they have been erected to celebrate (the Community Relations Officer has been able to identify individuals with whom they should hold discussions). Flying of flags has only been a significant issue in two loyalist areas. In Crossgar, for example, in 2003 they were successful in having flags removed immediately after the Twelfth celebration. Agreement was reached with the Orange Order and other community groups on the issue - the council also said they would provide services to help in the general clean up, although did not take down flags

themselves in case this caused offence. They attribute this success in the council area to successful working of local town redevelopment/regeneration groups. Projects seem to be more successful in providing ownership of the area and facilities if initiative comes from local area rather than the Council. This policy has been developed from around four years ago when Down Community Action Plan/Down 2010 was developed. Local regeneration committees deal with a range of local issues and this helps provide cohesion. There was a feeling that there was no great need for a Belfast-style Good Relations Steering Panel in Down District Council. The display of nationalist flags has also become an issue over the last year. Additionally, certain memorials and bonfires have also been the source of controversy.

Dungannon and South Tyrone Borough Council

The Union Flag is flown on Council Headquarters on designated flag days.

The council has no written policy on the display of flags in streets. Complaints are often referred to DRD Roads Service, NIHE or PSNI to be dealt with. The display of flags has become a more salient issue in recent years, partly because of the greater display of GAA county flags in the area and loyalists responding by erecting more flags. In 2004 loyalist flags were removed in September as opposed to previous years when they had been left to fly all year round, however some LVF flags remained in late October.

Fermanagh District Council

No flags are flown on any occasion. An Equality Impact Assessment was published in May 2003 and the existing policy was ratified by the Council.

A Working Group has been established to look at positive expressions of cultural identity, initially in Enniskillen. The group comprises a number of voluntary and statutory agencies including the NI Housing Executive, DRD Roads Service, Fermanagh Trust and Fermanagh District Council.

Larne Borough Council

The Union Flag is flown on Council Headquarters and the leisure centre every day.

The Council has no written policy on flags although there has been discussion in the Council of the issue of the flying of flags in streets. Where there are disputes the CRO, individual councillors and police liaison are involved in attempting to resolve the dispute. A new community relations strategy has been agreed and a Community Relations Forum is to be established involving politicians, voluntary and community sector representatives and others and this is likely examine issues such as those surrounding the display of flags.

Limavady Borough Council

No flags are flown on Council property.

The Council has no written policy on the display of flags in the Council area. Limavady contains one of the few integrated Housing Executive estates in Northern Ireland. Private and public housing is also side by side and flags are widely displayed along the access roads to these estates. Accordingly, the prolonged flying of flags is an issue. For the past number of years Council has requested the removal of unauthorised flags from Roads Service property. Council has recently established a Community Safety partnership and it is anticipated that this issue will be considered at an early date.

Lisburn City Council

The Union Flag is flown at Council Headquarters on designated flag days as well as 1 July and 12 July.

The Council is made aware by citizens of difficulties relating to flag flying which it realises is an important and emotive issue for many. Where disputes concerning flags arise it is not possible for the Council or any statutory agency to deliver an answer in isolation. In recent years there have been concerns about paramilitary flag flying, flags being flown in mixed areas where neither community wants them and about flags being put up to celebrate an event but not taken down after the event. There continues to be confusion regarding responsibility for removal of flags and the Council appears to be expected to undertake this role. In this regard callers are advised to refer to the agency which owns the property on which the flag is sited, usually DRD Roads Service or NIHE. Callers are also referred to the PSNI if relevant.

Magherafelt District Council

No flags flown on any occasion on council buildings

There is no written policy on the public display of flags in the council area. The Council has suggested that flags do not present a significant issue in the council area at the present time.

Moyle District Council

No flags are flown on any occasion.

Flags have appeared more generally over the last few years. It has been perceived as the responsibility of the Roads Service. Recently there have been complaints about flags in Ballycastle and in Bushmills, where loyalist paramilitary flags, murals and kerb-stones are painted. Bushmills is significant, not least because it is on route to the Giant's Causeway. Some recent improvements have taken place under a new village plan - the improved environment meant there was an unspoken agreement not to overdo loyalist material and this seemed to be toned down in 2003 with no paramilitary flags appearing. Union Flags were put up before 12 July and remained through August 2003 but were taken down in early September. Ballycastle has also become an issue with some Tricolours appearing during August but these were later taken down. This pattern was largely repeated in 2004. The Council is in the early stages of a community audit aimed at developing a new good relations strategy that may cover issues such as the display of flags.

Newry and Mourne District Council

No flags are flown on Council property on any occasion. Should flags be placed on Council property the Council takes all appropriate action to have these removed as quickly as possible and this can, on occasions, seeking community support for the action taken.

If flags or murals appear on property not owned by the Council but by another statutory agency then the matter is reported to the appropriate body for them to deal with. The Council endeavours to handle such matters in a sensitive and pragmatic manner irrespective of the source of such flags.

Newtownabbey Borough Council

The Union Flag is flown on all Council administrative buildings and leisure centres every day.

In June 2003 the Council published a Report on the equality impact assessment on the flying of flags on council premises. The report noted that following the equality impact assessment the council had decided to maintain its policy of flying the Union Flag at all times on its administrative buildings and leisure centres and that it be present in the council chamber during meetings of the council and its committees (para. 4.4). However it added that, 'consideration will be given to the appropriate mitigation for the current

policy such as challenging stereotypes, Community Relations education and Good Relations training with staff. Suggestions regarding appropriate mitigation would be welcomed.' (para 4.5) The council is in the early stages of a good relations audit which is likely to include an examination issues surrounding the flying of flags in the Council area.

North Down Borough Council

The Union Flag is flown in Castle Park adjacent to the Town Hall, Bangor and at the Maypole and at the Leisure Complex in Holywood every day.

Problems over the flying of flags is limited to a number of housing estates. However, there have been some complaints concerning flags from people driving past loyalist paramilitary flags on main roads. The Council co-operates with the police to have them removed but they are often replaced soon afterwards. The Council does not remove flags themselves because this may pose a safety problem for workers.

Omagh District Council

A flag displaying the Council coat of arms is flown at Council Headquarters every day. No other flag is flown. No flags are permitted to be flown on other Council premises.

In March 2004 the Council adopted a cultural policy which (inter alia) committed the Council to actively discourage the painting of political/sectarian slogans, flags and 'colours' on public property and to encourage local communities to have such painting removed. The Council also decided that it would, 'actively discourage the public display of flags, bunting or emblems on a territorial or triumphalist basis.' It added that where flags or emblems were used in conjunction with a special project or occasion Council would encourage the promoters, 'to display the flags/emblems for a reasonable period prior to the event and to remove them as soon as possible after the event.' At a recent special meeting to discuss a specific issue relating to the display of flags in Omagh it was agreed by Council Members that the council should work with communities to resolve particular situations.

Strabane District Council

No flag is flown on any occasion on council property.

There is no written policy on popular flying of flags. In the 12 July period Union Flags and bunting are flown by unionists and loyalists rather than paramilitary flags. The occasional display of Tricolours in housing estates also occurs, however, the flags issue is not considered a major one in the Council area. The Council does have an equality group but this does not involve community members. The Council CRO also works with community groups.

Policy overview on Popular Flags

- 5.3 The response of District Councils has varied widely. In council areas that have a heavy unionist or nationalist balance the flying of such flags has not, at least until recently, been regarded as a high priority issue since the degree of sectarian residential segregation gave fewer opportunity for offence to be caused to 'the other side'. The display of flags was only considered a problem after a conflict appeared. There have been some successful projects encouraged and driven by local Councils but these are by no means widespread.
- 5.4 **As far as we could ascertain, no local Council has a full written policy or protocol on how to deal with popular flags flying in the street although some have general guidance.** This bears interesting comparison with policies on bonfires. According to the report on *Bonfires* (2004) by the Interagency Working Group at the Department of the Environment, Environment and Heritage Service, ten councils have produced leaflets or

a code of conduct for members of the public (2.4.6). The same report also considered the role of Community Safety Partnerships in looking at bonfires.

Policy Overview on Official Flags

- 5.5 With Regard to the flying of flags on Council buildings Belfast City Council in part of its Equality Impact Assessment document produced the following table. We have amended this in light of more recent information.

Belfast City Council
Policy and Resources Committee Minutes 18 April 2003
Appendix C (B1541-1542)

	Council	Location	Flags & Dates
1	Antrim Borough Council	On Council HQ & Antrim Forum	Union Flag flown every day
2	Ards Borough Council	On Council HQ and war memorials	Union Flag every day
3	Armagh City & District Council	On Council HQ	Union Flag flown on designated days
4	Ballymena Borough Council	On Council HQ & Town Hall	Union Flag flown every day
5	Ballymoney Borough Council	Borough Offices, Riada House, Joey Dunlop Leisure Centre, Town Hall	Union Flag flown on all premises listed on designated days plus 12 July & Christmas Day
6	Banbridge District Council	On Council HQ, Tourist Information Centre and Town Hall, Banbridge	Union Flag flown every day
7	Carrickfergus Borough Council	On Town Hall, Leisure Centre, Bentra Golf Club, Sullatober Depot	Union Flag and Northern Ireland Flag flown at Town Hall and Leisure Centre. Union Flag only at other venues
8	Castlereagh Borough Council	On Council HQ	Union Flag, Ulster Flag and Council Coat of Arms flown every day
9	Coleraine Borough Council	On Council HQ (Cloonavin) and 3 Town Halls	Union Flag : Cloonavin every day the building is in use and ceremonial days if not in use, Coleraine Town Hall every day, Portrush and Portstewart Town Halls in July & August and ceremonial days
10	Cookstown District Council		No flags flown
11	Craigavon Borough Council	On Civic Centre	Union Flag flown on designated days
12	Derry City Council		No flags flown

