

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

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**CE's Application [2015] NIQB 55**

**IN THE MATTER OF AN APPLICATION BY CE FOR JUDICIAL REVIEW  
OF A DECISION BY THE POLICE SERVICE OF NORTHERN IRELAND  
AND A DECISION OF THE PARADES COMMISSION  
FOR NORTHERN IRELAND**

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**Extempore Judgment**

**HORNER J**

**INTRODUCTION**

[1] The applicant, CE, is a resident of the Carrick Hill area of North Belfast. She is a member of North Belfast Civil Rights Association ("NBCRA"). She seeks declarations that the decisions of the Police Service of Northern Ireland ("PSNI") and the Parades Commission to accept an "Advanced Notification" form pertaining to a parade related protest was unlawful in that it did not comply with all the requirements of the Public Processions (NI) Act 1998. For the sake of clarity I include Chief Constable when I refer to PSNI.

[2] Due to pressures of time the court has provided an extempore judgment. The court reserves the right to supplement this judgment in the event of an appeal by any party so that its reasoning is amplified to the degree that it considers necessary for the Court of Appeal.

[3] All counsel involved in this application are to be congratulated for the economical and efficient, but effective way, they put forward their respective client's cases.

## BACKGROUND FACTS

[4] The applicant participated in a parade organised by NBCRA on 1 February 2014. There were protests against this parade organised by the Concerned Residents Group Belfast (“CRGB”) and the Greater Concerned Residents Group Belfast (“GCRGB”). Both CRGB and GCRGB submitted forms for their counter-protests to the parade of NBCRA as they were obliged to do under Section 7 of the Public Processions (Northern Ireland) Act 1998 (“the Act”). These were in the form prescribed under the Public Order (Prescribed Forms) Regulations (NI) 2004 (“the Regulations”). Their objection was stated to be a “protest against a Republican parade and against a Republican rally near a NI war memorial”. However the applicant applied for judicial review to the High Court on 9 April 2014, that is nearly 2½ months after the parade and counter-protests of 1 February 2014.

[5] The complaint of CE is that CRGB and GCRGB did not complete Form 11/3 accurately or in full. This is the form that any organiser has to give to the PSNI who are then required to forward it to the Parades Commission. Accordingly, the form should not and could not lawfully have been accepted by PSNI and should not have been forwarded by PSNI to the Parades Commission or considered by the Parades Commission.

[6] The affidavit of CE states that she became aware that both protest groups had failed to fully complete the relevant (“Form 11/3”) in relation to their protest meeting. Her complaint primarily relates to the fact that the form was incomplete given that both forms were signed but the “name of the person signing the form was unclear”. It was alleged that this is a deliberate tactic and is designed to ensure that those organising these types of protest cannot be made subject to criminal sanction if, for example, the protestors ignore such conditions as may have been laid down by the Parades Commission. She claimed that the current legislation was such that neither the PSNI nor the Parades Commission were in a position to accept incomplete notification forms.

[7] These complaints about the forms which were submitted by GCRGB and CRGB respectively were developed during argument before this court. They can be summarised thus:

- (a) Form 11/3 submitted by GCRGB pursuant to Section 7 was incomplete and inaccurate in that:
  - (i) The name of the person organising the protest was stated to be “Greater Concerned Residents Group Belfast”; and
  - (ii) The name of the person who signed as the organiser did so illegibly.
- (b) Form 11/3 submitted by CRGB was incomplete and inaccurate in that:

- (i) The name of the person organising the protest was stated to be “Concerned Residents Group Belfast”; and
- (ii) The signature of the organiser was illegible.

Both forms were handed in by Maureen Dodds of 10 Boundary Way. She gave her own telephone number as the point of contact in respect of the form submitted by GCRGB and another number was given in respect of the form submitted by CRGB. This was the phone number of Robert Orr, who was stated in the form to be one of the marshals in attendance. It is the signature of Maureen Dodds which appears at the foot of the form submitted by GCRGB and it is the signature of Robert Orr which appears on the form submitted by CRGB.

[8] I note that the parade and counter-demonstrations have long since passed and that they did so without any significant community violence according to the PSNI. This judicial review is now being heard 18 months after the protests took place. My own view is that the application is academic and that it is not now possible to provide a remedy for the situation of which CE complains even if her contentions are correct. In R v Secretary of State for the Home Department ex parte Salem [1999] 2 All ER 42 Lord Slynn said:

“Discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discreet point of statutory construction arises which does not involve detailed consideration of facts while a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future”.

