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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**12/10/2026**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL FROM 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 FOR NORTHERN IRELAND

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Ms Denise Kiley KC with Ms Bobbie-Leigh Herdman (instructed by Phoenix Law) for the Appellant
Mr Tony McGleenan KC with Mr Mark O'Hara (instructed by Crown Solicitor's Office) for the Respondent
Mr Peter Coll KC and Mr Terence McCleave (instructed by Crown Solicitor's Office) for PSNI (Notice Party)
Mr Richard McConkey KC and Ms Emma McIlveen (instructed by Anderson Gillen Barr Solicitors) for the Notice Party Alan Hynes

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Before: Keegan LCJ, Colton LJ and McBride LJ

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KEEGAN LCJ (*delivering the judgment of the court*)

This decision was reached prior to the Secretary of State ("SoS") exercising his powers under the Public Processions (Northern Ireland) Act 1998 to prohibit the procession which is the subject matter of this appeal. We recognise that the legal position in relation to the procession has changed because of the SoS decision which is itself the subject matter of a legal challenge. However, the appellant has asked that we provide a ruling today on the application we heard. The respondent and the Notice Party Mr Hynes submitted that given intervening events the matter is academic and that we should simply dismiss the appeal. Having read the submissions, we deliver this judgment which is confined to the lawfulness of the decision made on 25 September 2026. This court is not determining whether the parade proceeds along the Garvaghy Road.

Introduction

[1] This is an appeal from a decision of Mr Justice Humphreys ("the judge") refusing leave to apply for judicial review. The decision was delivered in the early hours of the morning of 27 September 2026 after an emergency out-of-hours sitting. The impugned decision was made on Friday 25 September 2026 and communicated just after 14:00 hrs that day. It is a decision by the Parades Commission for Northern Ireland ("the Commission") which imposed certain conditions on a public procession notified by Portadown District Loyal Lodge No.1 ("the Lodge") in respect of a parade which was due to take place on Sunday 27 September 2026.

[2] As the judge pointed out, the appellant's challenge focuses upon the Commission's failure to place a condition which prevents the parade progressing along any part of the Garvaghy Road in Portadown.

[3] A court considering a judicial review of a decision made by a public body created by statute to determine a particular issue exercises a supervisory jurisdiction. It does not determine the merits of any decision made. What that means is that we can only decide whether a decision of a public body, in this case, the Commission, has been lawfully taken. We cannot make the decision ourselves. To be clear, this court is not determining whether the parade proceeds along the Garvaghy Road.

[4] The test which applies when adjudicating upon any judicial review leave application is explained by the Court of Appeal in *Ni Chuinneagain's Application* [2022] NICA 56. Specifically, in circumstances where a court hears substantial submissions and is fully informed of the underlying decision-making process, it can assess whether a case is arguable with a reasonable prospect of success. This formulation was agreed by all parties.

[5] Given the fact that we have all relevant papers including a comprehensive written determination of the Commission we are equipped to assess the reasonable prospects of success of this claim. We have taken the time to consider extensive written arguments which traverse the facts and the relevant law. We have considered the extensive oral argument from the appellant and proposed respondent, and we have considered the position of the notice parties.

The context

[6] Parading has long been a contentious issue in Northern Ireland. Historically, since 1807, the Lodge has marched to a service in Drumcree Church and then back to the town centre on the Sunday before the 12th of July. Difficulties arose in relation to this parade in the mid-1990s. In response to the serious disorder which ensued the then Secretary of State, Sir Patrick Mayhew, established an Independent Review of parades and marches. The North report in January 1997 recommended the creation of an independent body to deal with parades. Thereafter, in February 1998, a few months prior to the Good Friday Agreement, the Public Processions

(Northern Ireland) Act 1998 ("the 1998 Act") was enacted. This Act vests responsibility for making decisions about parades in the Parades Commission, an independent and specialist body.

[7] The Commission has remained in existence and exercised its function since 1998 deciding on the arrangements for parades across Northern Ireland. Over the years many decisions have been made without comment or controversy. However, this Lodge parade has been a procession which in the past has caused difficulty. The parade last walked on the Garvaghy Road in July 1997 on Drumcree Sunday which is the Sunday before the Twelfth of July. A challenge was mounted this year when the preferred parade route was refused; the Garvaghy Road return having been refused in all the intervening years. The Lodge did not agree with these refusals but abided by the conditions imposed. This year a judicial review application against the Commission decision was conceded on procedural grounds. The ensuing application for a parade to include the Garvaghy Road was granted and led to this judicial review.

[8] The sequence is as follows. The Lodge gave notice to the Police Service of Northern Ireland ("PSNI") on 3 September 2026 of a proposed public procession to take place on 27 September 2026. The application was to "parade and form up outside Drumcree Church with 60 Brethren and start to parade Drumcree Road; Garvaghy Road; Victoria Terrace - as Parade reaches end of Victoria Terrace after Northway under pass rest of District will join in with two Accordion bands – Castle Street; Bridge Street; High Street; Church Street and Carleton Street." This application was considered by the Commission who imposed restrictions on the proposal advanced by the Lodge but did not restrict the return journey along the Garvaghy Road.

[9] This impugned decision was the subject of a judicial review application heard before Mrs Justice Smyth on Saturday 26 September 2026 at approximately 12:00 hrs. She concluded that case at approximately 18:00 hrs. In a judgment reported at [2026] NIKB 56, she articulated her view that the case should be adjourned but she granted interim injunctive relief against the Commission which effectively prevented the parade taking place the following day. That order was set aside by the Court of Appeal later in the evening of the 26 September 2026 because of an error of law in that the judge had, in effect, determined the matter without considering the merits of the case and the order suspending/postponing the determination could not be made under the statutory scheme. The case was remitted to the judge who issued his judgment which is now under appeal.

[10] One other matter to record at the outset is that the appellant initially notified the police of a protest meeting in respect of the Lodge's procession through his instructing solicitor which referred to 5,000 participants by way of counter protest. This notification was withdrawn later the same day given the outcome reached by Mrs Justice Smyth. As far as we are aware there has been no further application for a counter protest. Notwithstanding this, we understand that the Garvaghy Road has

been effectively blocked to the Lodge by unnotified protesters and the parade has not been able to take place.