	Council	Location	Flags & Dates
13	Down District Council	On Council HQ	Council Flag flown every day – Union Flag not flown on any occasion
14	Dungannon District Council	On Council HQ	Union Flag flown on designated days
15	Fermanagh District Council		No flags flown
16	Larne Borough Council	On Council HQ and Leisure Centre	Union Flag flown every day
17	Limavady Borough Council		No flags flown
18	Lisburn City Council	On Council HQ	Union Flag flown on designated days plus 1 July and 12 July
19	Magherafelt District Council		No flags flown
20	Moyle District Council		No flags flown
21	Newry and Mourne District Council		No flags flown Council flag being considered
22	Newtownabbey Borough Council	On all Council administrative buildings and leisure centres	Union Flag flown on all premises listed every day
23	North Down Borough Council	On Town Hall and Leisure Complex	Union Flag flown every day
24	Omagh District Council	On Council HQ	Council Coat of Arms flown at all times – Union Flag not flown
25	Strabane District Council		No flags flown

5.6 There are a wide variety of approaches to the flying of flags on Council buildings. However, Section 75 of the Northern Ireland Act has made local Councils take a closer look at their policies. We know of Equality Impact Assessments being undertaken in Ards, Armagh, Belfast, Fermanagh, North Down and Newtownabbey. An Equality Impact Assessment in Newtownabbey, however, did not lead to a change of policy and Union Flags remain on all Council buildings at all times. For at least some Unionist controlled areas there is a movement towards flying the Union Flag in accordance with the regulations for Government building designating flag days. This also seems to be the general legal advice and the advice given by the Equality Commission.

5.7 A Council official speaking about the difficulty of dealing with the flags issue within the perspective of good relations (Section 75.2) said: 'It still hasn't been specifically defined as to what good relations are. We have defined it ourselves in many respects – through training and through our own internal thoughts. It's tackling difficult issues in terms of flags and emblems and whatever else. But it's extremely difficult to go in cold to people who are, maybe, from a strong unionist persuasion and tell them that they can't fly the flag. It's difficult but you have to tackle difficult issues as far as we are concerned.' On guidance over flags and legislation they commented: 'There needs to be some guidance from central government on this as well for us as the Mandelson edict doesn't apply to councils, it just applies to central government bodies. What councils are quite good at is complying with law. If we say "You have to do this" they say, "Why, why do we have to do

that?" But if it's actually in statute they say OK. Similarly with section 75, as soon as they realised it was a legal obligation in terms of the equality duty they went for it right away.'

- 5.8 The Equality Commission has consistently stressed that, in its opinion, displays of the Union Flag must be viewed in the context in which the flag is flown. Factors affecting the context include the manner, location and frequency with which the flags are displayed. The importance of examining the context has also been consistently stressed in this report.

Summary

- 5.9 A number of local Councils have developed successful projects in order to deal with issues over the popular flying of flags. **However it is clear that the response of councils to dealing the popular flying of flags is *ad hoc*. Not one local Council appears to have a written policy or protocol on dealing with issues that arise from the popular flying of flags.**
- 5.10 **Policies on the official flying of flags on Council buildings vary across the different Councils. Section 75, of the Northern Ireland Act is forcing local Councils to reconsider policies in this area and a number have, are or will be, undertaking Equality Impact Assessments.**

6. CAUSES, CONSEQUENCES AND TRANSFORMATION: CASE STUDIES

Practice and Context

- 6.1 Flags and other symbols are used in a whole range of contexts and, as we have already suggested, symbols carry a range of meanings. *The Northern Ireland Life and Times Survey* (see Appendix 2) shows that attitudes to the Union Flag, the Tricolour and loyalist and republican emblems vary depending upon which sector of the population you come from. We can also see from looking at people's practices that the context in which people live makes a difference. Not many flags are flown in middle-class areas in Northern Ireland. This may seem a mundane observation but it leads to a very important question. What is the context in which people feel the need to put up flags? Who puts the flags up, what flags do they put up and why?
- 6.2 What follows is some evidence as to why the flags are flown and 6 case studies which we believe illustrate the dynamics at work, both between communities (inter-community) and within communities (intra-community). The examples are all recent and from Northern Ireland although for a number of cases we have hidden the actual locations.

Belfast in July

Case 1

We take as our first case study the flying of flags in Belfast over the summer months. We have taken this broad survey because the Twelfth of July is the most significant period at which flags are displayed but also because there have been significant changes some of which are due to work within communities and with statutory agencies to impact on the environment. It is also important to remember that some of the areas covered are areas with significant social and economic pressures and high numbers of poorly maintained or derelict properties.

In late July 2001 Kate Fearon conducted a survey of the number and type of flags flying in parts of east and south Belfast. We replicated that survey in 2004 (see below). Below are some interesting figures looking at the number and type of flags flying around the Twelfth of July in areas of Belfast. These figures are a very broad comparison and not too many assumptions should be made. However, they show shifts over time and indicate that whilst there has been a decrease in flag flying in some areas, others appear to have more flags. 2001 was a period when intra-communal tensions within the Protestant community, driven by the loyalist feud, were still high. The areas that show an increase in flags in 2004 are ones where inter-community tensions are particularly significant.

A comparison of 2001 with 2004 shows how complex the issue of flags flying can be but, although there appears to be fewer paramilitary flags flying in recent years, it also suggests there is an ongoing issue. Take for example Sandy Row that has, throughout the 1990s, had a significant display of flags. Until around 1995 there was also an Orange arch at the Lisburn Road end of Sandy Row. During the later part of the 1990s it was noticeable how many Independent Ulster Flags flew (Blue with red cross of St Patrick, yellow star with red hand in the centre) representing some of the political leanings of the UDA at the time. It was noticeable how few Union and Ulster flags were flown. The figures above from 2001 suggest the high number of UDA flags in 2001. Rather than decreasing, 2004 actually appears to have seen an increase. The main section of the Sandy Row has only Union and Ulster flags but there remained a range of paramilitary flags at the intersection of Sandy Row and Donegall Pass. The building site on this corner also had hoardings up displaying the insignia of the UDA and UFF. This might reflect a dispute over the building of some new flats, which had received significant publicity earlier in the year.

Flags figures:

	Ulster Flag	Union Flag	UVF/YCV	UDA/UFF	Others
Sandy Row					
2001	11	12	0	18	0
2004	33	35	0	24	0
Donegall Pass					
2001	16	17	16	0	0
2004	16	16	0	0	0
Albertbridge Road					
2001	0	5	7	14	
2004	No flags – removable pennants – 6 Union 6 King Billy				
Lower New'ards Road					
2001	3	4	16	32	0
2004	34	33	8	8	1
(at bonfire site)	8*		11*		

* Removed after Twelfth

Donegall Pass, an area perceived as having support for the UVF has seen a decrease in the number of paramilitary flags. In 2004 there were no paramilitary flags on lampposts over the Twelfth although some were displayed on a public house. We understand some UVF flags had been displayed over the period of July 1st commemoration of the Battle of the Somme but were taken down afterwards.

The Albertbridge Road and Templemore Avenue show an even more dramatic change. In 2001 there were a large number of UVF and UDA flags. Replacing all the flags that were present in 2001 have been some smart pennants showing King William on an orange background, or the Queen on a Union Flag background. This clearly reflects decisions made in the area and makes a significant difference on main roads into the city.

Less than 10 minutes walk away on the Newtownards Road there has been a dramatic increase in the display of Union and Ulster flags but a decrease in paramilitary flags, except in some sensitive areas such as that facing Saint Matthew's Church on the Newtownards Road at the interface with Short Strand. These were removed just a few days after the Twelfth.

In Cluan Place a very small Protestant community on the edge of the Nationalist Short Strand area, where there was significant interface violence in 2002, the paramilitary flags, present in 2002 and 2003 have not re-appeared in 2004. In addition houses have now been rebuilt and the small cul de sac looks much better than 18 months earlier.

In other areas of Belfast there were also examples of a reduction in the number of paramilitary flags with both Union and Ulster flags more prominent. In 2001 paramilitary flags appeared all along the Shore Road and Tigers Bay clearly designating which part was controlled by the UVF and which by the UDA. Again, in 2004 these have been replaced by Union and Ulster flags. Similarly areas of the Shankill, which was the focus of the feud, show a dramatic reduction in the use of paramilitary flags.

It is also of interest that in the area of east Belfast we surveyed just over 54% of flags were displayed outside private residences, 28% on lampposts, just under 11% were on buildings of various sorts and 7% at other locations. We came across 29 different types

of flags. It is also worth noting that paramilitary flags, though comparatively few in number (13% of the total), tended to be displayed in clusters, and were more common at interface areas. The use of plastic bannerettes or pennants, mainly along Templemore Avenue, was also novel and provided a more professional, and possibly less threatening, look to the area with the bannerettes also being more likely to endure the weather much better than flags.

As discussed in section 2 there is always going to be a range of reasons why people fly flags. It is also important to understand who might be viewing the flags and the context in which the flags are displayed. For example, displaying flags on main roads might suggest that the purpose is to 'remind' others of their political beliefs rather than simply a celebration of a tradition by a community. Similarly, displays close to interfaces with particularly high number of flags at the interface would suggest that the intention is to 'remind' another community or be intimidatory.

This brief and relatively unscientific survey and set of observations does provide an indication of how a transformation of the context in which flags are being displayed makes a difference. The more widespread use of paramilitary flags was clearly, in part, driven by the loyalist feud that was at its height in 2000 and 2001. Evidence from 2004 suggests the more widespread use of the Union and Ulster flags in certain areas and some imaginative work using other forms of displays. In addition in some areas flags are being taken down after a period of time. However, there are clear examples where displays of flags, including paramilitary flags, near interfaces are placed as a message to the other community. In addition, there remain displays of paramilitary flags in residential streets.

