

Neutral Citation No: [2026] NIKB 56	Ref: SMY13146
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 26/81385/01
	Delivered: 26/09/2026

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**IN THE MATTER OF AN APPLICATION BY BREANDÁN Mac CIONNAITH
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF A DETERMINATION BY THE PARADES
COMMISSION**

**Ms D Kiley KC with Ms B-L Herdman (instructed by Phoenix Law) for the Applicant
Mr T McGleenan KC with Mr M O'Hara (instructed by Crown Solicitor's Office) for the
Respondent**

**Mr P Coll KC and Mr T McCleave (instructed by Crown Solicitor's Office) for PSNI
(Notice Party)**

**Mr J Larkin KC and Ms E McIlveen (instructed by McIlvor Farrell Solicitors) for the
Notice Party Alan Hynes**

RULING No.1

SMYTH J

Introduction

[1] Ms Kiley, just before we begin, if I could say some things which may be of assistance to the parties and so that the public understands the situation: The Parades Commission determination was made public at 14:10 hours yesterday, 25 September 2026. At 16:27 hours a request was made for the duty judge to facilitate an urgent hearing last night. I am the duty judge. It was indicated that pleadings would be lodged by 18:00 hours with a view to a hearing taking place last night at 18:30 hours. At 17:02 hours, I made directions which included the fact that this morning would be a rolled-up hearing at 11:00 hours and I directed that the applicant's skeleton, along with authorities, should be lodged by 18:30 hours last night, with the respondent's skeleton and authorities lodged by 21:00 hours last night.

[2] At 17:19 hours, the solicitor for the applicant emailed the court again requesting a hearing last night. At 18:03 hours, the senior court official replied to the

solicitor explaining, having spoken to me, that in the absence of the determination of the Parades Commission having been provided, as requested, no grounds of challenge having been lodged or skeletons, the directions I had given remained the same. In fact, and I think it is important that everybody understands this, the applicant's pleadings and skeleton were not lodged until 20:56 hours last night. The respondent's skeleton was then lodged at 23:46 hours, just before midnight. This morning the court received a skeleton argument containing additional points from the notice party, which was also a detailed, comprehensive document.

[3] I make no criticism of any of the parties, I want to make that absolutely clear. Everyone has been working to a very tight timescale and the decision of the Parades Commission obviously was made public at a very late stage. You will appreciate that there has been very little opportunity to read in full and consider the issues and, in particular, the authorities.

[4] I had directed a rolled-up hearing prior to receiving any of the pleadings or skeleton arguments and having now had the opportunity of considering same, there are a number of issues that concern me and it might benefit the parties if I indicated that at this stage. Whilst my mind is entirely open, I thought I should tell the parties that my preliminary view is that there may be some points in the applicant's challenge which may reach the threshold for leave. Obviously, that is a matter to be explored and determined. Those points are, and it may be of assistance that I expose my mind:

- (i) Firstly, whether or not a meaningful or transparent analysis of the engagement of the applicant's rights has taken place and whether or not a meaningful or transparent proportionality balancing exercise with the rights of members of the Loyal Orange Lodge has taken place.
- (ii) The second issue is in relation to previous assessments by the PSNI which may or may not have been provided to the Parades Commission in advance of previous determinations that have been made.

[5] An issue is raised as to the reasons for the Parades Commission determination, and it is unclear whether anything has, in fact, changed which might explain yesterday's decision. That is a point raised by the applicant. These are simply matters that I raise at the outset because they may need to be explored further and since there may be some merit in them, I wanted to give the parties an opportunity and, particularly, Mr McGleenon KC and Mr Larkin KC an opportunity to consider whether further evidence might be provided. As regards the latter point, that is, previous assessments of the Police Service, obviously I do not need to tell this group of very experienced lawyers, that there is a duty of candour on the part of the Parades Commission. Ms Kiley KC has made the point that the residents are prejudiced in conducting their challenge without an explanation as to how the current police assessment compares or contrasts with previous ones. In those circumstances, it seems to me that I should give the Parades Commission an

opportunity to consider whether, in fact, a rolled-up hearing is appropriate and, of course, you, Ms Kiley, obviously will have a view also. I was not aware that further enquiries, in fact, had been sought from the Police Service until Mr Coll indicated that this morning. Those queries were sent to PSNI after midnight, just after the Parades Commission skeleton was lodged

[6] The issues involved in this judicial review, in my view, are of such fundamental importance to our society as a whole that it would be unwise to proceed without those issues being properly considered and addressed by the parties. I thought I would say that at the outset so you might want to consider and take instructions about those matters.