The statutory scheme

[11] The framework in the 1998 Act is crucial to an understanding of the decision making in this case.

[12] Section 2 of the 1998 Act sets out the functions of the Commission as follows:

> "(1) It shall be the duty of the Commission—
>
> (a) to promote greater understanding by the general public of issues concerning public processions;
>
> (b) to promote and facilitate mediation as a means of resolving disputes concerning public processions;
>
> (c) to keep itself generally informed as to the conduct of public processions and protest meetings;
>
> (d) to keep under review and make such recommendations as it thinks fit to the Secretary of State concerning, the operation of this Act.
>
> (2) The Commission may in accordance with the following provisions of this Act—
>
> (a) facilitate mediation between parties to particular disputes concerning proposed public processions and take such other steps as appear to the Commission to be appropriate for resolving such disputes;
>
> (b) issue determinations in respect of particular proposed public processions and protest meetings.
>
> (3) For the purposes of its functions under this section, the Commission may, with the approval of the Secretary of State—
>
> (a) provide financial or other assistance to any person or body on such terms and conditions as the Commission may determine;
>
> (b) commission research."

[13] Section 5 of the 1998 Act requires the Commission to issue a set of guidelines as to the exercise of its functions under sections 8 and 9A, the powers to impose conditions on public processions and public protests.

[14] Section 8 of the 1998 Act provides the Commission's powers as follows:

> "(1) The Commission may issue a determination in respect of a proposed public procession imposing on the persons organising or taking part in it [or on any persons supporting it] such conditions as the Commission considers necessary.
>
> (2) Without prejudice to the generality of subsection (1), the conditions imposed under that subsection may include conditions as to the route of the procession or prohibiting it from entering any place."

[15] Section 8(5) of the 1998 Act provides that the Commission shall have regard to the guidelines when considering whether to issue a determination or conditions. Section 8(5) reads:

> "(5) In considering in any particular case—
>
> (a) whether to issue a determination under this section;
>
> (b) whether to amend or revoke a determination issued under this section; or
>
> (c) what conditions should be imposed by a determination (or amended determination) issued under this section,
>
> the Commission shall have regard to the guidelines."

[16] Section 8(6) specifies the matters which the guidelines must provide for the Commission to have regard to as follows:

> "(6) The guidelines shall in particular (but without prejudice to the generality of section 5(1)) provide for the Commission to have regard 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."

[17] In accordance with section 5 of the Act, the Commission issued guidelines in 2005 ("the Guidelines"). At para 1.4 of the said Guidelines, after acknowledging that the guidelines are based on the fundamental right of peaceful assembly and freedom of expression outlined in article 11 of the European Convention on Human Rights ("ECHR") the Guidelines state that the Commission will not seek to raise obstacles to the exercise of these rights unless there are compelling arguments. To quote:

> "The guidelines are therefore designed to provide the Commission with a means of testing the validity of these counter arguments. In effect, they will provide a basis for establishing what is fair, just and reasonable in relation to any contentious public procession."

[18] Para 2 of the Guidelines addresses the issue of public disorder which may result from a public procession. Again, to quote:

> "Past experience has shown how decisions about contentious processions or related protest meetings can provoke disorder. The Commission is obliged by the Act to have regard to any potential public disorder or damage to property. In doing so, it will seek and consider advice from the PSNI."

[19] At para 4, the impact of the procession on community relationships is addressed. As to this, para 4.2 outlines the principal factors the Commission should have regard to as follows:

(i) extent to which contested parts of the route comprise mainly residential or commercial property;

(ii) demographic balance among the residents in the immediate area surrounding any contested parts of the route, or location of a related protest meeting;

(iii) presence of sites such as monuments or churches of other traditions or other sites associated with past events which give rise to sensitivity within the community; and

(iv) purpose of the public procession and whether the route is necessary or proportional to the availability of alternative routes or locations which are not controversial.

[20] At para 6, the Guidelines address the desirability of allowing a procession which has customarily been held on that route to continue to do so in the following terms:

> "The Commission recognises the premium attached by many to the concept of tradition in relation to public processions and acknowledges this as a factor of some importance. In its deliberations, the Commission will take into account the extent to which the proposed route is longstanding and weigh this important factor along with all other material in reaching conclusions."

Relevant legal considerations

[21] There are two decisions which emanate from a case of *Pelan*, namely *Pelan No.1* [1998] NIJB 260 and *Pelan No.2* 12 April 2001. Both of these decisions are useful in that they discuss the role of the court in challenges against the Commission and the deference which should be paid to the specialist body. In *Pelan No.1*, Carswell J indicated as follows:

> "The court exercises only a supervisory jurisdiction and not an appellate jurisdiction. This means, in a case such as the present one, that the court will not intervene to set aside the decision unless (the onus of proof being on the applicant) the person making the decision has failed to consider matters which were relevant or unless the court considers that the person making the decision has abused the exercise of a discretion given to him and has come to a decision which no reasonable person could have come to. There may be arguments of weight and substance on both sides of the matter, but it is not for the court to weigh up the arguments for and against the decision. The weighing of those arguments is a matter for the decision-maker not for the court."

[22] In *Pelan No.2,* Kerr J picked up this theme in the following terms:

> "It seems to me that a body such as the 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 to bringing to bear on those 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 in this area."

[23] In a more recent decision in *Re Tweed's Application No.5* [2009] NICA 13, Girvan LJ also quoted from *Pelan* (*No.2*) and reiterated the points made above at para [22]:

> "[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."

[24] In addition to domestic law, the ECHR is relevant as there are competing human rights in play. The rights of the appellant and the community who object to the parade proceeding along the Garvaghy Road arise under article 8 of the ECHR, which is a qualified right expressed as follows:

> "**Right to respect for private and family life**
>
> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

[25] Against this are the rights of those who wish to parade. These rights are contained in articles 9, 10 and 11. Article 9 is the freedom to express one's religion. Article 10 the freedom of expression. However, it is article 11 with which we are principally concerned as it is the right of freedom of assembly and association. Article 11 is also a qualified right expressed in the following terms:

> "**11. Freedom of assembly and association**
>
> 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

[26] Section 3 of the Human Rights Act 1998 ("the Human Rights Act") provides that so far as possible, legislation must be read and given effect in a way which is compatible with the Convention rights. Section 6 of the Human Rights Act provides that it is unlawful for a public authority, including the Commission and the court, to act in a way which is incompatible with a Convention right.