On 22 July 2004 the PSNI announced that 150 paramilitary flags had been removed with agreement from local communities and Assistant Chief Constable Duncan McCausland suggested that the PSNI were committed to a strategy that ensured paramilitary flags were not flown in communities across the Belfast region (*Irish News* 22/7/04).

Case 2

'Huntclub Estate' May-June 2001

Huntclub estate is a small estate of approximately three streets on the northern edge of a large town in Northern Ireland - one road providing exit to the area. To reach the estate one passes through a more affluent residential area. This may increase the sense of deprivation felt by people in the estate. In June 2001, around 20 Tricolours were erected in the small estate. The appearance of Tricolours was blamed on Sinn Fein but it was suggested to us that it had as much, or more, to do with feeling of isolation within the estate. A group of loyalists reacted to the situation by storming into the estate to remove the flags - a number of them subsequently faced charges in relation to the incident. A member of the PUP was quoted as saying "Our party continues to monitor the situation and we will endeavour to support Protestant and Roman Catholic people in the Glebe Road area who do not wish to have their area reduced to the status of a republican ghetto."

The Borough Council approached Counteract in an attempt to resolve the situation. They rejected the idea of a single forum to examine the issue of flags and symbols in the Huntclub estate and another local loyalist area, Glebe, as being too confrontational. Instead they suggested two forums, one in Huntclub, another for Glebe. In the Huntclub estate there was no community organisation in existence and so Counteract had to help start such a group.

After meeting local families the issues raised concerned the lack of local infrastructure with no access to facilities, including the lack of a youth club. Many of the flags had been put up by young people rather than adults. Counteract created a mechanism for the Council to undertake a community survey. The outcome was that the Council provided a portacabin for local community use and the number of flags was reduced to one in the centre of the estate. This situation has been maintained. Moreover Huntclub has been further drawn into the wider community through a development plan for the general area.

Counteract and TIDES Training believe that progress on the community consultation process in Huntclub estate was almost lost in June 2002 when a political party released a paper which suggested that Sinn Fein activists had distributed Tricolours for display in the estate in an attempt to raise their profile. The paper claimed that residents who expressed opposition to the display of flags were subjected to intimidation. This led to a greater politicisation of the issue and Counteract had to 'freeze out' the deal for about six weeks until the situation calmed down.

On the wider issue the view was expressed that; 'these flags are articulating something and the long-term way of getting rid of them is that people see something else that they want. So you are moving towards something rather than reacting to something.' To be successful this required 'political vision' from the top as well as community work at grass-roots level. On a positive note it was felt that a climate was developing which was attempting to deal with some of the blockages – politics, paramilitarism and fear – but that local deals were not immune to the macro political situation in Northern Ireland.

Case 3

'Greenborough' July 2003

Wesley Road estate in Greenborough had been a mixed estate until the mid-1980s. In the wake of the Anglo-Irish Agreement increasing tensions saw attacks on the homes of Catholics in the estate and an exodus of Catholic families. In the years since then the estate has become increasingly 'loyalist'. In the town of Greenborough generally what had been a predominantly Protestant town (estimated at 80 per cent) thirty years ago was now approximately fifty per cent Protestant and fifty per cent Catholic. This factor was perhaps an element in increasing tensions and insecurity in the area leading to intermittent sectarian clashes.

In 1994 a Greenborough Regeneration Committee was formed to try to regenerate the town both socially and economically. In July 2003, unlike in previous years, loyalist paramilitary flags were erected in the centre of the town. This was attributed, at least partly, to rivalries between paramilitary organisations in the Wesley Road area with each group trying to out do the other in the display of flags. A contributing factor may have been the perceived growth in activity by Sinn Fein activists in the Greenborough area in the preceding years - further heightening loyalist concerns. Besides the obvious negative impact the display of such flags in the town centre had on community relations, local businesses were also concerned about the impact on commerce.

The Greenborough Regeneration Committee had already established contacts with loyalist representatives in the Wesley Road area and, about five years earlier, the Committee had assisted in obtaining a building for use by a local youth group and as a community centre. As a response to this, after a number of meetings, the loyalists had responded by agreeing to the removal of paint on kerbstones.

Subsequently, with the help of Counteract, Greenborough Regeneration Committee prepared a questionnaire touching on the broader issue of flags and murals. Of nearly 400 hand delivered questionnaires sent out approximately 80 per cent were returned and over 85 per cent favoured the removal of flags and murals. Furnished with this information the Committee was able to encourage loyalists to remove some of their paramilitary murals and only fly flags in July and August. The Committee also later mediated a dispute involving the erection of a loyalist memorial and helped obtain funding for a local festival.

With this background the Greenborough Regeneration Committee further established their credibility with some of those linked to the paramilitary groups, credibility used in negotiations over the removal of the flags. Another major factor in the Committee's ability to negotiate the removal of the flags was the local reaction to the brutal beating of a Catholic man, apparently by loyalists, in Greenborough in late July. The revulsion expressed within the local community to this attack increased pressure on loyalist groups to give ground on the issue.

Following a meeting between representatives of the Regeneration Committee and loyalist representatives from the UPRG the latter agreed to remove the flags from the town centre and subsequently did so on the evening of 11 July. At the same time the local police inspector employed his contacts with the PUP/UVF to encourage the removal of UVF flags and, after they were assured that the UDA were removing their flags, these were removed by the UVF by 9.30 am on the morning of 12 July.

As in other cases the involvement of a respected individual or group (in this case locally based) was highly significant in helping to resolve the dispute. One of the individuals involved noted: 'They know me over the years and I can walk any part of 'Greenborough' without the slightest worry from any of them. I think I'm one of the few people who can.' Where occasional arguments with members of paramilitary groups were involved; 'It's a bit of a safety valve for them because they've come to me on different occasions to talk to me about things. I find it very worthwhile and the police are happy that they [the paramilitary members] have someone to talk to that they trust.'

Case 4

Westmount 2003

Loyalist paramilitary flags were erected in the centre of the mixed estate of Westmount. There had been intimidation of people in the area. There was also some competition between loyalist groups in the area. Police had attempted to negotiate with people in the area over the removal of the flags and when this was unsuccessful, and after canvassing opinion in the area, they removed the flags. More flags replaced those removed. The police identified those putting the flags up, made arrests and found evidence of paramilitary involvement at the houses of those arrested. Suspects were charged under section 13 (1) of the Terrorism Act and in March 2004 four men were jailed. This judgement was then appealed. This case produced considerable publicity and has been mentioned to us as we discussed the flags issue with a range of individuals.

Case 5

'Spark' Area Jan 04

In early 2003 there was a change in the leadership of the predominant paramilitary group in this strongly loyalist urban area. One immediate result of this change was the removal of flags, arches and other iconography associated with the previous leadership. Initially these changes were largely determined by the internal concerns of the paramilitary leadership in demonstrating that the previous regime had been removed for good. An unexpected side-effect of this activity, however, was that the removal of some of the more aggressive and militaristic visual displays helped to produce a less hostile environment within which local residents could live.

Following on from this local representatives and community workers (some with an influence on local paramilitary organisations) approached statutory agencies, including the District Council, the NIHE and the Roads Service to undertake a more far reaching clean-up of the local area. A small unofficial 'clean-up committee' composed of a local councillor, a housing executive official, a council official and a community representative was established in the area and this group co-ordinated the removal of nine of the more militaristic murals in the area. Further murals were removed after discussion with local community representatives.

From this beginning the 'clean-up' became more widespread and developed into a more general attempt to improve the local environment. As part of this process there has been a reduction in the number of flags and murals on display and more recently the appearance of flower baskets in the streets – the latter provided as part of a effort by the council to improve the environment of the entire district council area. One member of the clean-up committee commented that local residents now 'have a flower basket instead of a flag'.

The success of the environmental clean-up in the area led to enquiries from a nearby district for the statutory agencies to undertake similar action in their area and subsequently to a second nearby district where a different paramilitary group was influential.

All of the members of the clean-up committee considered that the environmental clean-up approach had been a major success both in improving the lives of local residents and in inspiring other areas to take similar measures. The members did note, however, that more could still be done if additional resources were available. Several members also noted that the removal of kerbstone painting was an area where further action could be undertaken – particularly since they had been discouraging the painting of kerbstones over the last few years (a community representative commented, ‘you should wear your colours, not walk on them’).

Where flags specifically are concerned several factors beyond that of environmental clean-up have been important in leading to a reduction in the number being displayed in the area. There has been a decline in tension between rival paramilitary organisations and this, allied with a recognition that flags ought not to be used as territorial markers, has led to a reduction in the number of paramilitary flags being displayed. Negotiation at local level with regard to visual displays at sectarian inter-face areas has also led to a reduction in the number of flags being flown.

While some members of the clean-up committee agreed that the ‘environmental’ approach did not specifically address some of the difficulties associated with the display of flags they also believed that this was less important than accepting the benefits which the environmental clean-up approach had brought to the local community. Equally it could be argued that such an approach was less likely to be seen as an attack on a particular political culture. Perhaps most importantly this approach could be applied to a range of, sometimes contentious, areas, whether in dealing with flags, murals, arches or bonfires.

Analysis

- 6.3 In these cases events were taking place within the context of changing perceptions of territory with paramilitary groups competing for control of areas. In each of the cases community politics was in part determining what was taking place. Referring back to the symbolic strategies discussed in section 2 of this report these are both strategies to give political value to symbols within a community, and strategies to stop another community displaying symbols. It is very clear, for instance that the proliferation of paramilitary flags in Loyalist areas had much, if not most, to do with competition between the UDA, the UVF and the LVF. This of course does not mean that the displays do not appear threatening to many people outside those groups, particularly when sectarian attacks are taking place. But the point is that the practice of putting these flags up has been as much a part of intra-communal politics rather than inter-community politics and attempts to deal with those problems must take account of this.
- 6.4 There is no doubt that paramilitaries have had a significant role in the proliferation of flags and this may be why large numbers of people treat the practice with such suspicion. It was pointed out to us by the resident of one area of Belfast that there had always been flags and bunting around the Orange Hall, but it was only in the last few years that flags had appeared up and down the road. Some, but not all, of these flags were paramilitary. It is reasonable to suggest that most of the flags put up were not put there by the Orange Order. It is also the practice around Orange Halls to take decorations down at the end of the marching season.
- 6.5 In that vein the work of the Loyalist Commission, especially in parts of Belfast, has been particularly interesting. The Loyalist Commission has dealt with these issues from within the community with other sections of the Protestant community sometimes challenging the Loyalist paramilitaries about their practices with those groups responding in a positive way.