[7] I am going to rise to give the parties an opportunity to take instructions and to reflect. Obviously, if the view is taken that further time is simply needed to properly deal with these issues, and it is my view that is likely to be the case, then I would like you to consider what impact that has on what happens or does not happen tomorrow. I would like all the parties in this case to consider carefully the very important issues to our society that are raised in this case, the importance of these matters being dealt with properly and the importance of community relations even in dealing with this particular matter as we stand now.

Ruling No.2

[8] This morning I indicated that having considered the skeleton arguments in a very short space of time, without any opportunity to consider the relevant case law in any detail, it seemed to me that there may be issues raised by the applicant which might justify leave being granted. I made it clear that I was exposing my mind in order to assist the parties, but that my mind was entirely open to any ultimate conclusion that I might make.

[9] In short, in order to make an informed decision about the lawfulness of the Parades Commission's determination there was further information and potentially evidence, which would assist me. In doing so, I am, of course, mindful that the task that I am involved in is not an appeal of the Parades Commission's determination based on its merits. The Parades Commission is a statutory body of specialist advisers entrusted by Parliament to make decisions about parades or other forms of assembly and in doing so it is entitled to a margin of appreciation. It is not for this court to make those decisions. The function of this court is perhaps set out best in the Court of Appeal decision of *Re Murphy's Application* [1991] 5 NIJB. It is not necessary for me to set it out, Mr McGleenan has referred to the relevant passages in his skeleton. My function is supervisory only.

[10] It is unfortunate that the Parades Commission's determination was only made public yesterday afternoon and thereafter all parties have endeavoured to respond appropriately on behalf of their clients and no fault is attributable to any of the legal

representatives or, indeed, any of the parties before me involved in this particular dispute.

[11] On behalf of the applicant, issues have been raised about prejudice in proceeding with this matter due to information which has not been provided. Information which has been provided in the course of today's hearing has, I am told, prompted further enquiries.

[12] On behalf of the respondent, Mr McGleenan accepts that further time would be of benefit to the court but he cautions that if the matter is adjourned to enable a properly informed rolled-up hearing, the question of interim relief is a live issue, and even if the court has power to grant interim relief, the effect may be one that perhaps no one in this court would wish to see occur.

[13] The issue that this court is dealing with is of fundamental importance to the entire society in Northern Ireland. This particular parade has been described by all parties as a polarising issue for many, many, many years. It is right to say that much has improved between the two communities in the area but it is fragile, as are many of the positive changes that have occurred in the last 30 years. In my view, it would be contrary to justice and unwise to proceed to make a decision in the absence of proper information in relation to the issues that I have identified. The police are actively working on a request for information which they received after midnight, through no fault of the applicant. They are doing their best to deal with these types of enquiries at short notice, which may span a number of years. No fault whatsoever is attributable to the Police Service.

[14] Evidence from the Parades Commission on the issues I have identified is also, in my view, likely to be necessary in the interests of justice in order to enable me to discharge my obligations. However, it is a matter ultimately for the Parades Commissioners and for Mr McGleenan KC, how they wish to deal with this challenge.

[15] I therefore consider that further time should be permitted to enable both the Parades Commission and the applicant to properly conduct this hearing. In reaching that decision, I have also taken into account the rights of the Loyal Orange Order, which has engaged assiduously with the Parades Commission to their credit, accepted the limitations imposed albeit, no doubt, with hesitation and who want to express their article 9, 10 and 11 rights. The Parades Commission has decided that they may do so with the conditions set out and the limitations therein.

[16] However, my understanding is that the important date for the Loyal Orange Order was, in fact, 5 July. Previous proceedings in relation to a Parades Commission decision regarding a similar application to parade on that date was ultimately quashed. I have not been told that any significance attaches to Sunday 27 September 2026 in the Order's calendar. Whilst I accept that the Loyal Orange Order is anxious to exercise the rights of its members, I am satisfied that there is no prejudice to

adjourning for a very short period to enable this case to be properly prepared and argued by all parties.

[17] If I consider, ultimately, that the Parades Commission has lawfully discharged its obligations then, of course, the parade may take place with whatever restrictions the Parades Commission considers appropriate. Indeed, I consider that it could be to the disadvantage of the Parades Commission and the Loyal Orange Order to proceed today in the absence of important information being available. I have therefore reflected the rights of all parties in this ruling.

