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| <b>Neutral Citation No: [2026] NIKB 55</b>                                                      | <b>Ref: HUM13150</b>         |
| <i>Judgment: approved by the court for handing down<br/>(subject to editorial corrections)*</i> | <b>ICOS No:</b>              |
|                                                                                                 | <b>Delivered: 27/09/2026</b> |

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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

**AND IN THE MATTER OF A DETERMINATION BY THE PARADES  
COMMISSION FOR NORTHERN IRELAND**

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**Denise Kiley KC with Bobbie-Leigh Herdman (instructed by Phoenix Law) for the  
Applicant**  
**Tony McGleenan KC with Mark O'Hara (instructed by Crown Solicitor's Office) for the  
Respondent**  
**Peter Coll KC and Terence McCleave (instructed by Crown Solicitor's Office) for the  
PSNI Notice Party**  
**John Larkin KC and Emma McIlveen (instructed by McIvor Farrell Solicitors) for the  
Notice Party Alan Hynes**

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**HUMPHREYS J**

***Introduction***

[1] This is an application for leave to apply for judicial review which seeks to impugn the decision made on Friday 25 September 2026 by the Parades Commission for Northern Ireland ("the Commission") whereby it imposed certain conditions on a public procession notified by Portadown District Loyal Orange Lodge No.1 ("the Lodge"), in respect of a procession due to take place in just a few hours' time on Sunday 27 September 2026. Specifically, the applicant challenges the decision of the Commission not to place a condition on the parade which prevents it from processing along any part of the Garvaghy Road, Portadown.

[2] The applicant is a resident of the Garvaghy Road area and chair of the Garvaghy Road Residents' Coalition and has been since 1995. The route taken by the Lodge from Drumcree Church to return to the centre of Portadown on the Sunday before 12<sup>th</sup> July has long been contentious. It last took the route down the Garvaghy Road in 1997 when the area witnessed serious violent disorder. The following year the parade was re-routed and this precipitated a stand-off between Lodge members and their supporters, residents and the police. Since then the Lodge has sought to

walk down the Garvaghy Road each Drumcree Sunday but conditions have been imposed by the Commission preventing this from occurring. There has been no associated disorder.

[3] Similar conditions were imposed in respect of the 2026 parade. On 25 August 2026, this determination was quashed by this court on foot of an application for judicial review brought by Alan Hynes, a notice party to these proceedings.

[4] At around 6pm on 26 September 2026, Smyth J adjourned the judicial review application and issued an injunction which purported to suspend both the effect of the notice given by the Lodge and the determination given by the Commission until such time as the judicial review application was determined.

[5] This injunction was appealed to the Court of Appeal and, in an urgent sitting, it ruled that the interim relief granted by the High Court was vitiated by an error of law since the injunction effectively decided the judicial review application without its merits having been determined. The application was then remitted to me for hearing.

[6] In an ex tempore ruling, I dismissed the application for leave and gave reasons. This judgment now sets out those reasons in full.

### *The statutory framework*

[7] In 1998, Parliament passed the Public Processions (Northern Ireland) Act 1998 ("the 1998 Act") establishing the Commission on a statutory footing as the body which makes decisions in respect of public processions and protests. Under section 6 of that Act any such procession must be notified at least 28 days before its scheduled date and the notification must give certain particulars including the date, the time and the route, the numbers of persons, bands, arrangements around a proposed procession. Organising or taking part in an unnotified procession is a criminal offence, subject to the defences provided for in section 6(8) and (9).

[8] By section 8 of the 1998 Act the Commission is given a discretion to impose conditions on any proposed procession. If the Commission does not issue such a determination then a notified procession may proceed without any conditions.

[9] By section 8(6), in considering whether to impose any conditions, the Commission must have regard in particular to:

- (a) any public disorder or damage to property which may result from the procession;
- (b) any disruption to the life of the community which the procession may cause;
- (c) any impact which the procession may have on relationships within the community;

- (d) any failure of a person of a description specified in the guidelines to comply with the Code of Conduct (whether in relation to the procession in question or any related protest meeting or in relation to any previous procession or protest meeting); and
- (e) the desirability of allowing a procession customarily held along a particular route to be held along that route.

[10] The Commission published Guidelines in 2005 in relation to each of these considerations.