In Re McConnell’s Application [2000] NIJB 116 at 120 the court said:

“It is not the function of the courts to give advisory opinions to public bodies, but if it appears that the same situation was likely to recur frequently and the body concerned had acted incorrectly they might be prepared to make a declaration, to give guidance which would prevent the body from acting unlawfully and avoid the need for further litigation in the future.”

[9] The nature of this application necessarily involves consideration of two particular forms submitted under Section 7 of the 1998 Act. The complaints made

about the forms are fact specific. Context is everything. Accordingly this court has real reservations about hearing this particular application. However in view of the fact that leave has been given and that detailed and comprehensive arguments had been submitted by all the parties, the court will give its view on what has occurred and although every case must be taken on its own facts, this case may provide some limited guidance for the future.

## RELEVANT STATUTORY PROVISIONS

[10] Section 2 of the Act describes the functions of the Parades Commission in the following terms:

*"Functions of the Commission.*

2. - (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."

[11] Section 7 of the Act sets out the requirements for giving advance notice of protest meetings relating to public processions in the following terms:

*“Advance notice of protest meetings related to public processions.*

7. - (1) Where notice has been given under section 6 in relation to a public procession, a person proposing to organise a related protest meeting shall give notice of that proposal in accordance with subsections (1A) to (4A).

(1A) Notice under this section shall be –

- (a) left with a member of the Police Service of Northern Ireland not below the rank of sergeant at the police station nearest to the place at which the meeting is to be held; or
- (b) sent to the Police Service of Northern Ireland by permitted electronic means (see section 7A).

(2) Notice under this section shall be given-

- (a) not later than 14 days before the date on which the meeting is to be held; or
- (b) if that is not reasonably practicable, as soon as it is reasonably practicable to give such notice.

(3) Notice under this section shall-

- (a) be given in writing in such form as may be prescribed by regulations made by the Secretary of State; and
- (b) be signed by the person giving the notice.

(4) The form prescribed under subsection (3)(a) shall require a person giving notice under this section to specify-

- (a) the date and time when the meeting is to be held;
- (b) the place at which it is to be held;
- (c) the number of persons likely to take part in it;
- (d) the arrangements for its control being made by the person proposing to organise it;
- (e) the name and address of that person;

(f) where the notice is given as mentioned in paragraph (b) of subsection (2), the reason why it was not reasonably practicable to give notice in accordance with paragraph (a) of that subsection; and

(g) such other matters as appear to the Secretary of State to be necessary for, or appropriate for facilitating, the exercise by the Secretary of State or members of the [Police Service of NI] of any function in relation to the meeting.

(4A) Where notice is sent by permitted electronic means, the signature required by subsection (3)(b) is a permitted electronic signature (see section 7A).

(5) The Chief Constable shall ensure that a copy of a notice given under this section is immediately sent to the Commission.

(6) A person who organises or takes part in a protest meeting-

(a) in respect of which the requirements of this section as to notice have not been satisfied; or

(b) which is held on a date or at a time or place which differs from the date, time or place specified in relation to it in the notice given under this section,

shall be guilty of an offence.

(7) In proceedings for an offence under subsection (6) it is a defence for the accused to prove that he did not know of, and neither suspected nor had reason to suspect, the failure to satisfy the requirements of this section or (as the case may be) the difference of date, time or place.

(8) To the extent that an alleged offence under subsection (6) turns on a difference of date, time or place it is a defence for the accused to prove that the difference arose from-

(a) circumstances beyond his control;

(b) something done in compliance with conditions imposed under section 9A; or

(c) something done with the agreement of a member of the [Police Service of NI] not below the rank of inspector or by his direction.

(9) A person guilty of an offence under subsection (6) shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.

*Meaning of “permitted electronic means” and “permitted electronic signature”*

7A. – (1) A notice is sent by “permitted electronic means” for the purposes of sections 6 and 7 if –

- (a) it is sent by a specified form of electronic communication (within the meaning of the Electronic Communications Act 2000) and in accordance with specified requirements; and
- (b) receipt of the notice is acknowledged in a specified manner.

(2) For the purposes of sections 6 and 7, a “permitted electronic signature” is an electronic signature (within the meaning of section 7(2) of the Electronic Communications Act 2000) which complies with such conditions or requirements as may be specified.

(3) In subsections (1) and (2), “specified” means specified in a direction given by the Secretary of State.

(4) A direction under this section may be varied or revoked by a subsequent direction.

(5) Before giving or varying a direction under this section, the Secretary of State must consult –

- (a) the Chief Constable;
- (b) the Commission; and
- (c) such other persons as the Secretary of State is satisfied should be consulted.