- 6.6 It is worth noting that in Case 4, where the police perhaps took more decisive actions than they often do over flags, it is clear that the paramilitary group lacked widespread support in the area. This clearly made it easier for the police to act. We know of another example, where the relative powerlessness of the group seemed to lead to the removal of a memorial. It was also mentioned to us by a number of people in District Councils that that support for local groups did influence how much work could be done to remove flags. **This underlines the relationship between local political and paramilitary power and the control of public space.**
- 6.7 A further issue that arises from the cases where the police have intervened is one of consistency. Why take action in one area and not in another? The reality of course is that power relations and community infrastructure in each area make a difference. This is important if we are to consider legislation or a protocol to cover such displays. Should we accept that there is effectively one rule for a mixed middle class area and another for a working class Protestant or Catholic area?

Transforming the Context

- 6.8 In cases 2, 3 and 5 the work to overcome the conflict involved looking at a broader range of issues than simply those of flying flags. In each case the community was involved in the process. It is also worth noting that in cases 2 and 3 a survey was carried out to see what support there was for flags and a mural. In not dissimilar fashion Belfast City Council surveys a street where there have been requests for street nameplates in Irish. Sometimes it is worth finding ways of asking the communities involved.
- 6.9 It is also interesting to note the role of different interest groups involved. The role of traders in case 2 was significant, as they have been involved in issues around parades in London/Derry in recent years. We know of incidents in areas of Belfast where traders have backed attempts to take flags down and get kerbstone painting removed. Again this took place in areas that had a mixed and middle class population. In both of the examples in Belfast it was clear that it was paramilitary groups putting the flags up and that they had very limited support in the area.
- 6.10 Another organisation, Groundwork, has taken a similar approach to Counteract. Groundwork is a national NGO which works to improve the housing environment across the UK. Groundwork NI 'invests in local communities where the peace process is at its most fragile, areas of high social and economic need which have been scared by civil strife' (*From Policy to Practice: Groundwork NI Challenge to Politicians and Policy Makers*). Groundwork offers a model which links environmental regeneration to the development of community relations, community safety and of key skills in the community. The principals offered by Groundwork are the following:
- The social, cultural and religious divisions in NI society are affected by physical development.
 - Policy initiatives that influence physical development are affected by these divisions.
 - The environment can be a contentious issue.
 - The environment can be the key issue that motivates communities to come together for practical action.
- 6.11 Projects in Belfast have reduced levels of flag flying through involvement of the community in environmental improvement schemes. These projects, however, have had short time spans and in at least one area there remain a large number of paramilitary symbols.
- 6.12 Much of this work appears to have been reflected in the funding announced in April 2003 to support disadvantaged communities. The Community Action Group set up in November 2002 has developed measures to target health, education, physical and community regeneration. Included in the funding was the Creating Common Ground Consortium who are working 'on the link between regeneration and building cohesive communities around tangible issues, such as the environment' (*Creating Common Ground: A Positive Approach to Segregated Space – Value and Action*). Also funded has been the work of Mediation

Northern Ireland in East Belfast where a wide range of measures have been developed in an attempt to reduce tensions.

- 6.13 The main objective of these projects is to change the context in which people live. This can be achieved through examining the environment and by building relationships. A constant theme which has come out of interviews with those taking part in this arena is that the building of relationships and partnerships needs to be sustained in the longer term. Some theorists have described the types of relationships necessary as social capital. The networks of relationships do not imply there will be no conflicts but rather they provide possibilities with which to deal with the conflict when it arises. Greater security, which in some measure comes from greater trust, can allow communities to alter practices that appear to others as offensive. **These understandings should be reflected in the development of community relations strategies.**

7. CONCLUSIONS and OPTIONS

- 7.1 In the preceding sections we have explored the nature of symbolic politics, examined the range of legislation that can be applied to disputes and looked at case studies of disputes over flags. Disputes over symbols are not new and reflect the divisions within this society over a significant period of change. However, Northern Ireland has been undergoing significant social and political changes leading to increasing levels of insecurity in some communities and this has, in part, led to a proliferation of certain sorts of symbolic displays. Perhaps, the most obvious example of this has been the more widespread use of a range of flags, particularly paramilitary flags, by loyalists. Anyone travelling the streets of Northern Ireland over the years cannot fail to have noticed the changes that have taken place in terms of symbolic displays.
- 7.2 This leads us to a conclusion that underpins all other conclusions. **If you change the context within which people are living then symbolic expressions people use will also change.** People put flags up, build memorials and paint murals for a reason. If those activities are seen as unacceptable, or more importantly threatening, then, as a society, we need to address the reasons people are representing themselves in those ways and perhaps look for alternatives. In the case studies and across many of the interviews we have conducted people have told us that issues concerning flags need to be approached within a wider context of looking at the environment – physical, social economic and cultural - in which people live.
- 7.3 **Dealing with the conflicts that arise from the use of symbols is not just a moral imperative for public authorities it is now a legal duty.** Section 75 of the Northern Ireland Act 1998 demands that public authorities carrying out their functions with due regard to the need to promote equality of opportunity and have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial groups. Much attention is now being paid to the second part of section 75, ‘the desirability of promoting good relations between groups’.
- 7.4 We would also note the following recommendations from ‘A Shared Future: A Consultation on Paper Improving Relations in Northern Ireland’ produced by the Community Relations Council (p.21). The policy aims and outcomes of a new approach to promoting good relations should include:

Reducing the toleration of displays of sectarian aggression: Openly sectarian graffiti, aggressive paramilitary flags and murals, campaigns of intimidation and the inappropriate flying of flags and emblems should be the subject of clear policy and prompt action by responsible public bodies.

And

‘Identifying clear departmental responsibilities for dealing with sectarian issues: The culture of buck passing...should be ended.’

- 7.5 In this section of the report we make some concluding remarks about symbolic conflicts in Northern Ireland and then lay out a series of options that have been suggested to us by some of the people to whom we have spoken.

Nature of Symbols

- 7.6 We have made some basic observations about how symbols work. We have argued that:
- the meaning of symbols is not fixed;
 - meaning depends upon context;
 - symbols can have a whole range of meanings;
 - different people will read the same symbol in a different way;
 - the psychological drives for the display of symbols might vary;
 - political actors have a number of strategies when using symbols;

- there maybe a range of strategies being undertaken in a display of symbols;
- the power held by individuals and groups plays an important role in the strategies followed; and
- new symbols can be used to in new situations.

Official Flags - Legislation and Practice

- 7.7 A range of alternatives are argued by the political parties represented in the Northern Ireland Assembly. These vary from having the Union Flag fly on every day of the year, to the use of no flag, to the flying of both the Irish Tricolour and the Union flag together reflecting both communities.
- 7.8 The new statutory rules regarding the flying of official flags from Government buildings – The Flags Regulation (NI) 2000 - has defined the use of the Union Flag for certain types of public buildings on designated ‘flag days’. Legal advice and the opinion of the Equality Commission, given to Belfast City Council and the Northern Ireland Assembly sub-committee, suggests that the practice of the flying of the Union Flag on flag days can be defended as representing the constitutional status of the country. Such limited but significant use would seem to echo Section 75 of the Northern Ireland Act 1998 in an attempt to promote good relations. When the State needs to be represented then judicious use of the Union flag would seem to be reasonable. By the same token the use of national flags for official visits, such as those by the Head of State or government ministers, might also be considered on a reciprocal basis.

Options

- 7.9 There is an argument for the development of a new flag representing Northern Ireland. *The Life and Times Survey* would suggest that there is some support for a new flag (Appendix 2) however, it is not surprising that there is limited support for a symbol that does not exist. There would seem to be some merit in a flag that is not widely displayed on the street but used as an official recognition of Northern Ireland. It could be used in conjunction with other flags. As we argued in section 2 on how symbols work, for such a flag to have resonance it would need politicians and others to commit political capital to it.

Official Flags - District Councils

- 7.10 There is a wide range of policies practiced by District Councils around Northern Ireland. These range from the flying of the Union Flag on nearly all Council buildings every day of the year, to flying no flags on any building or flying simply the Council flag. There are Councils that have chosen to follow the legislation for Government buildings and fly flags on designated days, even though the legislation does not apply to local Council buildings. A further question is whether there is a difference between flying a flag at the Councils’ headquarters and flying a flag at a place of work. Whilst the headquarters is also a place of work it could be argued that its ceremonial status places it in a different category to that of a work place for council workers.
- 7.11 Some District Councils have undertaken Equality Impact Assessments with a range of outcomes. The assessments have considered different options. Some of the possible options are detailed below:
- The flying of flags on all local Council buildings – reflecting the sovereignty of Northern Ireland
 - No flag at all
 - Two flags – the Irish Tricolour and the Union flag representing the two main national communities in each Council area.
 - Flag days that reflect ceremonial but judicious presentation of United Kingdom sovereignty.
 - A flag representing the council area

7.12 Unionists argue that the removal of the Union Flag has just as much impact as it being left in place. Nationalists tend to favour flying both the Union Flag and the Tricolour, flying a Council flag or no flag at all.