### *The Parades Commission*

[11] The Commission is a body, established by statute, which is the specialist decision maker in this field. When Parliament creates such an expert body, it is well established that the courts ought to show an appropriate level of deference when exercising the supervisory jurisdiction in judicial review.

[12] In *Re Tweed's Application (No 5)* [2009] NICA 13, Girvan LJ stated:

“[22] The democratic process has determined that it is the Commission as established by the 1998 Act and constituted in accordance with its provisions which is to be charged with the duty of deciding the question whether conditions should be imposed on contentious parades. The Commission must exercise a judgment. In *Re Pelan (No. 2)* (12 April 2001) Kerr J at first instance stated and appropriate weight must be accorded to its judgment:

“It seems to me that a body such as a Parades Commission pre-eminently must be afforded a margin of appreciation. It is a body charged with a specific responsibility for researching, assembling material, taking representations, evaluating those representations on the topic of disputed marches. Moreover the Commission is in a unique position in bringing to bear on these contentious issues the collective experience of its members and the decision that it reaches is, as this case exemplifies, one that is arrived at after comprehensive and informative debate. It seems to me therefore that this court should be slow to intervene in the resolution by the Commission of the tension that arises in relation

to the human rights asserted by the applicant and the residents of the area.”

In that case in the Court of Appeal the judgments make clear that this approach was accepted although it was recognised that the matter had not been fully argued in that case. What Kerr J and the Court of Appeal said in that case accords with the more recent House of Lords authorities.”

[13] It is important to recognise that in reviewing the decision, the court is not acting as appellate body or conducting a merits-based review. It is confined to an audit of the rationality and legality of the decision.

### *The notification*

[14] On 3 September 2026, the Lodge notified that a proposed procession would take place on 27 September 2026 and be made up of approximately 60 participants, including two bands. It would assemble at Drumcree Church at 12:45 hours, then proceed down Drumcree Road and the Garvaghy Road to Carleton Orange Hall; where it would disperse at 14:30 hours; and that banners and flags would be carried. An undertaking was given that the parade would proceed in silence on the contentious stretch of road and that no supporters would accompany it.

[15] The Commission, when faced with this particular notification, set about receiving oral and written representations from a range of people including the Lodge and its representatives, from the residents and their representatives and from the PSNI, church representatives and political parties.

### *The determination*

[16] In its determination, issued on 25 September 2026, the Commission found it necessary to impose the following conditions on the parade:

- (i) No more than 35 participants would be permitted;
- (ii) It would start at 08:00 hours and disperse no later than 09:30 hours;
- (iii) No supporters would accompany the parade or congregate along the route;
- (iv) No bands would participate;
- (v) Only the banner of the Lodge could be carried during the parade as it proceeded on any part of the Garvaghy Road.

[17] The Commission therefore imposed conditions which related to the time and manner of the procession but not as to its route or location. In doing so, it permitted

the Lodge to march down the Garvaghy Road. The judicial review challenge seeks the court's intervention in respect of the failure to impose a restriction on that particular route.

[18] The Commission gave detailed reasons for its determination in a 31 paragraph document. In relation to the imposed conditions, it states:

"The Commission considers these restrictions to be the least restrictive alternative means to achieve the aim of preventing disorder and protecting the rights and freedoms of others, in particular the rights of the residents of the Garvaghy Road and the impact of any parade on the community. These measures are intended to reduce the level of disruption that the parade will cause, in particular the impact on residents of the Garvaghy Road. These measures strike a fair balance, are not such as to materially undermine the right to freedom of peaceful assembly of those participating and are considered to be reasonable in all the circumstances of this application." (para [29])

### *The grounds for judicial review*

#### *(i) The disorder issue*

[19] The applicant challenges the analysis by the Commission of the question of public disorder. It is said that the Commission fell into error by failing to apply the correct statutory test which focuses on the risk of disorder which may occur.

[20] There is also challenge to some of the evidence upon which the public disorder determination was made. The determination sets out at para [25] that both written and oral submissions were made by the PSNI. These indicated that, at the time of making them, the police had:

"No information indicating that the parade would result in disorder or violence"

[21] The police, represented in oral briefings by Assistant Chief Constable Henderson, told the Commission that they had planned for different scenarios and would provide sufficient resources to police any parade which took place, with or without conditions.