[27] The right to freedom of assembly is a fundamental right in any democratic society. In *Kudrevičius v Lithuania Application 37553/05* at paras 142, 143 and 145, the European Court of Human Rights ("ECtHR") defined the contours of this right as follows:

> "142. The right to freedom of assembly, one of the foundations of a democratic society, is subject to a number of exceptions which must be narrowly interpreted and the necessity for any restrictions must be convincingly established. When examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered 'necessary in a democratic society' the Contracting States enjoy a certain but not unlimited margin of appreciation (see *Barraco*, cited above, § 42). It is, in any event, for the court to give a final

ruling on the restriction's compatibility with the Convention and this is to be done by assessing the circumstances of a particular case.

143. When the court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they took.

145 Any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often even endanger it."

[28] In *Kudrevičius*, the ECtHR also explained the positive obligation that attaches to article 11 in the following terms:

"158. States must not only refrain from applying unreasonable indirect restrictions upon the right to assemble peacefully but also safeguard that right. Although the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected … there may in addition be positive obligations to secure the effective enjoyment of these rights ...

159. The authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens … However, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used … In this area the obligation they enter into under Article 11 of the Convention is an obligation as to measures to be taken and not as to results to be achieved ...

160. In particular, the court has stressed the importance of taking preventive security measures such as, for example, ensuring the presence of first-aid services at the site of demonstrations, in order to guarantee the smooth conduct of any event, meeting or other gathering, be it political, cultural or of another nature."

[29] The right to freedom of assembly includes, within the limits of article 11(2), the right to choose the time, place and manner of assembly. In *Lashmankin and others v Russia* [2007], the Grand Chamber addressed the importance of location at para [405] as follows:

> "405. The right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly, within the limits established in paragraph 2 of Article 11 … the organisers' autonomy in determining the assembly's location, time and manner of conduct, such as, for example, whether it is static or moving or whether its message is expressed by way of speeches, slogans, banners or by other ways, are important aspects of freedom of assembly. Thus, the purpose of an assembly is often linked to a certain location and/or time, to allow it to take place within sight and sound of its target object and at a time when the message may have the strongest impact … Accordingly, in cases where the time and place of the assembly are crucial to the participants, an order to change the time or the place may constitute an interference with their freedom of assembly, as does a prohibition on speeches, slogans or banners ..."

[30] What is plain from the Convention jurisprudence is that the right of freedom of assembly is an important democratic right which can only be interfered with in accordance with law, in pursuit of a legitimate aim, and when interference is necessary in a democratic society. The main tension arises at the last stage. That is because whether any interference is necessary will depend upon a proportionality balance being conducted where the rights of others conflict with those wishing to express freedom of assembly. In this case the article 8 rights of those who object to the parade taking place on the Garvaghy Road can be interfered with to protect the rights and freedoms of others depending on the proportionality balance.

The decision-making process

[31] This is explained in the written determination which we have had the benefit of analysing. It is necessary to read the determination in its entirety to glean a fair and accurate picture of the Commission decision. It is also necessary to set out the process in some detail as follows.

[32] The first point to note is that prior to making the determination the Commission, as it states, received a wide range of written and oral submissions in relation to this parade. It held meetings over two days, on 22 and 23 September 2026 and received a very large number of representations.

[33] The Commission records these as various written and oral submissions by and on behalf of the organiser, the Garvaghy Road Residents' Coalition, individual residents of the area, the police, and a wide range of political parties (many represented at party leader level), representatives of churches and others. The Commission also records that a petition was submitted signed by the Garvaghy Road Residents' Coalition, and a public opinion survey was submitted by Let's Talk Loyalism.

[34] Next the Commission records that the representations included detailed legal submissions referencing statute law, domestic and ECHR jurisprudence. The Commission records that it has carefully considered these representations and applied the general legal principles advanced therein within the framework of the 1998 Act. At this point we pause to observe that in accordance with its statutory obligations, the Commission did attempt to facilitate mediation which was acceptable to the Lodge but not to the Residents' Association.

[35] The Commission then records the two perspectives in play. The determination refers to the Lodge's position and the huge importance to it of completing the return part of the annual Drumcree Church parade along its traditional route. The Commission records the efforts that the Lodge made to reduce the potential impact of the parade and an expressed wish to avoid disorder. Specifically, the determination notes that they (the Lodge) indicated that they were willing to agree to a range of conditions on the parade (for example re the timing, size and inclusion of bands) including two of those requested by the Garvaghy Road Residents' Coalition (preventing congregation or participants or supporters at specified locations).

[36] Reflecting the other perspective, the Commission also records the Garvaghy Road Residents' Coalition position which was expressed by them and their legal representatives as their very firm opposition to the parade proceeding along the Garvaghy Road. In particular, the Commission cites the fact that these opponents "spoke of their inability to understand the insistence of the Orange Order to attempt to parade along the Garvaghy Road, when there is an alternative and less controversial route available."

[37] The Commission then records the economic and social development of the Garvaghy Road community since 1998 and the events in the 1990s which caused "intergenerational trauma" and the submission that any parade would revive that for many residents.

[38] The Commission records that the Garvaghy Road Residents' Committee "spoke of the shock, fear, anxiety and anger felt by many residents at the prospect of a parade along the Garvaghy Road and indicated that there are instances of people avoiding Portadown town centre and making arrangements to leave the area for the weekend if it goes ahead." The Commission noted that residents were concerned that any parade would be an opportunity for displays of triumphalism, such as that that took place in the 1990s.

[39] In addition, the Commission records political representatives from across the spectrum indicating both support and opposition - the support coming from members of the Protestant/Unionist and Loyalist community and the opposition coming from Catholic/Nationalist Republican community.