7.13 **Options**

- Legal advice and advice from the Equality Commission would seem to suggest, taking account of the each particular context, that the flying of the Union flag on designated flag days at the head-quarters of the local Council may be legally defensible as a practice.
- Statutory rules for government buildings could be extended to local Council buildings. This might require Councils not flying any flag to put the Union flag up on 'flag days'.
- There is argument that a Council represents the people of a given area, not of a nation, and therefore the symbols of a council should represent that place.
- One suggestion is that no flag should be flown unless all the Councillors agree to a policy. In other words good relations are promoted by demanding consensus amongst politicians.

'Popular' Flag Flying

7.14 Displaying flags, bunting and painting kerbstones before commemorative and celebratory days has a long history in the North of Ireland. Also part of that long history is the role this practice has in defining territory. That is certainly not to say that this is the only reason the practice takes place. As with all symbolic and ritual acts they can perform a range of functions. Vibrant communities all over the world have events that give them a sense of belonging and consciousness. However, in the context of the divisions in Northern Ireland, such practices can be divisive.

7.15 It is also clear that whilst some of the practices are 'popular', in that members of the community welcome the appearance of flags, bunting and painted kerbstones, some displays are not. The organisation of these practices has changed over time. It was made clear to us by a number of people that many flags are put up by groups with paramilitary connections. This is quite different to what might have taken place in the 1950s or even the 1880s. For example, it has been made clear to us that members of the Orange Order are actually involved in only a very limited way in displays of flags and bunting and that usually takes place around Orange Halls. Flags at Orange halls are also often put up and taken down over a reasonably short period of time around the Twelfth.

7.16 In addition, the marching season, which in Loyalist areas is frequently given as the reason for the flying of flags appears to have extended over most of the summer and beyond. The period in which these celebrations and commemorations are taking place, judged by when the flags go up and are taken down can be five or six months. Often flags are not taken down at all and just become shreds over the winter months.

7.17 Most significantly flags are clearly used to mark territories. If one visits almost any of the interfaces in Belfast there are flags clearly erected so that the other community can see them. Indeed great effort is sometimes gone to so that flags can be seen beyond the area in which they are erected.

7.18 **Whilst the PSNI, the Northern Ireland Housing Executive, District Councils and the DRD Road Service all play active roles in dealing with problems over flags neither has a publicly available policy or protocols. As such the approach to problem solving remains ad hoc and inconsistent.**

- 7.19 **There are a wide range of good projects involving all the statutory agencies and local communities involved in environmental improvement and community development.**
- 7.20 To sum up, there is a clear distinction between the practice of flying flags and decorating an area for a community event and the practice that routinely takes place in Northern Ireland. A policy initiative to deal with the issue might have the following aims:
- To tackle the display of symbols and emblems in a way that attempts to differentiate acts of celebration and commemoration from those of territorial marking and intimidation.
 - To encourage community events that give affirmation to identities within that community.
 - To encourage forms of celebration and commemoration that are less threatening to other communities.
 - To make clear, including through rigorous policing, the some forms of symbolic representation that are unacceptable.
- 7.21 Very broadly there are two ways that change could be undertaken. The first is to explore the 'policing' of such activities through legislation and the activities agencies with legal jurisdiction over public space. The second is to look at projects, forms of community engagement and funding that encourages a change in practice.
- 7.22 **There is a clear need for there to be a more co-ordinated approach to a whole range of issues involving acts of symbolic representation.** To date the only arena in which a co-ordinated, if controversial, approach has been tried is that of parades and protests. The nature of organised parades lends itself to an approach that can be based on legislation but also offer problem solving through mediation. There are a number of policy options that might be learned from the control of parades.
- The use of specific and targeted legislation.
 - The use of a code of conduct designating reasonable behaviour.
 - The use of Authorised Officers (fieldworkers) to co-ordinate mediation/negotiate or help enforcement.
- 7.23 The Parades Commission of course has a substantial budget (£1.2 million in 2002/3) and was put in place in part to deal with specific and major public order problems. It is set up under specific legislation, and that legislation is relatively clear in defining what decisions the Commission should make and what is the responsibility of the police. It has power to make determinations and a code of conduct for those involved in parades. As such the Parades Commission has relied upon legislation to change the context in which parades are taking place as much as simply encouraging change. Indeed, in some respects the legislative power that is at the disposal of the Parades Commission has made it harder for it to have a role in change through education and persuasion.

Popular Flag Use – Legislation and Policing

- 7.24 At present there is a fundamental contradiction in the attitude of a range of public authorities towards the flying of flags. On the one hand Fair Employment Codes of Practice demands that employers create a harmonious working area for employees or face possible prosecution for discrimination. On the other hand a range of government agencies often do not act as flags are placed around lampposts and kerbstones are painted and murals are put up. By their inaction it could be argued that agencies might be in contravention of Section 75 of the Northern Ireland Act 1998. As has been discussed, exactly whose responsibility such action should be, and what sort of legislation might be utilised, is part of the problem.
- 7.25 This is a particular issue for policing. There is no specific legislation on the popular flying of flags and, as discussed in section 3, there is a range of legislation that could be, and has been used. Many paramilitary flags could fall under anti-Terrorism legislation and

incitement to hatred but it can be difficult to obtain prosecutions (see section 4.15). We have already briefly discussed, in section 5, one attempt to use the legislation when the flying of flags was involved. The more routine approach would be to utilise public order legislation and act if there appears to be provocative conduct or a possible breach of the peace. Yet decision making on this issue is driven by the particular contexts. In addition, particularly where flags and kerb-painting are concerned action from the police, without broad consent within the local community or groups with power in the community, could lead to a proliferation of flags and paintings. On the other hand the police also recognise that flags are often displayed in support of paramilitary groups and do not carry widespread community support. The police have a duty to protect people against acts of intimidation. The PSNI have an important role to play and drawing upon a community policing approach in an attempt to deal with the complexity of community politics according to specific circumstances. District Policing Partnerships or Community Safety Partnerships might have an important role.

7.26 We discussed in Sections 4 and 5 the range of other agencies to whom the problem of dealing with flags, murals and kerb-stones might fall: the Northern Ireland Housing Executive, DRD Roads Service, the District Council. Their roles cut across each other. None of these agencies has full responsibility although we are aware of examples when all have tried to tackle the problem. All mentioned that security of staff was of importance. In a recent report on Bonfires an Interagency Working Group suggested that in encouraging better safety control 'the likelihood of success is greatly increased when the issue of a bonfire is not dealt with in isolation but rather regarded as just one of the issues in which statutory bodies need to engaged with community' (6.2.1). The flags issue is just one of those other issues. What is required is a sense of collective ownership and local partnership over solving specific problems.

7.27 In recent years there has been a more effective response to graffiti in Belfast. The Council does have contractors who will clear away offensive graffiti. Under Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 Part VI on the functions of District Councils a local Council can clear away any graffiti that in the opinion of the Council is detrimental to the amenity of any land in its district. Similarly party political election posters are to be removed no later than 14 days after an election. Of course with political posters the person and party responsible are usually pictured on the front.

7.28 **Options**

- New legislation: Whilst a range of legislation exists more clearly defined offences might be helpful. It could even be argued that a more equitable version of the 1954 Flags and Emblems Act could be considered. In particular such legislation could more clearly identify which agencies are responsible.
- Greater utilisation of current legislation: We know of a case where Article 13(1) of the Terrorism Act has been used to prosecute individuals who had been witnessed putting up paramilitary flags.
- Policing: In line with above there could simply be more vigorous policing by all the agencies involved.
- Multi-Agency: We know of examples where multi-agency approaches offer possible solutions. These could be highlighted and extended. Both the District Police Partnerships and Community Safety Partnerships are possible avenues through which this could be approached.
- Protocol: There was widespread support for the development of a protocol or a simple code of conduct around the display of flags and the painting of kerb-stones.
- Planning permission. There are a range of possible options that could be considered. For example, Belfast City Council make enquiries of people living in a street before Irish Street name plates are put up.
- Given that one of the rights affirmed by the parties to the Multi-Party Agreement was that to freedom from sectarian harassment, and given also the Northern Ireland Human Rights Commission's ongoing consultation on a Bill of Rights for Northern

Ireland, the concept of 'harassment' might in the future be invoked with regard to the erection of flags even where a breach of the peace is unlikely.

7.29 Belfast City Council Good Relations Steering Panel is presently developing a Protocol on the flying of flags in the street. It remains to be seen how this might be enforced, if indeed the Council finds a Protocol it could adopt. Broadly the areas being looked at are:

- Whether some flags should be banned completely.
- Whether particular areas should be kept free of flags: mixed areas, arterial routes, interface areas.
- Whether flag flying should be limited to particular times and particular dates.
- Whether buildings like schools, hospitals and churches should have no flags placed near them.

7.30 A Protocol or Code of Conduct may well be voluntary but it would provide a reasonable set of rules to which politicians might appeal. One group to whom we spoke argued that a protocol would need to be clear and unambiguous.

Conflict Management and Conflict Transformation

7.31 Whilst many people would be in favour of clearer guidelines or rules or enforcement around the flying of flags or painting of kerbstones nearly all the people we interviewed stressed the importance of changing the context within which displays of symbols take place. It is vital to understand why people feel the need to make symbolic displays. It has been clear in many of the examples that we have heard about that flag flying was part of a tit-for-tat display around territory. As such, improved relationships around interfaces can see the reductions of flags or changes in the murals. We have discussed examples in section 5. **Long-term stability in these areas must involve processes of transformation.**

7.32 In particular there are economic advantages for local communities to look at their environment. The use of flags, the painting of kerb stones and murals, are only part of this process.

7.33 We heard from a number of groups that the key to progress was to get people to explore the totality of the environment in which they live. A reduction in flags or a change in murals can be brought about by communities taking ownership of ways that they want their place of living to look like. Projects undertaken by groups such as Counteract or Groundwork provide examples of this. Issues around the display of symbols can be dealt with by looking at the context under which the symbols are displayed. One interviewee stressed to us that there were a range of ways that peoples identity could be affirmed. The Loyalist Commission is also an example of the use of a forum to discuss issues within a community.