[22] At paragraph [27] of the determination, the Commission states:

"The police have stated, as set out above, that they have no information indicating that the parade will result in public disorder or damage to property if it proceeds along the

notified route. Some of those making recommendations to the Commission have referred to the potential for serious disorder. The Commission is cognisant of the terrible disorder that occurred in relation to parades at Drumcree in the 1990s. However, given their operational experience, the assessment of the police must be given significant weight in the consideration of the potential for disorder. The concerns of academic commentators, residents and representatives in respect of the potential for disorder have also been weighed and the Commission considers that it does not have any specific information which indicates that the parade, if permitted to parade along its notified route, has the potential to result in public disorder, violence or damage to property.”

[23] The applicant says that the use of the words “will occur” in para [27] is indicative of the Commission applying a test of certainty rather than a test of risk to the question of public disorder. It is important to read the determination as a whole and not to seek to cherry-pick particular lines or sections from it. When one does this, it is evident that the Commission did focus on the risk. It speaks twice in that same paragraph of the “potential” for disorder to occur. In assessing the risk, the Commission references the evidence received on the issue from different sources and applies what it assesses to be appropriate weight to each.

[24] The determination states that the police did carry out an assessment but no specific information in relation to disorder was identified. That is not the same as saying there was no risk of disorder. In fact, the court was told that ACC Henderson did refer to various risks which had been considered by the police. A range of potential scenarios from an entirely peaceful passing off to violent disorder and all those potential scenarios had been mapped out by police and the appropriate responses were being considered.

[25] There was clearly detailed engagement by the Commission with senior police officers over a period of time at which intelligence assessments were considered and the PSNI’s planning was explained to the Commissioners. The only proper conclusion to draw from those paragraphs of the determination when read together, is that public disorder did feature in the consideration of the Commission in accordance with section 8 of the 1998 Act and the relevant guidance.

[26] Simply because the words “specific information” appear does not indicate that any enhanced test was being applied by the Commission. It is a reference to what was being provided to the Commission by the police themselves. The assessment of the police in relation to this order is inevitably an important part of the decision-making process. The Commission attached significant weight to the police assessment but, nonetheless, considering the relevant risk of disorder that had been identified,

imposed certain restrictions on the parade. This is entirely in accordance with the statutory scheme and is a matter within the Commission's discretion.

[27] I therefore reject as unarguable this ground of challenge.

(ii) *The rights issue*

[28] This case inevitably involved a collision of rights which enjoy protection under the European Convention on Human Rights which are incorporated into our domestic law by the Human Rights Act 1998. The Lodge relies on and is entitled to advocate for its article 11 right of freedom of assembly and, also, it should be said in this case, associated article 9 and 10 rights in relation to religion and expression.

[29] The Strasbourg case law to which I was taken including *Lashmankin v Russia* (App 57818/09) and *Kudrevičius v Lithuania* (App 37553/05), make it clear that the right to freedom of assembly is a foundation of democratic society and that restrictions on the exercise of the right should only be those which are necessary. The right includes the right to choose the time, the manner, and the place of assembly, that the autonomy of individuals who wish to exercise the right should be recognised and that in certain instances, the timing and the place of the exercise of the right are crucial to its effective exercise.

[30] In this case, the exercise of the right of freedom of assembly, if it entails walking the Garvaghy Road, will necessarily interfere with the article 8 rights of the applicant and of others who live there. There is no doubt that that the article 8 right is engaged on the facts of this case and the evidence clearly reveals that there would be an interference for a period of time, in this case between 08:00 hours and 09:30 hours, if the march proceeds during which time those rights that are normally enjoyed would be restricted and interfered with.

[31] Whenever one is dealing with a collision of Convention rights of this nature, a decision-maker must carry out the balancing exercise that is set out in some detail in the Supreme Court decision in *Safe Access Zones* [2022] UKSC 32. Key to that is a balance between the rights and proportionality exercise which identifies whether the interference which would necessarily occur is proportionate and is necessary. Where a public authority seeks to interfere with the article 11 right, such interference will only be lawful where it is prescribed by law, in pursuit of a legitimate aim and necessary in a democratic society.

[32] In this case, such interference is prescribed by the 1998 Act and can be seen to have the legitimate aim of the protection of the rights of others. The key question will be whether it is necessary in a democratic society which gives rise to questions of less restrictive alternative means and whether a fair balance has been struck between competing rights.

