

Judicial Communications Office

28 October 2026

COURT DISMISSES GARVAGHY ROAD CHALLENGE

Summary of Judgment

Mr Justice Scoffield, sitting today in the High Court in Belfast, dismissed an application for judicial review of the Secretary of State's decision to prohibit an Orange Order parade along the Garvaghy Road. The court held the decision was lawful and within the margin of discretion properly afforded to him.

This application concerned a public procession notified by Portadown District Loyal Orange Lodge No. 1 ("the Lodge") which the Parades Commission determined on 25 September 2026 could proceed along the Garvaghy Road subject to conditions. The procession did not take place on 27 September 2026 because the Police Service of Northern Ireland ("PSNI") assessed that it could not be facilitated safely due to a substantial protest obstructing the route.

The applicant, Alan Hynes, a member of the Lodge, challenged:

- the Chief Constable's application under section 9 of the Public Processions (Northern Ireland) Act 1998 ("the 1998 Act") for review of the Parades Commission determination;
- the Secretary of State's decision confirming the determination but concluding that it could no longer be given effect; and
- the Secretary of State's order under section 11 of the 1998 Act prohibiting the procession.

Following the intended procession date, the Secretary of State engaged in discussions with representatives of the Lodge and the Garvaghy Road Residents' Coalition in an attempt to achieve agreement. No agreement was reached. The Lodge maintained that any acceptable resolution required a procession along the Garvaghy Road, while the residents' representatives maintained that no procession should proceed along that route.

The evidence before the court showed that the PSNI mounted a substantial operation directed to facilitating the procession while protecting life and public safety. The Chief Constable's assessment was that all lawful and proportionate options had been exhausted and that any remaining option would require a major public order intervention carrying an unacceptable risk of serious injury, disorder and wider consequences across Northern Ireland.

On 9 October 2026 the Chief Constable applied to the Secretary of State for review of the determination under section 9 of the 1998 Act. The Secretary of State subsequently confirmed the original determination, concluded that it could no longer be given effect because of the passage of time and changed circumstances, and made an order under section 11 prohibiting the procession.

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The principal issues raised by the applicant included whether the Chief Constable had taken into account irrelevant considerations; whether the Secretary of State had acted unlawfully in concluding that the determination could no longer be given effect; whether the Secretary of State's decisions were irrational; whether proper regard had been given to the Guidelines issued under the 1998 Act; whether the applicant's Convention rights, including rights under article 11 ECHR, had been infringed; and whether the state had complied with its positive obligation to facilitate peaceful assembly.

The court held that there was nothing unlawful in the Chief Constable's decision to refer the matter to the Secretary of State under section 9 of the 1998 Act. It said that even assuming that certain observations concerning possible political consequences were not relevant policing considerations, they were not material to the decision, which would inevitably have been taken in light of the policing assessment and the ongoing operational situation.

The court rejected the challenge to the Secretary of State's consideration of whether the Parades Commission determination could still be given effect. It held that it was lawful for the Secretary of State to consider that issue as part of the context for the exercise of his powers and that, on the evidence available, it was open to him to conclude that the determination could no longer provide legal cover for the procession to proceed.

The court further held that the Secretary of State had not fettered his discretion and was aware of his power to amend the determination. It was open to him to conclude that amendment of dates, times or conditions would not resolve the underlying impasse concerning the Garvaghy Road route.

In relation to Convention rights, the court held that the authorities had sought to facilitate the procession through extensive policing measures, negotiations and ongoing criminal investigations relating to alleged unlawful conduct. The positive obligation under article 11 required the taking of appropriate measures but did not require facilitation of the procession at all costs.

The court accepted that the Lodge members had enjoyed a legal right to undertake the procession in accordance with the Parades Commission determination. However, it held that the Secretary of State was entitled to conclude that a prohibition order was necessary in the public interest, having regard to the risks of disorder, disruption to community life, impacts on community relations, demands on policing resources and the rights and freedoms of others.

The court concluded that the Secretary of State's decisions under sections 9 and 11 of the 1998 Act were lawful and fell within the margin of discretion available to him. It refused leave on a number of grounds as unarguable, granted leave on limited grounds which reflected the core issues in the challenge, but dismissed the substantive judicial review application on those grounds. The court stated:

"The applicant and other members of the Lodge enjoyed the legal right to undertake their notified procession, including by processing along the Garvaghy Road, in accordance with the Parades Commission's determination of 25 September 2026.

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The applicant has not been able to exercise his right to process, which also involves the exercise of his rights under article 11 ECHR, as a result of a significant protest which has been mounted with the purpose and effect of thwarting the exercise of those rights.

The assessment of the police (which it is not for the court to look behind) was that at no point – from the time of the proposed parade on 27 September up to the time of the Chief Constable’s application to the Secretary of State for review of the Commission’s determination on 9 October – was it possible for the parade to proceed safely along its notified route. Seeking to clear the Garvaghy Road and facilitate the parade along that route by force (i) would not have succeeded; and (ii) would not have been proportionate or consistent with the primary policing objective of the protection of public safety.

