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**CAJ Response to the Guidelines,  
Code of Practice and Procedural Rules  
issued by the  
Parades Commission**

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## ***Public Processions and Parades***

### Introduction

The Committee on the Administration of Justice (CAJ) has already commented on the Public Processions Etc (Northern Ireland) Bill. Below are our comments on the draft Guidelines, Procedural Rules and Code of Conduct recently published by the Parades Commission. We have numbered our comments to correspond to the relevant paragraph in each of the three documents.

### Guidelines

#### *2. Public Disorder or Damage to Property which may result from the Procession*

While it is completely appropriate for considerations of public disorder or damage to property to be taken into account by the Parades Commission when coming to determinations, CAJ would emphasise that this factor should not outweigh other considerations. Although the Public Order (Northern Ireland) Order 1987 allowed for a number of considerations to be taken into account when deciding whether to impose conditions on a parade, the RUC appeared almost exclusively to base their decisions on the public order criteria. Indeed it appears this was done to such an extent that the current Security Minister seems unaware of there having being any other factors.<sup>1</sup> We believe that the collapse in the rule of law around the Drumcree marches stemmed in no small measure from the failure to consider other factors apart simply from the public order dimension.

#### *3. Disruption to the life of the Community*

It appears to us highly problematic that the guidelines indicate that the Parades Commission will take care to "distinguish between disruption caused by the procession itself and disruption caused by any associated protest activity or police action taken in response to that activity." We feel it is important that the Commission explain why they are making this distinction. It is imperative that any genuine balancing of rights acknowledges the equality between the competing rights of the marchers and the residents. The specific reference to police action taken in response to protest activity as opposed to the march appears to undermine that equality. To attempt for instance to strike such a balance in the context of the Lower Ormeau Road or the Garvaghy Road in the absence of a consideration of police action would be ludicrous. In those circumstances was the police action, which resulted in an almost complete abrogation of the right to freedom of movement on the part of the local community to facilitate the complete vindication of the rights of the marchers, taken in response to "associated protest activity" or was it inherently associated with the march?

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<sup>1</sup> Hansard, Volume 303, No. 92 at 495 and 496.

The policing of controversial marches has become part and parcel of the problem surrounding marches. CAJ's observers have witnessed considerable violations of community and individual rights as a result of the policing of marches. This of course adds to the opposition to the march itself. To ignore this essential link is to court failure. Some of the most serious violations of rights of residents have been as a result of actions of the police not of the marchers. It is our firm position that it is clearly disproportionate to place a host community under effective extended curfew in order to allow a march to proceed. It is unacceptable for the police to abrogate completely the rights of residents in order to vindicate completely the rights of marchers, as was done in 1997 on the Garvaghy Road. If the Parades Commission is to resolve this problem, then it cannot ignore this reality.

Additionally, the police have on at least one occasion justified their actions in imposing an effective curfew on the Lower Ormeau Road by suggesting that they were protecting the residents from a threat from the marchers.<sup>2</sup> In those circumstances any attempt to separate the policing of a march from the balancing of rights exercise is nonsensical. This line of argument on the part of the police also raises questions as to the exercise of the right to march. International standards only guarantee the right to freedom of *peaceful* assembly. If the assembly, either of the marchers or residents is not peaceful, then it is not entitled as of right to either domestic or international legal protection.

#### 4. *Impact of the Procession on Relationships within the Community*

Generally, CAJ welcomes this section of the guidelines. In particular we welcome the recognition that the right to march does not necessarily mean the right to march along a particular route. It may often be appropriate to consider alternative non-controversial routes.

#### 5. *Compliance with the Code of Conduct*

CAJ has few detailed comments to make on the Code of Conduct document. Therefore our comments under this section will include all the comments we feel we can usefully make in relation to the Code of Conduct.

While the Commission indicates that compliance with this Code will be a factor that the Commission will take into account in deciding whether to impose conditions on a contentious parade, there is no indication as to how compliance will be policed. While of course it may be possible for individuals or groups to raise alleged violations of the Code of Conduct at a Commission hearing in relation to the particular parade on the next occasion when notice is given of that parade, there does not appear to be any mechanism established to enable the Commission to receive objective evidence as to compliance or otherwise. We do not think that it would be appropriate for the

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<sup>2</sup> Interview given by Chief Constable, Ronnie Flanagan to Human Rights Watch/Helsinki, Belfast, November 11<sup>th</sup> 1996 in which he described the police actions on the Lower Ormeau Road in July 1996 as a "benign" siege as opposed to the more malevolent siege that would have occurred had the march not been allowed to proceed. *To Serve Without Favor*, Human Rights Watch/Helsinki, 1997 at 90.