[33] The applicant contends that there was no proper analysis carried out by the Commission of his article 8 rights. It is true to say that article 8 is not expressly referenced, but neither is article 11. It is important not to read the determination of the Commission as a judgment of a court. What it must do, as a public body, is to carry out the balancing exercise. At para [29], set out above, it specifically references the least restrictive alternative means and the rights of residents. It cannot therefore be said that the applicant's article 8 rights were ignored and the question is whether the Commission carried out a lawful and fair balancing exercise.

[34] I am quite satisfied that the Commission did carry out a balancing exercise. One can readily see that there could be vehement disagreements with the outcome of that exercise. Many would argue that the outcome of the balancing exercise ought to have been different. However, the Commission took evidence from all the relevant interested parties, informed itself about the interference that would occur and it has attempted to craft conditions in order, as it says, to impose restrictions which would recognise the rights of residents and the right of freedom of assembly. It has chosen from the menu of options of conditions, ones which relate to time, ones which relate to manner, but not, in this instance, ones which relate to place. The determination demonstrates that the Commission considered the range of conditions available to it and concluded that restrictions as to time and manner, rather than route, represented the least restrictive means of addressing the competing interests.

[35] Where the primary decision-maker such as the Commission has undertaken an informed balancing of competing Convention rights, the court will attach substantial weight to that assessment and will be slow to interfere unless the balance struck falls outside the range of proportionate outcomes.

[36] For these reasons, I find this ground of challenge to be unarguable.

*(iii) The reasons issue*

[37] In a separate, but related challenge, the applicant says that the reasons given by the Commission are defective because there has been no explanation of the change of the approach adopted over the last 28 years by now permitting the return leg to proceed on the Garvaghy Road. Counsel for the Commission argues that every application is considered afresh. This was, in terms, quite a different application from the one which was made in July this year, different in terms of numbers, in terms of music and in terms of the timing and the time of year.

[38] The applicant accepts there is no public law obligation to act consistently, in fact, proper decision-making by public authorities has to be done on a case-by-case basis. There is no doctrine of precedent applicable to Commission decisions and each of them has to take the necessary evidence of the circumstances prevailing at the given time. No doubt a forensic analysis could be carried out of all the evidence given to the Commission over the last 28 years but this is not a feasible or, indeed, appropriate exercise for this court to carry out at the leave stage.

[39] The obligation to give reasons, in line with the Lord Brown's analysis in *South Bucks District Council v Porter (No 2)* [2004] UKHL 33, is to enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal important controversial issues. A reasons challenge will only succeed where an applicant can demonstrate that he was substantially prejudiced by a failure to give adequate reasons.

[40] In this case, that threshold is not met. The Commission did give detailed written reasons. It referred to the statutory criteria and guidelines, to the evidence received, the rights which were in play, the outcome and the reasons for it. The reasons given could have been more detailed in that they could, for instance, have included more of the evidence from ACC Henderson. However, they clearly meet the standard of intelligibility.

[41] The applicant disagrees with the outcome and rejects the reasons given but this cannot sustain a reasons-based challenge.

*(iv) Rationality*

[42] In this case, the specialist public body took evidence from the relevant sources, weighed up the key issues which were in play and which arrived at a reasoned decision set out in the determination. In those circumstances, it will be in a rare case that the court would intervene on grounds of rationality. The jurisdiction to impugn public body decisions on that basis is necessarily limited to cases where no reasonable decision-maker could have arrived at that outcome. In this case, that threshold, in my analysis, has not been met.

[43] This is a decision with which many people will disagree. It can be argued that evidence should have been given different weight or that the balancing exercise should have resulted in a different outcome. However, those are not matters for this court. Provided the right issues are identified, the guidance has been followed and the Strasbourg approach to the competing rights under article 11 and article 8 has been adopted, this court cannot substitute its own view or anybody else's view for that of the Commission.

[44] The rationality challenge is also therefore unarguable.

*Conclusion*

[45] For all these reasons, I find that the grounds of judicial review relied upon by the applicant are unarguable and I refuse leave to apply for judicial review. On that basis there is no question of any interim relief arising.

[46] I dismiss the application for leave to apply for judicial review.