The police operation, at very significant cost, which was designed to facilitate the parade in accordance with the Commission’s determination – allied with the later efforts on the part of the Secretary of State to facilitate the parade by negotiated resolution and the ongoing criminal investigation of those who may have acted unlawfully in seeking to obstruct it – discharges the state’s positive obligation under article 11 to seek to ensure the peaceful enjoyment of the applicant’s rights. That obligation required the taking of *appropriate* measures to facilitate the parade but did not require it to be facilitated at all costs.

There was nothing unlawful in the Chief Constable’s decision to refer the Commission’s determination to the Secretary of State for review under section 9 of the 1998 Act. There are arguments on each side as to whether comments made by the Chief Constable (about the potential political implications of a major police operation to seek to force the procession along the contested route) were relevant policing considerations. However, even assuming that issue in the applicant’s favour (which the court has not decided), those were not material considerations in the decision to refer the matter to the Secretary of State. The police had decided not to mount the large-scale operation to clear the Garvaghy Road for valid policing reasons and, as matters had developed, the referral of the matter to the Secretary of State for review would inevitably have occurred in any event.

By the time the Chief Constable asked the Secretary of State to review the determination on 9 October, and in the circumstances which had arisen, there was no error of law in the Secretary of State considering that it was no longer possible for the determination to be given effect under the 1998 Act. Moreover, the Secretary of State was entitled to take a view on that issue as background context to the consideration of the exercise of his powers under sections 9 and 11 of the 1998 Act.

The Secretary of State properly appreciated that, acting under section 9, he could not only revoke or confirm the Commission’s determination but

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could also amend it. He did not violate the applicant's Convention rights by declining to amend the determination as to date, conditions or route. In reality, at that point the Secretary of State was faced with a binary choice given the central issue of principle in dispute between the Lodge and the Residents Coalition. Having determined that he should not 'refresh' the Lodge's right to proceed along the notified route, which (with whatever conditions) would simply have resulted in the impasse continuing, there was no breach of the applicant's rights in the Secretary of State declining to himself re-route the march. The Lodge had made clear that proceeding along the Garvaghy Road was crucial to the exercise of its members' article 11 rights in this instance. It remains free to notify further intended processions not including the contentious element of the route as and when it wishes.

Although the series of decisions made by the Secretary of State were complex, there was nothing unlawful or irrational about the way in which he resolved the issues before him. He was entitled to confirm the Commission's determination in order to indicate that he was not seeking to undermine or challenge it on the basis of the Commission's reasoning at the time it was made. That is the case even though he was of the view that it was no longer capable of being given effect. He was also entitled not to revoke the determination and declined to do so on rational grounds.

The key decision in the case was the making of the order under section 11 of the 1998 Act which prohibited the intended procession along the Garvaghy Road. Assuming that represented a restriction of the applicant's Convention rights (notwithstanding that the determination had effectively expired), or that declining to amend the determination by refreshing the date of the permitted parade did so, that was within the margin of discretion available to the Secretary of State and not unlawful. The Secretary of State was entitled to, and did, take into account the factual picture which had developed since the Commission's determination of 25 September.

The Convention analysis to be undertaken by the court in assessing the legality of Secretary of State's decision is not as straightforward as weighing only (on the one side) the rights and interests of peaceful marchers against (on the other) the rights and interests of unlawful and violent protesters. There are a number of reasons for this. First, protesters acting unlawfully but *peacefully* may still be entitled to rely on their own Convention rights. Second, although those with violent intentions are not entitled to have their rights weighed in the balance, their involvement in a protest does not necessarily remove or negate the rights of other protesters with no such intentions. Third, and most importantly, in weighing the competing rights, the applicant's rights are to be weighed against the rights of *others* – neither marchers nor protesters – whose rights and freedoms would be significantly affected by the ongoing impasse or the public order situation arising from an attempt to facilitate the march by force.

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For my part, I consider that, in the present context, the rights of those protesting unlawfully and with the object of thwarting the exercise of the rights of the members of the Lodge should be given little (if any) weight. Their right to protest could in principle be accommodated alongside the Lodge's right to process. However, the rights of others – incorporated within the public interest test in section 11 of the Act – were sufficient to warrant any restriction of the applicant's rights brought about by the Secretary of State's section 11 order in all of the circumstances of this case.

The legal provisions in the 1998 Act contain the powers in sections 9 and 11 as a safety valve for circumstances where the Secretary of State disagrees with the Commission's determination or, as here, where circumstances have developed to such a degree that it is in the public interest to reconsider the determination.

The Secretary of State's decision was lawful, and within the margin of discretion properly afforded to him, although it is highly regrettable that it was required in the circumstances in which it arose."

Dismissing the application for judicial review, the court made the following comments:

"Whatever one's standing or strength of conviction, the law does not apply only when you agree with it or with the outcome of a particular legal process. That is one thing which the court is both entitled, and in my view duty bound, to point out in the circumstances of this case. It is a lesson for those on *all* sides of the debate in our society, which at least for some remains (as the subject matter of this case demonstrates) deeply divided along traditional faultlines. Such divisions enhance, rather than undermine, the need for respect both for the rule of law and for the decisions of the legal mechanisms established in our democracy to resolve deep-seated disputes."

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available shortly on the Judiciary NI website (<https://www.judiciaryni.uk/>).

ENDS

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