[40] The Commission went on to consider the evidence from the police. In this regard the Commission records that the police made both written and oral submissions. Paragraph 25 of the determination records the police evidence as follows:

> "25. The police made both written and oral submissions, indicating that they, at the time of making them, had no information indicating that the parade would result in disorder or violence. They are planning for all reasonably likely scenarios, both known and unknown, in accordance with their legal obligations and the applicable policies and procedures. Their assessments will be updated on a continuous basis. Meetings have been held with the organiser, residents and political parties and local police are engaging with the community. They were unable to indicate the size and profile of the police deployment for the parade as it would depend on the situation as it was at the time. The police stated that they would provide sufficient resources to police any parade that takes place, whether subject to conditions or not, and also any protest activity that may occur."

[41] At this point it is convenient to refer to the police risk assessment documents which the Commission had. These are in a format of Form 11/9 Public Procession Reports. The first public procession report relates to the original application for a parade on 5 July 2026, the second to the application for Sunday 27 September 2026. In these forms question 6 focuses on public disorder or damage of property which has occurred previously. The answer provided by police on both forms reads:

> "The notified outward parades have been peaceful in recent years.
>
> The history of the notified return parade is well-known and documented.
>
> There has been no disorder associated with the return parade, subject to the determination, in recent years.

> In previous years, notifications had been given for either a counter parade or a street festival on the main return route.
>
> No such notification has been received by police to date."

[42] During the hearing before the judge the representatives for the PSNI also read into the record, a summary of the evidence given to the Commission by ACC Henderson representing the police which reads as follows:

> "No specific threat assessment was provided to the Commission by the PSNI. The PSNI attended a meeting with the Commission on 23 September 2026. In attendance from PSNI was the Gold Commander ACC Henderson, and Silver Commander, Chief Superintendent Hasslet. As noted above, Form 11(9) had been submitted prior to the meeting. During that sessions ACC Henderson addressed in his answers the issues of what the PSNI knew on that date, what scenarios the PSNI were planning for and a summary of what PSNI had heard from engagement that had taken place with political parties and other stakeholders. In relation to what was known through intelligence and information, an intelligence assessment was read to the Commissioners outlining the limited information that was available at the time. The assessment was clear that it was unlikely that meaningful intelligence in relation to the parade would be known until the determination was issued publicly. ACC Henderson also identified that there was no intelligence to indicate that disorder was being planned in relation to this parade at this point. ACC Henderson outlined in his role as Gold Commander that due to the lack of intelligence, PSNI were actively planning against an unclear picture of what may arise from either potential outcome of the, as then, unknown determination. ACC Henderson further explained that in the absence of clear intelligence, PSNI had to plan for a range of potential scenarios ranging on a scale from peaceful up to violent disorder. ACC Henderson outlined the detail of those scenarios in relation to whether the parade was allowed to proceed or not. ACC Henderson confirmed that the reason for planning in this way was that whilst an evidence-based assessment of likelihood of those planning scenarios occurring could not be given at that time because of the absence of intelligence, the impact of the more extreme of those should they happen to be

> significant and not to have planned for them would have been a serious omission. ACC Henderson also provided a summary of the information obtained through community engagement. That engagement included explaining the scenarios PSNI were planning for on the basis of limited information and no determination yet made. ACC Henderson informed the Commissioners that the planning included the mobilisation of significant resource to provide a policing response should they arise."

[43] Having documented the evidence considered, the Commission went on to explain its ruling. It did so by reference to section 8 of the 1998 Act and the Guidelines.

[44] The core of the ruling is then contained in the following paragraphs of the determination which reads as follows:

> "27. The Commission has sought and considered advice from the police. 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 its notified route. Some of those making representations 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 in 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 relation to 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 proceed along the notified route, has the potential to result in public disorder, violence or damage to property.
>
> 28. The Commission notes the measures taken by the organiser to reduce the size and impact of the parade. It also notes that the parade has not resulted in any disorder or violence for many years and that the organiser and participants have complied with all of the Commission's determinations.

29. Notwithstanding the above, in view of the history associated with this parade, the Commission considers that it is necessary to reduce the numbers of participants in the parade to a total of 35 and to require it to commence at 8am and finish by 9:30am, in view of the fact that this is likely to reduce the level of disruption caused by the parade, both in terms of the time it takes to pass any particular point and also in terms of potential impact on residents of the Garvaghy Road. It also considers that a prohibition on bands accompanying the parade along any part of the route is necessary. The Commission considers these conditions 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 and 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.

30. The Commission has also considered the potential impact of the parade on relationships within the community. As noted above, relationships have improved a lot in Portadown in recent years, but this dispute remains extremely divisive. The Commission believes that there is a real and pressing need to resolve this dispute for the benefit of all in Portadown and further afield. There is scope to build upon the recent progress in community relations in Portadown to pursue a lasting solution, to the benefit of all communities in the town and across Northern Ireland. The sense of grievance at what they see as a denial of their civil and religious liberties felt by the brethren and supporters of the LOL No.1 is genuine and is not underestimated by the Commission. This is exacerbated by what they see as an obstinate refusal of representatives of residents to speak to them under any circumstances. Equally, the sense of trauma and hurt felt by those affected by the treatment they received during the height of the Drumcree dispute is real and continued. The Commission has recently appointed mediators to seek to engage with the parties to the

dispute. The Commission notes the willingness of the parties to engage in mediation. It remains committed to promoting and facilitating mediation and would urge the parties to continue to approach mediation in an open and committed manner.

31. The Commission would also point out that each and every notified parade and protest is considered individually, on the basis of all of the information available to it, in light of the applicable legal and policy framework, this decision relates to this specific application and is based on the evidence available to the Commission. The Commission notes in particular, the number of participants and the extensive measures taken by Portadown District LOL No.1 to minimise the disruption and address the genuinely held concerns raised by residents. The Commission understands the genuine hurt experienced by many residents of the Garvaghy Road. This decision is not, and should not be perceived, as a victory for one side or a loss for another. It is the outworking of the application of the legal framework to facts available to the Commission."

[45] The conditions of the determination are then set by the Commission in a document which runs from point A-N as follows (there is some repeat of lettering on the original):

"The Parades Commission's determination is that the following conditions are placed on the organiser and participants in the Portadown District LOL No. 1 parade in Portadown on Sunday 27th September 2026.