(6) The Secretary of State must publish a direction under this section.”

[12] Section 8 sets out the Parade Commission’s powers to impose conditions on public processions in the following terms:

**“The Commission’s powers to impose conditions on public processions (ss.8-10)**

*The Commission’s powers to impose conditions on public processions.*

8. - (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.

(3) Conditions imposed under subsection (1) may incorporate or be framed by reference to-

(a) the Code of Conduct; or

(b) any other document-

(i) prepared by the person or body organising the procession in question;  
and

(ii) approved by the Commission for the purposes of this section.

(4) The Commission may, in accordance with the procedural rules, amend or revoke any determination issued under this section.

(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.

(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."

[13] Section 17 makes clear what will constitute a “protest meeting” in the following terms:

*“Interpretation.*

17. - (1) In this Act-

“area” means the whole or any part of Northern Ireland;

“band” means a group of two or more persons who carry for the purpose of playing or sounding, or engage in the playing or sounding of, musical instruments;

“the Code of Conduct” has the meaning assigned by section 3(1);

“the Commission” means the Parades Commission for Northern Ireland;

“constable” means a member of the [Police Service of NI] or the [Police Service of NI] Reserve;

“the guidelines” has the meaning assigned by section 5(1);

“intoxicating liquor” and “licensed premises” have the same meanings as in the Licensing (Northern Ireland) Order 1996;

“passenger vehicle” means a motor vehicle (within the meaning of the Road Traffic (Northern Ireland) Order 1995) which is adapted to carry more than 8 passengers;

“the procedural rules” has the meaning assigned by section 4(1);

“protest meeting” means an open-air public meeting (within the meaning of the Public Order (Northern Ireland) Order 1987)-

(a) which is, or is to be, held-

(i) at a place which is on or in the vicinity of the route or proposed route of a public procession; and

(ii) at or about the same time as the procession is being or is to be held; and

(b) the purpose (or one of the purposes) of which is to demonstrate opposition to the holding of that procession on that route or proposed route;

“public place” means-

(a) any road within the meaning of the Roads (Northern Ireland) Order 1993; and

(b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

“public procession” means a procession in a public place, whether or not involving the use of vehicles or other conveyances.”

[14] Mr O’Donoghue QC on behalf of the applicant said that when one looked at the statutory objectives of the Act and in particular Section 7, then it is clear that the requirements to complete the form are mandatory, that the organiser has to be adequately identified so that the organiser can be held to account and that there has been a failure to distinguish between the unincorporated associations organising the protests and the actual persons who did so.

[15] Dr McGleenan QC who appeared with Mr McLaughlin on behalf of the PSNI and Mrs Murnaghan QC who appeared on behalf of the Parades Commission took issue with this construction. They both claimed that Section 7 (and Section 6) was not mandatory and did not require either the PSNI or the Parades Commission to reject a form because it had not been completed exactly in accordance with the Act or the Regulations made thereunder. They said that such a construction was wholly contrary to the purpose of the Act and that the better interpretation was that the Chief Constable was required by Section 7(5) to pass on all notifications which he receives, irrespective of whether all of the notice requirements have been satisfied. It is then a matter for the Commission to decide whether or not to exercise its function or to seek more information about the proposal from the police. Should a parade or protest take place without compliance with the notification requirements, it is a matter for the PSNI and the PPS to determine whether the organiser or the participants should be prosecuted.

## DISCUSSION

[16] There has been much ink spilt over whether duties or powers set out in an Act are mandatory or directory. Bennion on Statutory Interpretation at page 26 stated:

“Previous editions of this work have explained in detail the distinction between mandatory and directory statutory requirements. The distinction was described as *long-standing and useful*. However in R v Soneji [2005] UKHL 49, a majority of the House of Lords held that the distinction and *its many artificial requirements* had *outlived their usefulness*. Instead, *the emphasis ought to be in the consequences of non compliance, and posing the question whether Parliament can fairly be taken to have intended total*

*invalidity*: [23], [52], [70]. This reflects developments in statutory interpretation by the High Court of Australia, the Supreme Court of Canada and the Supreme Court of New Zealand.”

Lord Hailsham in London and Clydeside Estates v Aberdeen District Council [1980] 1 WLR 182 commented that language like “mandatory”, “directory”, “void”, “voidable” and “nullity” did not improve the understanding of how the provision should operate but in fact by categorising them in such a way created “a bed of Procrustes invented by lawyers for convenient exposition.”