7.34 Whilst one method of transforming the context is to involve communities in exploring what they want their environment to be like, an alternative route is to enter forms of negotiations to reduce tensions and provide a system of monitoring to allow agreements to work. We know of at least one example where mediators have brokered a reduction in the flying of paramilitary flags and a system of monitoring has been put in place.

7.35 Whilst many people believe this to be the best way to deal with intimidating displays some reservations could be voiced. First, it is done on a very ad hoc basis. There is no agency that is tasked to deal with such conflicts and tensions except the Parades Commission and it, clearly, only deals with one type of conflict. The Parades Commission has had field officers that have, after a difficult start, been quite effective in monitoring the management of a number of parade disputes. One possibility is that their role could be replicated in other spheres. A dedicated field officer would be able liaise to agencies and possible organise the multi-agency approaches discussed above. Could the Community Relations Council be tasked to organise field officers to develop or encourage approaches to problems in specific areas?

7.36 The second reservation is around the negotiating process. Flags are very often put up by people with associations, real or perceived, with paramilitary groups. Getting the flags removed through processes of negotiation or mediation involves engaging with paramilitary representatives. This may well give them legitimacy over other members of the community and also might lead to solutions that see a reduction, but not complete removal of paramilitary flags. Some would argue that these paramilitary flags are always unacceptable and their existence should not be a matter of negotiation.

7.37 **Options**

- **Increase the number of individuals mediating disputes involving symbols, whether flags, murals, memorials, kerb-stones or other forms of 'marking'.**
- Increased funding for organisations engaged in transforming the environment in which people live.
- Develop a more co-ordinated approach to management of conflict and conflict transformation through the use of dedicated fieldworkers.
- Provide a contact point between agencies involved in this arena (District Councils, DRD Roads Service, NI Housing Executive, PSNI).

Political Leadership

7.38 Some of the answers to these problems lie within the hand of the political parties and political leadership. Can one expect communities to resolve issues over the flying of flags when local Councils and Government find it so difficult to do? District Councils could provide protocols and could be more active in dealing with problems. There are some examples, such as the clearing of graffiti and the removal of bonfire material when local Councils have acted decisively.

What sort of Society Do You Want?

7.39 There remains a fundamental problem in dealing with the display of emblems and flags whether official or unofficial. So many of the events celebrated divide communities in Northern Ireland. If, for example, we want to move to a situation where housing estates become more mixed then surely we need to look for community identities that unite and not divide. If you allow Tricolours or Union Flags to go up in an estate then it almost inevitably marks that estate out. In the present contexts even these national flags are intimidating to people. Many of the options suggested above do nothing more than manage the differences that already exist in an attempt to allow people to live peacefully apart. They are policies of high walls make good neighbours. If we agree that we need a more mixed and interdependent society then we need to find other ways of identifying with each other.

Appendix I:

Literature Review

Academic

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Counteract www.counteract.org

TIDES Training www.tidestraining.org

Appendix II

Selected 'Northern Ireland Life and Times' Survey Results 2001-02

Question: When you see the Union Jack, does it make you feel proud, hostile or do you not feel much either way?

	2001 (%)	2002 (%)
Very proud	17	16
A bit proud	10	10
Does not feel much either way	58	60
A bit hostile	6	5
Very hostile	2	2
(It depends)	4	4
Other	2	1
(Don't know)	1	2

Results for men and women:

	2001 (%)		2002 (%)	
	Male	Female	Male	Female
Very proud	17	17	16	16
A bit proud	11	10	11	9
Does not feel much either way	56	60	59	62
A bit hostile	8	6	6	4
Very hostile	2	2	2	2
(It depends)	5	4	4	4
Other	1	2	1	1
(Don't know)	1	1	1	2

Results for people of different ages:

	2001 (%)					
	18-24	25-34	35-44	45-54	55-64	65+
Very proud	17	12	13	15	21	23
A bit proud	10	11	8	8	8	16
Does not feel much either way	58	62	60	60	57	52
A bit hostile	9	7	8	7	7	2
Very hostile	1	2	3	2	1	0
(It depends)	3	3	6	5	4	3
Other	1	0	2	2	0	2
(Don't know)	0	3	0	1	1	1
	2002 (%)					
	18-24	25-34	35-44	45-54	55-64	65+
Very proud	8	14	14	13	19	24
A bit proud	10	9	9	8	9	14
Does not feel much either way	60	59	60	68	61	54
A bit hostile	14	6	5	3	4	2
Very hostile	3	3	3	2	1	1
(It depends)	3	7	5	5	3	3
Other (specify)	2	2	2	1	1	1
(Don't know)	1	1	2	1	2	3

Results for people of different religions:

	2001 (%)		
	Catholic	Protestant	No religion
Very proud	0	34	7
A bit proud	0	18	6
Does not feel much either way	74	43	70
A bit hostile	14	0	7
Very hostile	3	0	2
(It depends)	5	3	5
Other	2	1	1
(Don't know)	1	1	3
	2002 (%)		
	Catholic	Protestant	No religion
Very proud	0	31	6
A bit proud	1	18	7
Does not feel much either way	77	45	70
A bit hostile	10	1	6
Very hostile	4	0	1
(It depends)	5	3	6
Other (specify)	1	1	2
(Don't know)	2	1	2

Question: When you see the Irish tricolour, does it make you feel proud, hostile or do you not feel much either way?

	2001 (%)	2002 (%)
Very proud	4	3
A bit proud	5	5
Does not feel much either way	59	56
A bit hostile	10	16
Very hostile	13	12
(It depends)	5	5
Other	2	2
(Don't know)	2	2

Results for men and women:

	2001 (%)		2002 (%)	
	Male	Female	Male	Female
Very proud	5	3	3	4
A bit proud	7	4	5	5
Does not feel much either way	57	61	55	57
A bit hostile	11	10	17	14
Very hostile	12	13	12	12
(It depends)	5	5	5	5
Other	2	3	2	2
(Don't know)	1	2	1	2

Results for people of different ages:

	18-24	25-34	35-44	45-54	55-64	65+
Very proud	4	3	6	4	5	2
A bit proud	6	5	8	3	8	3
Does not feel much either way	63	60	60	63	52	58
A bit hostile	5	10	7	12	11	15
Very hostile	14	13	12	11	15	12
(It depends)	5	6	4	5	6	5
Other	2	1	2	3	2	3
(Don't know)	1	3	1	1	2	2
2002 (%)						
	18-24	25-34	35-44	45-54	55-64	65+
Very proud	5	5	5	2	1	2
A bit proud	15	7	4	4	3	3
Does not feel much either way	49	50	57	66	55	54
A bit hostile	14	15	14	13	19	17
Very hostile	9	11	12	9	13	17
(It depends)	4	8	6	3	5	4
Other (specify)	2	2	1	2	3	1
(Don't know)	2	2	1	1	2	3

Results for people of different religions:

2001 (%)			
	Catholic	Protestant	No religion
Very proud	9	0	3
A bit proud	13	1	0
Does not feel much either way	69	47	75
A bit hostile	3	18	7
Very hostile	0	25	5
(It depends)	3	6	7
Other	3	2	1
(Don't know)	1	1	3
2002 (%)			
	Catholic	Protestant	No religion
Very proud	7	0	1
A bit proud	11	0	4
Does not feel much either way	70	42	68
A bit hostile	4	27	12
Very hostile	1	22	5
(It depends)	3	6	6
Other (specify)	1	2	3
(Don't know)	2	1	1

Question: The Union Flag (that is, the Union Jack) is normally flown outside public buildings on special occasions like public holidays. On future special occasions, what flag do you think should be flown outside public buildings?

	2000 (%)
Union Flag	48
Irish tricolour	1
Both the Union Flag and the Irish tricolour	9
No flag at all	15
A new neutral flag for Northern Ireland	23
Other (specify)	1
Don't care	1
(Don't know)	2

Results for men and women:

	2000 (%)	
	Male	Female
Union Flag	51	45
Irish tricolour	2	1
Both the union flag and the Irish tricolour	7	10
No flag at all	15	15
A new neutral flag for Northern Ireland	21	25
Other (specify)	2	1
Don't care	1	1
(Don't know)	2	3

Results for people of different ages:

	2000 (%)					
	18-24	25-34	35-44	45-54	55-64	65+
Union Flag	26	45	50	46	58	58
Irish tricolour	5	1	0	0	0	2
Both the union flag and the Irish tricolour	9	9	10	8	8	8
No flag at all	21	15	14	15	13	15
A new neutral flag for Northern Ireland	35	25	24	25	18	13
Other (specify)	1	2	1	2	1	1
Don't care	0	1	0	1	0	1
(Don't know)	2	2	2	3	3	3

Results for people of different religions:

	2000 (%)		
	Catholic	Protestant	No religion
Union Flag	6	72	43
Irish tricolour	4	0	1
Both the union flag and the Irish tricolour	18	4	7
No flag at all	32	5	20
A new neutral flag for Northern Ireland	34	16	25
Other (specify)	1	1	1
Don't care	2	0	1
(Don't know)	3	2	2

Question: Has there been any time in the last year when you personally have felt intimidated by loyalist murals, kerb paintings, or flags?