A. No more than 35 persons, including the five marshals named on the Form 11\1 submitted on 3rd September 2026, shall take part in the parade.

B. The parade shall depart from its notified assembly point at Drumcree Church no later than 8am and shall disperse from its notified dispersal place, Carleton Street Orange Hall, no later than 9.30am.

C. Only the banner of Portadown District LOL No. 1 may be carried or displayed during the parade as it proceeds along any part of the Garvaghy Road. No other banners, flags or emblems shall be carried by participants in the parade.

D. No supporters shall accompany the parade during any part of its notified route.

E. No supporters shall congregate along the notified parade route, including but not limited to the vicinity of the notified assembly point at Drumcree Church, the roundabout at the junction of Dungannon Road, Moy Road and Garvaghy Road and St John the Baptist Church. In addition, no supporters shall congregate in the vicinity of homes on the Dungannon Road and Drumcree Road.

F. No bands may participate in the parade during any part of its notified route.

G. All participants in this parade must abide by the appropriate conditions of the Code of Conduct; and comply with police directions and act in accordance with legislation.

H. The Commission further re-affirms the importance of respectful behaviour in the vicinity of interface areas.

I. The organiser and all participants in the parade shall comply with the conditions set out at Appendices A and B to the Commission's Code of Conduct. For ease of reference, these are reproduced below.

G. **Flags etc.**

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

H. **Stewards**

The names of stewards will have been notified to the police and the Parades Commission at the time of notifying the proposed parade.

Stewards should:

- be properly trained
- be briefed by the organisers prior to the parade

- carry proof of their status at all times during the event, and provide this information to police on request
- be fully aware of their responsibilities and role
- be highly visible by means of jackets, singlets, armbands, etc.
- not consume alcohol before or during the parade
- co-operate with the police
- be prepared to identify to the police any persons in the parade who may be committing any offence against criminal law.

I. **Policing**

Organisers of parades must co-operate with the police from the time of submission of the notice of intention to parade until the parade disperses.

J. **Dispersal**

When a parade has concluded, all those taking part must disperse immediately. It will be the responsibility of the organisers to ensure compliance with instructions in this regard.

K. **Abiding by Conditions**

Organisers must ensure that all participants In any parade have been Informed of any conditions imposed. As a general principle, the organiser Is responsible for the behaviour of all participants and for ensuring compliance with the Code of Conduct.

J. The parade organiser shall ensure that the parade begins and disperses promptly and that there are no undue delays or stoppages during the parade. Where practicable the parade shall stay close to the near side of the road at all times to minimise disruption and to facilitate the passing of vehicular and other traffic.

K. The organiser shall arrange for the presence of an adequate number of stewards to ensure that all parade participants act in an orderly manner.

L. The parade organiser shall bring to the attention of stewards the guidance for parade participants

contained in Appendices A and B of the Commission's Code of Conduct,

M. The parade organiser shall ensure that all stewards and participants obey any direction given by the police in relation to this parade.

N. The parade organiser shall ensure that these conditions are drawn to the attention of all participants."

The grounds of appeal

[46] The appellant advances four inter-related grounds of appeal as follows:

(i) The judge erred in rejecting the appellant's submission that the respondent applied the incorrect test to its assessment of whether any public disorder or damage may occur from the notified procession. This is compounded by a material misdirection as to fact in relation to the PSNI evidence.

(ii) The judge erred in refusing the appellant leave to challenge the determination in circumstances where the reasons provided were demonstrably inadequate, internally inconsistent and failed to grapple with the issues.

(iii) The judge erred in refusing the appellant leave to challenge the determination in circumstances where the reasons provided do not reflect the proportionality balancing exercise required of the respondent.

(iv) The judge erred in refusing the appellant leave to challenge the determination in circumstances where it was infected with irrationality.

[47] We note that in the certificate of urgency, the appellant raised a potential issue that the notice for this parade may have lapsed, however, Ms Kiley KC confirmed that this was not being litigated upon at present and it was not before this court in any event. Mr McGleenan KC also confirmed that the Commission has been asked to review its decision, and it can do so within the terms of the 1998 Act in that it is empowered to amend or revoke any decision. This was the updating information we had.

Consideration of grounds of appeal

Ground 1 – Application of the incorrect test?

[48] There are two limbs to this argument. First, the appellant maintains that the Commission applied the wrong legal test in that it looked for evidence that disorder would result, rather than assessing whether it might result. Second, the appellant

makes the case that the Commission misunderstood the PSNI's assessment. By so doing it underestimated and improperly failed to analyse the relevant risk of public disorder. The first question concerns how the Commission directed itself; the second concerns how it understood and weighed the police evidence.

[49] In assessing this argument, we look to the operative statutory provisions and Guidelines. Section 8(6)(a) of the 1998 Act provides for consideration of disorder or damage to property which "may result from the procession." Section 8(5) requires the Commission to have regard to the Guidelines. In this regard, section 2 of the Guidelines reinforces this requirement by referring to potential disorder. This is a wide and open textured requirement rather than a strict legal test. The inquiry is also forward looking. It requires assessment of risk, not certain proof that disorder will occur.

[50] It is not disputed that recognition of a risk does not automatically compel exclusion of the route. The Commission must assess its significance alongside the other relevant considerations and on that basis decide what conditions are necessary. It is also not disputed that the PSNI view will hold significant weight on this issue.

[51] In respect of the foregoing, the appellant's argument focuses on para [25] and [27] of the determination. Para [25] of the determination records that the PSNI had no information indicating that the parade "would result in disorder or violence." Para [27] repeats the PSNI's position using the words "will result in public disorder or damage to property." The same paragraph then records the Commission's own conclusion that it had "no specific information" indicating that the parade had the potential to result in disorder. The appellant seeks to contrast this reasoning with the statutory language to consider disorder which "may result." His concern is that the Commission treated the absence of information predicting disorder as an answer to the broader question – whether disorder remained a risk. The Commission's emphasis on "specific information" might also suggest that it required concrete intelligence before recognising a risk of supported by the historical context of the parade and other varied representations.