[18] The question of interim relief now arises. I am going to rise for a very short time, I am going to urge the parties again, to reach an agreement for the sake of everyone in Northern Ireland, not just for your sake. Be big enough to step back from the abyss, reach an agreement, let us have the issues properly aired, everybody properly represented so that everybody knows they have had a fair hearing whatever the result.

Ruling No.3

[19] This is my ruling in relation to interim relief. The Honourable Sir Michael Fordham states at paragraph 20.1 of the Judicial Review Handbook 7th Edition:

“Judges have wide and flexible powers to make interim orders securing a specified position where justice so requires pending final disposal of JR proceedings.”

[20] The notice party in this case, Mr Hynes, does not agree the interim relief sought and makes the case that even if he did agree, he could not bind the Portadown Loyal Order Lodge.

[21] I directed communications with the Lodge seeking their agreement to a short period of interim relief. I have received a letter indicating why agreement cannot be given.

[22] Firstly, I am satisfied that since the solicitor for the notice party, Mr Hynes, communicated my direction and the reasons for same that the information was conveyed accurately. It is important to state the position of the Deputy District Master who penned the correspondence. He has carefully explained his position. Firstly, he makes the point that the Lodge has engaged completely and without reservation with the Parades Commission and his members are extremely aggrieved that this challenge should have been taken in view of the Parades Commission's careful consideration of this issue. It is correct and important to say that the Lodge has acted in accordance with the determinations of the Parades Commission for 28 years and there has been no breach.

[23] Secondly, he makes the point and no doubt this is also believed by other members of his Lodge that the real purpose of the challenge is simply to ensure that the judgment of the Parades Commission is reversed and that an interim decision will, in effect, determine these proceedings. That is a source of deeply held grievance. It is believed that the threat of disorder will be deliberately escalated to ensure that result. In order to ensure that the Deputy Master's position is fairly understood and properly represented, there has been a request from the media for a copy of his letter, and I have directed that it should be released, having been redacted of personal information.

[24] It is evident from all of the papers in this case and this letter, that the level of mistrust between the residents and the Portadown Loyal Orange Lodge cannot be overstated. Neither side accepts any of the reassurances provided by the other or that there is any genuine reason for the stance adopted by the other. It is also clear to me that this particular long running dispute has the potential to escalate within Northern Ireland and thereby impact all of the inhabitants of Northern Ireland. Against that background, I am firmly of the view that the issues affecting both parties, or all three parties, which is more accurately the case, must be properly and fairly ventilated so that whatever ultimate decision is made by this court, the losing party knows that they have been heard and that their points have been fairly considered.

[25] In those circumstances, applying the wide powers available to me, I make the following order. I make an order for an injunction suspending the effect of the notice PAR\11838 given by Portadown Loyal Orange Lodge 1, pursuant to section 6(1) of the Public Processions (Northern Ireland) Act 1998 until such time as this judicial review application is determined and it will be determined as soon as the parties can provide the information necessary to do justice to it.

[26] I also make an order for an injunction suspending the determination made by the Parades Commission under section 8 of the Public Processions (Northern Ireland) Act 1998 until such time as this judicial view application is determined. I am satisfied that the balance of convenience test clearly points inevitably towards this result. The fact is that if the parade processes tomorrow in the terms currently approved by the Parades Commission, there will simply be no opportunity for the applicant to have his case fairly considered. That is not the case with regard to the Lodge or to the Parades Commission. It is not correct that inevitably the decision of the Parades Commission will be altered and, ultimately, as I have made clear, this court is not carrying out an appeal function, it is merely carrying out a supervisory function.

[27] I am also mindful that the applicant is prepared to give the normal undertaking as to damages and in order to ensure that all parties in this case feel that I have dealt with these matters in an even-handed way, I have expressly dealt with the issue of an application by the Coalition, as it is known, to the Parades Commission for a counter protest tomorrow. I have been told that an undertaking

will be given that the application which is set out at PRO\59732, to the Parades Commission for a protest application, will be withdrawn upon the interim relief being granted as well as the undertaking as to damages.

[28] I think that deals with all of the issues. I have been made aware that Mr Larkin's client certainly intends to lodge an appeal in this matter. I tell people that simply because if an appeal is lodged, arrangements will be made as soon as possible for the appeal to be heard.