[17] Treacy J in Desmond and Gordon’s Application [2013] 1 AC 340 at paragraph [35] stated:

“.. I am in respective agreement with the Australian High Court (in Project Blue Sky Ink v Australian Broadcasting Authority [1998] 194 CLR 355) that the rigid mandatory and directory distinction, and its many artificial requirements, have outlived their usefulness. Instead, as held in the Attorney General’s Reference (No 3 of 1999) [2001] 2 AC 91, the emphasis ought to be on the consequences of non-compliance and posing the question whether Parliament can fairly be taken to have intended total invalidity. That is how I would approach what is ultimately a question of statutory construction ..”

[18] In this case the court prefers the submissions of the respondents. The court considers that the legislature did not intend that any failure to comply to the letter with the completion of the form would render it invalid and/or void and/or incapable of being accepted either by the PSNI or by the Parades Commission. The reasons for so concluding are as follows:

- (i) It would be a ridiculous conclusion if by a trivial mistake, the Form 11/3 could not be accepted and the organisers liable to prosecution. I agree with Ms Murnaghan QC for the Parades Commission that a refusal to issue determinations on foot of a potentially innocuous omission will run contrary to the Commission’s overarching functions which included the duty to “promote greater understanding by the general public of issues concerning processions” and “to promote and facilitate mediation as a means of resolving disputes concerning public processions”.
- (ii) There is no prejudice to the applicant caused by the CRGB or GCRGB failing to complete the form strictly in accordance with the prescribed forms. Indeed the likelihood of prejudice will come if the Parades Commission is unable to discharge or prevented from discharging its statutory function by, inter alia

being precluded from imposing conditions either on the organisers or the participants of a parade.

- (iii) The obligation on the PSNI, or more particularly the Chief Constable, under Section 7(5) to “ensure that a copy of a notice given under this section is immediately sent to the Commission” does not require the Chief Constable to only send the Commission a notice strictly in accordance with sub-sections (2)-(4).
- (iv) The duty in ensuring the form is correct and accurate rests fairly and squarely on the organiser not on the PSNI or the Commission. As Dr McGleenan QC submitted the power of the Commission to make determinations for parades or protests and is not conditional upon receipt of a notice strictly in accordance with the provisions of the Act.

[19] In relation to the specific complaints made here the following points can be made:

(a) GCRGB Form.

(i) The complaint is that the name of the person organising the protest is said to be the Greater Concerned Residents Group Belfast. The home address is given as 100 Boundary Way which is the address of Maureen Dodds who has also given her mobile phone number as the point of contact. An unincorporated association under Schedule 1 of the Interpretation Act 1978 which applies to this statute which is UK legislation, states that the definition of person includes “a body of persons corporate or unincorporate”. It should also be noted that under Section 6(c) “words in the singular include the plural and words in the plural include the singular.”

(ii) The notice is signed by Mrs Dodds, although she signs as the organiser rather than on behalf of the organisers, that is the GCRGB.

(b) CRGB Form.

(i) The complaints made about the CRGB notice are the same as those made against the GCRGB notice but include in addition a complaint that the signature of the person who signed the form is illegible. The evidence of Sergeant Gawne of the PSNI was that he had telephoned Ms Dodds and discovered that the point of contact for the meeting was Robert Orr and although he did not know Robert Orr personally, he knew of him. It was Robert Orr who had signed the CRGB notice.

[20] Taking the applicant’s case at its very height the present facts indicate that such omissions or inaccuracies as appear on the forms, are extremely modest. The

PSNI was able to identify the body organising each protest, it was signed by someone who was a member of the body and who was signing on behalf of that body, and who was identifiable by the PSNI. Both forms allowed the Parades Commission to discharge its statutory duty in respect of each protest.

[21] The court therefore rejects any complaints in this case that the PSNI or the Parades Commission was under an obligation to reject either form as submitted or that their failure to do so was unlawful. Indeed, there is good reason to conclude that much public money has been spent on an issue which is undeserving of such lavish expenditure, namely whether the minor imperfections in either of these forms meant that the PSNI or the Parades Commission was unable to accept them.

### **THE FORM**

[22] It does seem that the form could be improved by making some modest alterations which might serve to prevent further difficulties arising in the future. The following tentative suggestions are made with due diffidence:

- (i) The box in Part 1 presently reads “name of person organising the protest” should perhaps be changed to “name of the person organising the protest or persons organising the protest if there is an organising body”.
- (ii) The person completing the declaration signature should also be asked to print his name legibly as well as sign it and the person signing it on behalf of an organising body should confirm that he or she is doing so on his or her own behalf or on behalf of all those responsible for organising the protest if there is an organising body involved.