[52] However, the respondent submits this interpretation gives isolated wording too much individual significance. That submission is undoubtedly correct. It is important to read the determination in its entirety. Para [27] expressly considers potential disorder, acknowledges history and states that the concerns raised by residents and others have been weighed. Para [25] records PSNI contingency planning; moreover, para [29] imposes additional conditions in part to "achieve the aim of preventing disorder."

[53] It is important to note that the Commission expressly stated at para [27] that "the assessment of the police must be given significant weight in the consideration of the potential for disorder." This is unsurprising given the PSNI expertise. However, the Commission also took into account other views which were different to the police in predicting disorder.

[54] When the core paragraphs are read together, we are satisfied that these passages indicate that the Commission considered the possibility/potential risk of disorder despite the absence of specific information predicting it. Specific information from the PSNI was not treated as a prerequisite to taking precautions. The judge accepts that reading at paras [23]-[26] of his decision and we consider that he was correct to do so. In substance, he concluded that: the determination's references to potential disorder, its consideration of the wider evidence and its preventative conditions made it difficult to conclude that the Commissioners were labouring under the assumption that it required certainty of risk of disorder. Collectively, these points refute the suggestion that the Commission asked the wrong legal question.

[55] The second limb of this argument concerns the Commission's understanding of the PSNI assessment. This turns on a comparison between the PSNI assessment as recorded in the determination and the fuller account recorded in the judgment.

[56] At paras [25] and [27] of the determination, the Commission emphasises the absence of information indicating that the parade would result in disorder but that the police had confidence that it could plan for "all reasonably likely scenarios." In addition, as the judge records at para [24] of his ruling, ACC Henderson referred to risks considered by the PSNI and scenarios extending from peaceful passage to violent disorder. The appellant relies on that additional detail to argue that the PSNI assessment was more qualified than the Commission's emphasis suggests.

[57] The alleged error is not simply that the determination omitted some detail, but that the Commission may have understood the absence of specific information as reassurance that there was no material risk. Given the "significant weight" afforded the PSNI assessment the potential effects of this are obvious insofar as they may affect the decision to permit the route subject to conditions.

[58] In reply the respondent argues that the additional detail in the judgment at first instance does not contradict the position recorded by the Commission. The PSNI's planning supports an inference that they contemplated some risk of disorder, but crucially they maintained that it could be managed. Recognising that possibility is not incompatible with having no specific information that goes towards predicting whether it will materialise. Indeed, neither such PSNI planning, nor the fuller account in the High Court judgment establishes, by itself, the likelihood or severity of the anticipated disorder. It simply establishes the PSNI were assessing it as a possibility.

[59] More importantly, in our view the recognition of risk by the PSNI does not demonstrate that the Commission overlooked risk and did not consider it. The relevant question is whether the Commission understood that uncertainty and assessed it not whether the uncertainty existed.

[60] Para [25] of the determination supports the respondent because it records expressly, contingency planning, the continuing review of PSNI assessments and assurances about sufficient resources. In substance, it appears plain to us the Commission cannot be said to have presented the absence of specific information as the entirety of the PSNI position.

[61] The only rational conclusion is that the Commission understood the PSNI's position of uncertainty and thereafter made its own judgment about the safeguards/conditions required. The respondent's argument rests on reading the determination as a whole which is the correct approach. Its account of contingency planning, consideration of other evidence and imposition of preventative conditions provide the basis for apprehending the Commission as recognising uncertainty and accordingly considering the safeguards sufficient.

[62] Therefore, ground 1 of this appeal fails. The judge was correct to refuse leave on this ground. The appellant's argument while skilfully advanced by Ms Kiley cannot prevail on an overall reading of the determination and the evidence the Commission had before it from PSNI which included no specific information as to the risk of disorder but assured that police would cope with any eventuality. In those circumstances the Commission decision withstands the challenge presented by ground 1 in this appeal.

Ground 2 – Adequacy of reasons?

[63] The appellant's second ground of appeal concerns whether the Commission adequately explained its determination. The relevant legal principles governing such a challenge are articulated in *South Bucks District Council v Porter (No 2)* [2004] UKHL 33. In terms of the requirements para [36] is instructive:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. … Decision letters must be read in a straightforward manner, recognising that they are

> addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

[64] The appellant argues that the determination identifies evidence and competing interests but does not sufficiently explain why they justified allowing the procession along the Garvaghy Road. The respondent argues that the explanation is clear when the determination is read as a whole: the appellant demands more clarity than legal principle requires.

[65] As per *South Bucks*, reasons must allow the reader to understand why the decision was reached and how the principal controversial issues were resolved. They may, however, be brief and need not address every material argument or consideration.

[66] The appellant identifies three related problems:

(i) Inconsistency about the assessment of future disorder;

(ii) Insufficient explanation of the balance between the competing rights; and

(iii) And insufficient explanation for the departure from previous route restriction decisions.

[67] The first argument which revolves around the potential for future disorder is framed as follows. At para [27] the determination states that it has "no specific information" indicating the procession has the potential to result in disorder. Yet, at para [29] it imposes conditions to, in part, protect against such disorder. The appellant begs the question: did the Commission consider that there was no meaningful risk, or that there was a risk that the conditions would adequately address? In essence the argument advanced is that the determination does not adequately explain what the risk was or why conditions were sufficient.

[68] We cannot accept that proposition. Para [25] of the determination records PSNI contingencies; para [27]-addresses history and other representations and warnings; and para [29] imposes conditions in light of the history. Accordingly, the absence of specific information did not rule out the potential for disorder, notwithstanding, the procession was allowed to proceed under conditions. In this regard, the two passages are not in contradiction and an adequate explanation for the determination is discernible.

[69] The second aspect of this ground of challenge concerns the explanation for the proportionality balance the Commission struck – ie how does it explain its choice of restrictions on time and manner and not the route of the parade. On this basis, the

appellant argues that beyond noise, traffic and time taken to for the procession to pass, the residents' article 8 rights extend beyond this, including fear, trauma and the significance of the parade returning to the area. The argument is advanced that para [29] of the determination explains how the conditions would reduce disruption, it does not adequately explain why the measures made the wider impact on residents acceptable. The question is asked - why did making the procession smaller, quieter and earlier sufficiently answer and justify overriding the residents calls for excluding the route?