	2000 (%)	2002 (%)
Yes	21	22
No	77	75
Other (specify)	2	2
(Don't know)	1	1

Results for men and women:

	2000 (%)		2002 (%)	
	Male	Female	Male	Female
Yes	20	21	22	22
No	78	77	75	75
Other (specify)	2	1	2	2
(Don't know)	1	1	1	2

Results for people of different ages:

	2000 (%)					
	18-24	25-34	35-44	45-54	55-64	65+
Yes	23	26	21	19	25	11
No	73	73	77	79	74	86
Other (specify)	2	1	2	2	2	2
(Don't know)	2	1	0	1	0	1
	2002 (%)					
	18-24	25-34	35-44	45-54	55-64	65+
Yes	26	23	22	25	22	17
No	73	72	75	74	76	77
Other (specify)	1	4	2	1	2	2
(Don't know)	0	1	1	0	0	4

Results for people of different religions:

	2000 (%)		
	Catholic	Protestant	No religion
Yes	25	18	21
No	74	79	77
Other (specify)	1	2	1
(Don't know)	1	1	1
	2002 (%)		
	Catholic	Protestant	No religion
Yes	25	19	26
No	74	77	69
Other (specify)	1	2	4
(Don't know)	1	1	2

Question: Has there been any time in the last year when you personally have felt intimidated by republican murals, kerb paintings, or flags?

	2000 (%)	2002 (%)
Yes	17	20
No	80	78
Other (specify)	2	1
(Don't know)	1	1

Results for men and women:

	2000 (%)		2002 (%)	
	Male	Female	Male	Female
Yes	19	15	21	19
No	78	82	77	78
Other (specify)	3	1	1	1
(Don't know)	1	1	1	2

Results for people of different ages:

	2000 (%)					
	18-24	25-34	35-44	45-54	55-64	65+
Yes	20	22	17	15	17	12
No	76	76	81	81	82	85
Other (specify)	1	1	2	3	1	2
(Don't know)	3	1	0	1	0	1
	2002 (%)					
	18-24	25-34	35-44	45-54	55-64	65+
Yes	22	23	18	20	22	17
No	78	75	79	80	76	77
Other (specify)	0	2	1	0	2	2
(Don't know)	0	0	2	0	0	3

Results for people of different religions:

	2000 (%)		
	Catholic	Protestant	No religion
Yes	7	21	23
No	91	76	75
Other (specify)	1	2	1
(Don't know)	1	1	1
	2002 (%)		
	Catholic	Protestant	No religion
Yes	12	27	20
No	86	70	78
Other (specify)	1	1	0
(Don't know)	1	2	2

Selected 'Northern Ireland Life and Times' Survey Results 2003

Question: Has there been any time in the last year when you personally have felt intimidated by loyalist murals, kerb paintings, or flags?

	%
Yes	21
No	76
Other (specify)	2
(dont know)	2

Results for men and women:

	%	
	Male	Female
Yes	24	18
No	73	79
Other (specify)	1	2
(dont know)	1	2

Results for people of different ages:

	%					
	18-24	25-34	35-44	45-54	55-64	65+
Yes	30	28	17	20	18	16
No	67	70	81	78	78	80
Other (specify)	0	1	1	2	2	2
(dont know)	3	1	1	1	1	2

Results for people of different religions:

	%		
	Catholic	Protestant	No religion
Yes	23	19	19
No	74	79	78
Other (specify)	2	1	3
(dont know)	1	2	0

Question: Has there been any time in the last year when you personally have felt intimidated by republican murals, kerb paintings, or flags?

	%
Yes	21
No	76
Other (specify)	1
(dont know)	2

Results for men and women:

	%	
	Male	Female
Yes	24	19
No	74	77
Other (specify)	1	1
(dont know)	2	2

Results for people of different ages:

	%					
	18-24	25-34	35-44	45-54	55-64	65+
Yes	26	26	19	22	21	18
No	72	71	78	75	76	79
Other (specify)	0	1	1	1	1	2
(dont know)	3	2	2	2	1	2

Results for people of different religions:

	%		
	Catholic	Protestant	No religion
Yes	12	29	14
No	85	68	81
Other (specify)	1	1	4
(dont know)	2	2	0

Question: The police should remove all paramilitary flags that are being flown throughout Northern Ireland?

	%
Strongly agree	32
Agree	34
Neither agree nor disagree	15
Disagree	8
Strongly disagree	3
Can't choose	6
Missing	2

Results for men and women:

	%	
	Male	Female
Strongly agree	34	32
Agree	32	36
Neither agree nor disagree	16	14
Disagree	7	8
Strongly disagree	3	3
Can't choose	6	6
Missing	3	2

Results for people of different ages:

	%					
	18-24	25-34	35-44	45-54	55-64	65+
Strongly agree	30	28	27	38	33	38
Agree	26	34	38	30	42	33
Neither agree nor disagree	17	14	18	15	12	12
Disagree	8	10	9	7	5	7
Strongly disagree	7	2	3	2	4	2
Can't choose	10	11	4	5	4	6
Missing	1	1	2	4	1	3

Results for people of different religions:

	%		
	Catholic	Protestant	No religion
Strongly agree	38	27	42
Agree	37	33	26
Neither agree nor disagree	11	17	19
Disagree	5	10	7
Strongly disagree	2	3	3
Can't choose	4	8	2
Missing	3	2	2

Question: In some areas the flying of paramilitary flags is an important expression of culture.

	%
Strongly agree	4
Agree	22
Neither agree nor disagree	19
Disagree	27
Strongly disagree	20
Can't choose	6
Missing	2

Results for men and women:

	%	
	Male	Female
Strongly agree	5	4
Agree	22	21
Neither agree nor disagree	19	19
Disagree	28	26
Strongly disagree	20	21
Can't choose	5	6
Missing	3	2

Results for people of different ages:

	%					
	18-24	25-34	35-44	45-54	55-64	65+
Strongly agree	8	5	4	3	3	5
Agree	28	20	20	17	23	22
Neither agree nor disagree	18	22	19	19	19	17
Disagree	18	26	28	27	32	28
Strongly disagree	17	18	22	26	17	19
Can't choose	10	8	4	4	4	6
Missing	1	1	2	4	1	4

Results for people of different religions:

	%		
	Catholic	Protestant	No religion
Strongly agree	4	5	3
Agree	21	21	26
Neither agree nor disagree	18	20	17
Disagree	26	29	23
Strongly disagree	25	16	27
Can't choose	4	6	3
Missing	3	2	2

Question: There should be special laws banning the flying of all paramilitary flags throughout Northern Ireland.

	%
Strongly agree	33
Agree	32
Neither agree nor disagree	16
Disagree	7
Strongly disagree	3
Can't choose	7
Missing	2

Results for men and women:

	%	
	Male	Female
Strongly agree	33	34
Agree	32	32
Neither agree nor disagree	16	16
Disagree	6	7
Strongly disagree	4	3
Can't choose	6	7
Missing	3	2

Results for people of different ages:

	%					
	18-24	25-34	35-44	45-54	55-64	65+
Strongly agree	23	28	31	40	34	40
Agree	27	34	35	25	38	31
Neither agree nor disagree	21	19	16	16	13	12
Disagree	8	5	8	7	6	6
Strongly disagree	9	2	3	4	2	2
Can't choose	12	11	4	5	5	5
Missing	1	1	2	4	1	4

Results for people of different religions:

	%		
	Catholic	Protestant	No religion
Strongly agree	38	28	42
Agree	35	30	28
Neither agree nor disagree	11	20	11
Disagree	5	9	6
Strongly disagree	3	4	5
Can't choose	6	7	7
Missing	3	2	2

Question: In some neighbourhoods, the flying of paramilitary flags should be allowed.

	%
Strongly agree	3
Agree	10
Neither agree nor disagree	18
Disagree	32
Strongly disagree	29
Can't choose	6
Missing	3

Results for men and women:

	%	
	Male	Female
Strongly agree	3	3
Agree	8	11
Neither agree nor disagree	19	17
Disagree	33	30
Strongly disagree	28	29
Can't choose	6	7
Missing	3	2

Results for people of different ages:

	%					
	18-24	25-34	35-44	45-54	55-64	65+
Strongly agree	6	4	3	3	2	3
Agree	13	12	8	10	8	8
Neither agree nor disagree	22	17	18	18	19	16
Disagree	24	32	36	28	37	31
Strongly disagree	24	25	28	33	27	32
Can't choose	10	10	5	4	5	6
Missing	2	1	2	5	2	4

Results for people of different religions:

	%		
	Catholic	Protestant	No religion
Strongly agree	3	3	3
Agree	9	10	11
Neither agree nor disagree	14	22	14
Disagree	30	33	33
Strongly disagree	35	23	34
Can't choose	5	7	3
Missing	3	3	2

Question: Paramilitary flags should be allowed at certain times of year.

	%
Strongly agree	5
Agree	18
Neither agree nor disagree	16
Disagree	28
Strongly disagree	25
Can't choose	6
Missing	2

Results for men and women:

	%	
	Male	Female
Strongly agree	4	5
Agree	18	19
Neither agree nor disagree	17	15
Disagree	27	29
Strongly disagree	26	24
Can't choose	5	7
Missing	3	2

Results for people of different ages:

	%					
	18-24	25-34	35-44	45-54	55-64	65+
Strongly agree	6	8	4	4	2	4
Agree	19	19	17	18	16	23
Neither agree nor disagree	20	15	16	17	16	13
Disagree	22	26	29	25	37	28
Strongly disagree	22	24	25	29	23	24
Can't choose	10	7	6	4	5	5
Missing	1	1	2	4	1	4

Results for people of different religions:

	%		
	Catholic	Protestant	No religion
Strongly agree	3	5	7
Agree	18	19	20
Neither agree nor disagree	14	18	14
Disagree	25	31	25
Strongly disagree	32	19	30
Can't choose	6	6	3
Missing	3	2	2

Question: Laws to stop the flying of paramilitary flags would be unenforcable.