Commission to rely primarily on evidence from the police, given the composition of the RUC, its past record in dealing with the marching issue and the widespread allegations of mutual membership of the police and the loyal orders.

Additionally, we would appreciate clarification as to whether a parade would be allowed to go ahead in the event that participants refuse to comply with the Code of Conduct on the day of the parade. In other words if, on the day of the parade, it becomes clear that participants are flagrantly breaching the Code of Conduct, what would happen?

6. *The Desirability of allowing a Parade which has been customarily held on that Route to continue to be allowed to do so.*

CAJ has already set out its opposition to the notion that regard should be had to the desirability of allowing a procession to proceed simply because it has traditionally been held along a particular route. There is no basis in the international human rights protection afforded to freedom of assembly for special protection of traditional assemblies. Tradition per se is not a legitimising factor and, in the context of marches in Northern Ireland, is simply a reflection of the historic balance of power that has existed between the two communities. To give legislative effect to this is to legitimise it and perpetuate it rather than trying to ensure that both communities are treated equally. It may be appropriate to refer in the guidelines to the desirability of allowing processions with a historical significance to take place, but that significance cannot simply come from the fact that the procession has followed a particular route for a number of years. Additionally we believe that it is very difficult to prove conclusively routes of parades as a matter of historical fact. It is important to point out that in some cases parades have become contentious due to demographic changes which mean that those inhabiting the 'traditional route' no longer support the continuation of such parades. Secondly, in certain cases particular incidents have occurred along 'traditional routes' which have increased opposition to particular parades, the shooting in the Sean Graham bookmakers on the Ormeau Road being an obvious example.

## Procedural Rules

### 1. *Introduction*

There may be some problems which will arise as a result of the implication in this paragraph (1.4) that the terms of reference for the broad view of parades envisaged will in fact be limited to contentious parades. Firstly, the notion that because a certain number of parades are being allowed across the North, others should be stopped as a matter of balance is to ignore the genuine balancing of rights in each individual scenario. On the other hand, it may be artificial to consider the small number of contentious parades in isolation from all of the other parades which take place across Northern Ireland. For instance, to look at the Apprentice Boys Parade on the Lower Ormeau without considering its links to the main march in Derry is, in our opinion, an insufficiently broad approach.

2. *Gathering Information*

CAJ welcome this endeavour by the Parades Commission but, given our comments above in relation to policing, we believe that one of the issues about which information should be gathered is the previous policing of parades in that area, and problems associated with it. This would obviously include details of alleged human rights violations, but should also look at matters we have highlighted in the past, such as the problems caused by the apparent lack of communication skills on the part of the police.

3. *Taking Evidence*

It is clearly important that the Commission takes evidence from as wide a spectrum of groups and individuals as possible.

4. *Expressing a Preliminary View*

We have a number of concerns in relation to this paragraph. It is indicated that when "Commissioners are satisfied that they have considered all the available information .... it (sic) will take a preliminary view about parades in that location." Does this mean that the preliminary view will be taken by the individual Commissioner assigned to that area or by the Commission as a whole? It would, in our opinion, be wrong to allow an individual Commissioner publicly to express any view, preliminary or otherwise.

We believe the plan to issue a preliminary, but not binding, view on individual parades may lead to pressure being applied in order to persuade the Commission to reverse their preliminary view. Plans in relation to individual parades or groups of parades are, in our view, best announced well in advance in public and in binding form.

5. *Making Formal Determinations*

While it is of course important that the Commission receive police advice about whether a parade should proceed as planned or not, it should also be borne in mind that given the composition of the RUC, its past history of policing of parades and allegations of extensive mutual membership of the RUC and the loyal orders, it would not be surprising if advice given on public order ramifications of parades were tainted by this fact. Indeed, in order to reassure themselves of the objectivity of the advice they were being given, we believe the Commission should call for the establishment of a register to record details of police membership of the loyal orders.

It is also important that the advice given by the RUC should be made available to the public. We are not of course suggesting that detailed or confidential security or intelligence information need be disclosed to the public but we do feel that in order to maintain the confidence of the public, the process needs to be as open as possible. The essence of the police advice should be made public.

We presume that the concerned parties mentioned at 5.2 (iv) will include residents groups but we believe it would be appropriate to add relevant residents groups specifically to this section.

6. *Review of Decision or Determination*

In the event that a decision is reversed by the Commission in these circumstances, and we would expect there to be very few such instances, it should be explicitly incumbent on the Commission publicly to explain its actions and the reasons for them.