[70] Again, the respondent states that the answer to the appellant's question readily emerges from the determination in its entirety. We agree. The absence of bands and accompanying supporters, alongside restrictions on conduct, reduced the possibility of adverse behaviour to the residents. The Commission was not required to explain how every concern would be removed. Indeed, it did not claim that every concern would be removed. Its judgment was that the remaining impact on residents did not justify excluding the route and thus struck a fair balance. There is force in the respondent's argument that the Commission did in fact consider and explain how restrictions would impact the residents.

[71] The third aspect of the reasons challenge is that the Commission should have said why it changed its mind to allow this parade without restricting the return along the Garvaghy Road when that had not happened for 28 years. We understand this concern. However, as the Commission expressly stated at para [31] each application must be considered individually and there is no legal requirement to explain consistency or inconsistency with previous decisions. Notably the appellant accepts that earlier decisions did not bind the Commission. This point goes to the merits of the decision rather than reasons and so it cannot prevail in judicial review.

[72] A determination such as this should not be read hyper critically. As the judge said, the determination of the Commission should not be read as a judgment of the court, it represents their evaluative judgment in respect to multifactorial issues. In our view the reasons for the decision are discernible and so this ground of appeal also fails.

Ground 3 – The proportionality balance?

[73] The third ground of appeal advanced by the appellant concerns the proportionality analysis and particularly the balance struck between the participants' rights under article 10 and 11 and the residents' rights under article 8. In essence, the appellant maintains that the Commission and the judge did not sufficiently assess the importance of using the disputed route (the Garvaghy Road) before weighing the competing rights. Contrastingly, the respondent argues that the route's significance was understood and considered, and that the appellant is merely disputing the weight attributed to it.

[74] In terms of the balance, on one side is the interference with residents by allowing the procession along the Garvaghy Road under the conditions imposed. On the other side is the interference with the participants by requiring a different route. The Strasbourg authorities inform this assessment. In *Lashmankin and Others v Russia* at para [405], the Grand Chamber recognises the importance of organisers' choice of time, place and manner, including the relationship between a location and a specific audience or object. In *Mustafa Hajili and Others v Azerbaijan* at para [65], proximity to Parliament mattered because participants' demands were directed to each institution. In both these cases, the location was deemed 'crucial' to the purpose of the assembly itself.

[75] The question of cruciality in relation to location of the parade occupied some argument before us. Having, considered the submissions made we consider that cruciality is part of the factual matrix to be considered when defining the nature of the article 11 right in play. However, it is not a threshold which the notice party must cross before their choice of location receives protection. Article 11 indisputably protects that choice – subject to justified restrictions/conditions. Nonetheless, a location's close connection to the assembly's purpose must be weighed in the balance. It is in this vein that the appellant argues that the particular importance of the Garvaghy Road was assumed rather than sufficiently assessed by the Commission.

[76] Obviously, a procession could still hypothetically take place on another route. However, the question that had to be asked was how much of its cultural, religious or expressive significance would have been lost through that change in the balancing exercise. This assessment is necessary to properly calibrate what is at stake for the two competing rights holders. Without it, the appellant argues that the Commission and judge laboured under an erroneous assessment of the interests being balanced. The argument in its best light is that a material part of the fair balance assessment was missing, as opposed to excessive weight being given to one side.

[77] Against this argument, the respondent makes several submissions which we summarise. First, the European case law cited is not confined to practical necessity or proximity to a political audience. Historical, cultural and commemorative associations may also explain the weight of the interference occasioned by relocation. For instance, in *Stankov and the United Macedonian Organisation Ilinden v Bulgaria*, nos 29221/95 and 29225/95, ECHR 2001-IX, the historical meaning of commemorative sites supported the Chamber judgment that the time and place were indeed crucial to the applicant's article 11 right. While factually distinct from this situation, it undermines any suggestions that a traditional route deserves little weight because participants could physically assemble elsewhere.

[78] In addition, the respondent submits that the participants' own understanding of the event is relevant. To this end, the respondent's submission is that the significance of location to the participants' rights was identified in the determination.

[79] Specifically, para [13] of the determination records the organisers' account of the longstanding use of the route, its importance to completing the traditional return procession and the continuing grievance caused by its exclusion. Read as part of the wider determination, it provides a concrete basis for the respondent's contention that importance of the route was understood and considered, as opposed to merely assumed. Moreover, as para [30] of the determination recognises the appellant's grievance.

[80] Para 6.1 of the Commission Guidance also recognises the importance of customary routes – while requiring that consideration to be weighed alongside other relevant factors.

[81] The decision of the Supreme Court in *Re Safe Access Zones* [2022] UKSC 32 addressed the appropriate questions when considering a piece of proposed legislation and deciding on its human rights compliance. This was an *ab ante* challenge prior to the legislation being enacted. However, various questions were asked in assessing the proportionality of a general measure when article 8 and 11 rights conflict. These reflect the ECHR requirements that an interference with article 8 rights which are in play in this case require to be in accordance with law, for a legitimate aim and necessary in a democratic society.

[82] The respondent's articulation and answers to the relevant questions which we set out as follows appears to us to be accurate and legally sound:

> **"(i) Does imposing restrictions restrict the exercise of the rights protected by article 9, 10 and/or 11 ECHR?**
>
> The answer to this is yes: "The right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly, within the limits established in paragraph 2 of Article 11 the organisers' autonomy in determining the assembly's location, time and manner of conduct, such as, for example, whether it is static or moving or whether its message is expressed by way of speeches, slogans, banners or by other ways, are important aspects of freedom of assembly. Thus, the purpose of an assembly is often linked to a certain location and/or time. (see: *Lashmankin & Others v Russia* (2019) 68 EHRR 1 at para [405]). Further, the participants to this notified procession would be expressing themselves with others (see: *Primov v Russia* (2014) ECHR 605 at paras [91]-[92]).

(ii) **Is the restriction prescribed law?**

The answer to this is yes, with reference to section 8 of the 1998 Act.