	%
Strongly agree	16
Agree	34
Neither agree nor disagree	17
Disagree	12
Strongly disagree	8
Can't choose	11
Missing	2

Results for men and women:

	%	
	Male	Female
Strongly agree	18	14
Agree	36	33
Neither agree nor disagree	15	19
Disagree	13	11
Strongly disagree	6	9
Can't choose	10	11
Missing	3	2

Results for people of different ages:

	%					
	18-24	25-34	35-44	45-54	55-64	65+
Strongly agree	21	15	14	20	14	12
Agree	27	30	37	35	35	40
Neither agree nor disagree	15	24	18	15	18	14
Disagree	9	9	13	11	18	11
Strongly disagree	7	6	8	10	6	8
Can't choose	19	15	7	6	9	11
Missing	1	1	2	4	1	4

Results for people of different religions:

	%		
	Catholic	Protestant	No religion
Strongly agree	15	16	24
Agree	33	35	33
Neither agree nor disagree	14	20	15
Disagree	13	11	17
Strongly disagree	11	6	4
Can't choose	11	11	6
Missing	3	2	2

Selected Results from the 'Young Life and Times Survey'

Question: Has there been any time in the last year when you personally have felt intimidated by *loyalist* murals, kerb paintings, or flags?

	2000 (%)
Yes	20
No	73
Don't know	7

Question: Has there been any time in the last year when you personally have felt intimidated by *republican* murals, kerb paintings, or flags?

	2000 (%)
Yes	18
No	75
Don't know	7

Appendix III

Taken from Belfast City Council's Equality Impact Assessment – September 2003. **Amended by report authors July 2004.**

Policies of Councils in Northern Ireland

	Council	Location	Flags & Dates
1	Antrim Borough Council	On Council HQ & Antrim Forum	Union Flag flown every day
2	Ards Borough Council	On Council HQ and war memorials	Union Flag every day
3	Armagh City & District Council	On Council HQ	Union Flag flown on designated days
4	Ballymena Borough Council	On Council HQ & Town Hall	Union Flag flown every day
5	Ballymoney Borough Council	Borough Offices, Riada House, Joey Dunlop Leisure Centre, Town Hall	Union Flag flown on all premises listed on designated days plus 12 July & Christmas Day
6	Banbridge District Council	On Council HQ, Tourist Information Centre and Town Hall, Banbridge	Union Flag flown every day
7	Carrickfergus Borough Council	On Town Hall, Leisure Centre, Bentra Golf Club, Sullatober Depot	Union Flag and Northern Ireland Flag flown at Town Hall and Leisure Centre. Union Flag only at other venues
8	Castlereagh Borough Council	On Council HQ	Union Flag, Ulster Flag and Council Coat of Arms flown every day
9	Coleraine Borough Council	On Council HQ (Cloonavin) and 3 Town Halls	Union Flag : Cloonavin every day the building is in use and ceremonial days if not in use, Coleraine Town Hall every day, Portrush and Portstewart Town Halls in July & August and ceremonial days
10	Cookstown District Council		No flags flown
11	Craigavon Borough Council	On Civic Centre	Union Flag flown on designated days
12	Derry City Council		No flags flown

	Council	Location	Flags & Dates
13	Down District Council	On Council HQ	Council Flag flown every day – Union Flag not flown on any occasion
14	Dungannon District Council	On Council HQ	Union Flag flown on designated days
15	Fermanagh District Council		No flags flown
16	Larne Borough Council	On Council HQ and Leisure Centre	Union Flag flown every day
17	Limavady Borough Council		No flags flown
18	Lisburn City Council	On Council HQ	Union Flag flown on designated days plus 1 July and 12 July
19	Magherafelt District Council		No flags flown
20	Moyle District Council		No flags flown
21	Newry and Mourne District Council		No flags flown Council flag being considered
22	Newtownabbey Borough Council	On all Council administrative buildings and leisure centres	Union Flag flown on all premises listed every day
23	North Down Borough Council	On Town Hall and Leisure Complex	Union Flag flown every day
24	Omagh District Council	On Council HQ	Council Coat of Arms flown at all times – Union Flag not flown
25	Strabane District Council		No flags flown

Policies of Councils in Scotland

	Council	Location	Flags & Dates
1	Aberdeen City Council		No information available
2	Aberdeenshire Council	Civic HQ Area Offices Town Halls	Union Flag, Saltire and Council Flag flown on Civic HQ every day; Saltire flown on other buildings every day
3	Angus Council	Civic HQ Town Halls	Saltire flown on all buildings every day; Union Flag flown on designated days
4	Argyll and Bute Council		Union Flag flown on designated days
5	Clackmanannshire Council		No information available
6	Comhairle nan Eilean Siar	Main Council Office Area Office	Union Flag and Saltire flown on designated days
7	Dumfries and Galloway Council		Currently reviewing the policy
8	Dundee City Council	City Chambers St. Mary's Tower Caird Hall Broughty Ferry Castle	Union Flag, Saltire and City Flag flown at City Chambers every day; Saltire flown at other properties every day
9	East Ayrshire Council		Union Flag and/or Saltire flown on designated days
10	East Dunbartonshire Council	Council HQ Boclaire House	Union Flag, Saltire and Council Flag flown on designated days
11	East Lothian Council		No information available
12	East Renfrewshire Council	Council HQ	Union Flag flown on designated days

	Council	Location	Flags & Dates
13	Edinburgh City Council	City Chambers	Saltire and City Flag flown every day; Union Flag and Saltire displayed on balustrade of the Chambers
14	Falkirk Council	Council HQ	Union Flag and Saltire flown on designated days
15	Fife Council	Council HQ County Buildings Area Headquarters City Chambers St Andrew's Town Hall	Union Flag and Saltire flown on designated days on most buildings; no flags flown at St Andrew's Town Hall
16	Glasgow City Council	City Chambers	Union Flag flown on designated days
17	Highland Council	Council HQ Town Halls	Saltire flown at most buildings every day
18	Inverclyde Council		No information available
19	Midlothian Council	Council HQ Town Halls	Union Flag, Saltire and Council Flag flown on designated days
20	Moray Council	Council HQ Council Offices Town Halls Schools War Memorials	Union Flag and Saltire flown at Council HQ every day; Saltire flown at Council Offices, Town Halls and Schools every day; Union Flag flown at War Memorials every day
21	North Ayrshire Council	Cenotaph	Union Flag and Saltire flown on designated days
22	North Lanarkshire Council	Council HQ Area Offices	Union Flag, Saltire and Council Flag flown on designated days
23	Orkney Islands Council		No information available
24	Perth and Kinross Council	Council HQ	Union Flag and Saltire flown on designated days

	Council	Location	Flags & Dates
25	Renfrewshire Council	Council HQ Area Offices	Union Flag, Saltire and European Flag flown every day
26	Scottish Borders Council	Council HQ Town Halls England/Scotland border	Saltire flown every day Union Flag flown at Kelso Town House and on the border every day
27	Shetland Island Council		No information available
28	South Ayrshire Council		No information available
29	South Lanarkshire Council	Council HQ Area Offices	Corporate Flag flown every day; Union flag and Saltire flown on designated days
30	Stirling Council	Council HQ	Union Flag and Saltire flown on designated days
31	West Dunbartonshire Council	All civic buildings	Coat of Arms flown every day; Union Flag and Saltire flown on designated days
32	West Lothian Council	All Council offices	Union Flag, Saltire and Council Flag flown on designated days

Policies of County Councils in the Republic of Ireland

	Council	Location	Flags & Dates
1	Carlow County Council		No flags flown
2	Cavan County Council		No information available
3	Clare Council	All Council offices and facilities	National Flag and County Flag flown at all times
4	Cork County Council		No information available
5	Donegal County Council	Council offices	National Flag and County Flag flown on designated days
6	Dun Laoghaire-Raithdown County Council	County Hall	Council Flag flown at all times; National Flag flown on designated days
7	Fingal County Council		County Flag flown at all times; National Flag flown on designated days
8	Galway County Council		National Flag flown on some state occasions
9	Kerry County Council		National Flag, County Flag and EU Flag flown on designated days
10	Kildare County Council	Council HQ Council buildings	National Flag flown on designated days
11	Kilkenny County Council	County Hall	National Flag, County Flag and EU flag flown on designated days
12	Laois County Council	Council offices	National Flag flown on designated days
13	Leitrim County Council	Council HQ	National Flag and County Flag flown on designated days
14	Limerick County Council	Council HQ Area Offices	National Flag and County Flag flown on designated days

	Council	Location	Flags & Dates
15	Longford Council		No information available
16	Louth County Council		Flags flown only for visiting dignitaries
17	Mayo County Council	Council HQ	National Flag, County Flag and EU Flag flown on designated days
18	Meath County Council	County Hall	National Flag flown on designated days
19	Monaghan County Council		National Flag flown on designated days
20	Offaly County Council	Council HQ	National Flag, County Flag and EU Flag flown on designated days
21	North Tipperary County Council	County Hall	National Flag flown on designated days
22	Roscommon County Council		National Flag flown on designated days
23	Sligo County Council	County Hall	National Flag, County Flag and EU Flag flown on designated days
24	South Dublin County Council		No information available
25	South Tipperary County Council		National Flag flown on designated days
26	Waterford County Council	City Hall	National Flag flown on designated days
27	Westmeath County Council		No information available
28	Wexford Council	County Hall	National Flag and EU Flag flown on designated days
29	Wicklow County Council	County buildings	National Flag, County Flag and EU Flag flown on designated days

Policies of Councils in England and Wales

	Council	Location	Flags & Dates
1	Birmingham City Council		Union Flag flown on designated days; City Flag flown every day
2	Bradford City Council		Union Flag flown every day
3	Cardiff County Council		Union Flag flown every day
4	Coventry City Council		Union Flag flown every day
5	Gateshead Borough Council		Union Flag flown on designated days
6	Leeds City Council		Union Flag flown on designated days
7	Manchester City Council		Union Flag flown on designated days
8	Newcastle-upon-Tyne City Council		Union Flag, EU Flag and Council Flag flown every day
9	Sheffield City Council		Union Flag flown on designated day; City Flag flown every day
10	Swansea City and County Council		Union Flag and Welsh Dragon flown every day



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