(iii) **Does the restriction of the Convention rights pursue a legitimate aim?**

The Commission's determination cites the 'prevention of disorder' and 'the protection of the rights and freedoms of others' each of which feature expressly as legitimate aims in articles 8(2), 9(2), 10(2) and 11(2) of the ECHR.

(iv) **Is the restriction of the Convention rights necessary in a democratic society?**

The court will note that articles 8(2), 9(2), 10(2) and 11(2) ECHR refer to the restriction being 'necessary in a democratic society.' However, the domestic courts break this consideration down into the following four sub-questions:

(a) Is the aim sufficiently important to justify interference with a fundamental right?

The prevention of disorder and the protection of the rights and freedoms of others — each of which are expressly provided for in articles 8(2), 9(2), 10(2) and 11(2) ECHR — satisfy this requirement. The Court will note that the Commission has correctly directed itself at para [27] of its determination as to the meaning of 'disorder' for the purposes of the Convention (see: *Perincek v Switzerland* (2015) 63 EHRR 6 [GC], at paras [151]- [153]).

(b) Is there a rational connection between the means chosen and the aim in view?

The restrictions imposed are plainly rationally connected to the means chosen and the aims in view.

(c) Are there less restrictive alternative means available to achieve that aim?

The meaning of this question was considered in *Glor v Switzerland* [2009] ECHR 2181 where the court said

"[94] there must be no other means of achieving the same end that would interfere less seriously with the fundamental right concerned." The court will note that the Commission expressly considers this at para [29] of its determination.

(d) Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?

The Commission has been charged by statute to perform this balancing exercise and has come to this conclusion after a comprehensive and informed analysis. It has taken representations, received legal submissions and academic commentary, considered testimony from residents, set up a mediation, met with all the key protagonists, engaged with the political representatives and taken the expert operational view of the police. Having done so it has reached an evaluative judgment on the appropriate balance with which the court should be slow to interfere with (see: *Re Tweed* (No 4) at para [22] cited above)."

[83] The body of Strasbourg jurisprudence we have referred to relates to article 11 interference. This case concerns an interference with the appellant's article 8 rights. Therefore, the considerations are whether this was in accordance with law, for a legitimate aim of protecting the competing right to freedom of assembly and the interference was necessary on a proportionality balance. The question is not simply whether a restriction upon the proposed route would constitute a proportionate interference with article 11 but whether the Commission's decision to permit the procession, subject to conditions achieved a proportionate reconciliation of the competing rights in play.

[84] In terms of our approach to this question we have considered the Supreme Court's decision in *Shvidler v Secretary of State for Foreign and Commonwealth* [2025] UKSC 30. Having done so our approach is one of appellate review. That is because this was a fact sensitive analysis of an individual case. The point in issue is not one that engages a dispute about the content in Convention compatibility of the 1998 Act itself. Rather, the dispute turns on assessment of the Commission's assessment. The judge reviewed the impugned decision, and we also have reviewed his decision and reach the same outcome.

[85] The core question, was whether the Commission carried out the proper balancing exercise. The Commission recognised that article 11 rights in respect of route was not one to be lightly interfered with as the participants considered this

was crucial. As *Lashmankin* at para [422] notes, even a counter protest is not a trump card. The court stated at para [422]:

> "422. The court considers that the refusal to approve the venue of a public assembly solely on the basis that it is due to take place at the same time and at the same location as another public event and in the absence of a clear and objective indication that both events cannot be managed in an appropriate manner through the exercise of policing powers, is a disproportionate interference with the freedom of assembly." [our emphasis added]

[86] In this case, the PSNI evidence to the Commission was that "they would provide sufficient resources to police any parade that takes place, whether subject to conditions or not, and also any protest activity that may occur."

[87] In the absence of information that the parade could not be managed, a route restriction according to *Lashmankin* at para [422] cited above would have represented an unjustified interference with article 11 rights.

[88] The Commission had to consider whether if a route restriction was imposed this would breach article 11. It was not just a question of the availability of an alternative route, something which the Commission clearly knew had occurred in the past as per para [9] of the determination. Rather, the Commission had to balance all of these various factors and matters.

[89] This exercise was conducted as appears at paras [28]-[31] of the determination. The Commission identified all the relevant issues, it recognised the positive obligation to support article 11 rights with restrictions to mitigate community impact and disorder and the Commission also took into account that the parade took one minute to pass any point and 14 minutes in total in respect of how this would impact on the article 8 rights. Thereafter, the Commission struck a balance by imposing restrictions in respect of numbers, music, regalia etc.

[90] The Commission weighed many factors in reaching its determination having heard directly from interested parties over a number of days and considered the evidence before it. In these circumstances, as the Court of Appeal and the ECtHR has made clear on more than one occasion, it is entirely illegitimate to invite the court to second guess that assessment.

[91] Thus, we agree with the judge that the Commission did carry out a balancing exercise having properly informed itself of the competing interests. This ground of appeal also fails.

Ground 4 – Irrationality?

[92] This ground of appeal was not pursued by Ms Kiley as a standalone ground of challenge. Given our conclusions on the other grounds of challenge, it therefore cannot prevail. In any event, irrationality is a high bar particularly when the impugned decision is made by a specialist body entrusted by Parliament with responsibility for a particular issue as here. We agree with the judge that the threshold for irrationality cannot be met in this case given that the Commission obtained evidence from the relevant sources and then considered the competing interests to reach a reasoned decision. As the judge said, the fact that people may disagree with the decision does not make it irrational. This ground of appeal also fails.

Overall conclusion

[93] Having carefully considered the arguments we are satisfied that the judge was correct in his assessment of this application and that we should dismiss this appeal. We have had the benefit of the core material we needed to reach this outcome namely a comprehensive decision from the Commission and the underlying material from the police which was given significant weight. Having assessed this material and the extensive legal arguments made, we find that this application for leave to apply for judicial review has no reasonable prospect of success and so the judge was correct to refuse leave. We are also bound to say that even if leave were granted this application would have failed on its merits for all of the reasons we have given. This is the law which we apply in exercising our supervisory jurisdiction. We make no comment on the merits of the decision itself as that is not our function.

[94] Accordingly, we dismiss the appeal and the application for leave to apply for judicial review is thereby also dismissed.