

Committee on Standards and Privileges

Report on complaints against Mr Gerry Kelly MLA

**Together with the Report of the Acting Commissioner for Standards and
the Minutes of Proceedings of the Committee**

**Ordered by The Committee on Standards and Privileges to be printed on 10 March 2014
Report: NIA 165/11-15 Standards and Privileges Committee**

Committee Powers and Membership

1. The Committee on Standards and Privileges is a Standing Committee of the Northern Ireland Assembly established in accordance with paragraph 10 of Strand One of the Belfast Agreement and under Assembly Standing Order Nos. 51 and 57.
2. The Committee has power:
 - to consider specific matters relating to privilege referred to it by the Assembly;
 - to oversee the work of the Assembly Clerk of Standards;
 - to examine the arrangement for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest established by the Assembly, and to review from time to time the form and content of those registers;
 - to consider any specific complaints made in relation to the registering or declaring of interests referred to it;
 - to consider any matter relating to the conduct of Members;
 - to recommend any modifications to any Assembly code of conduct as may from time to time appear to be necessary.
3. The Committee is appointed at the start of every Assembly, and has power to send for persons, papers and records that are relevant to its enquiries.
4. The membership of the Committee is as follows:

Mr Alastair Ross (Chairperson)
 Ms Anna Lo (Deputy Chairperson)¹
 Mr Steven Agnew
 Mr Mervyn Storey ^{2 3}
 Mr Cathal Boylan
 Ms Paula Bradley ⁴
 Mr Colum Eastwood ⁵
 Mr Declan McAleer ^{6 7 8 9}
 Mr Fra McCann
 Mr Ian McCrea ¹⁰
 Mrs Sandra Overend ¹¹
5. The Report and evidence of the Committee are published by the Stationery Office by order of the Committee. All publications of the Committee are posted on the Assembly's website: (www.niassembly.gov.uk.)
6. All correspondence should be addressed to the Clerk to the Committee on Standards and Privileges, Committee Office, Northern Ireland Assembly, Room 254, Parliament Buildings, Stormont, Belfast BT4 3XX. Tel: 02890 520333; e-mail: committee.standards&privileges@niassembly.gov.uk

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- 1 With effect from 01 October 2013 Mrs Anna Lo replaced Mr Kieran McCarthy.
 - 2 With effect from 07 May 2013 Mr Sydney Anderson replaced Mr David McIlveen.
 - 3 With effect from 16 September 2013 Mr Mervyn Storey replaced Mr Sydney Anderson.
 - 4 With effect from 15 April 2013 Ms Paula Bradley replaced Mr Jonathan Craig.
 - 5 With effect from 23 April 2012 Mr Colum Eastwood replaced Mr Patsy McGlone.
 - 6 With effect from 3 July 2012 Mr Alex Maskey replaced Mr Pat Doherty.
 - 7 With effect from 7 September 2012 Mr Francie Molloy replaced Mr Alex Maskey.
 - 8 With effect from 7 April 2013 Mr Francie Molloy resigned as a Member.
 - 9 With effect from 15 April 2013 Mr Declan McAleer replaced Mr Francie Molloy.
 - 10 With effect from 3 December 2012 Mr Ian McCrea replaced Ms Paula Bradley.
 - 11 With effect from 26 September 2011 Mrs Sandra Overend replaced Mr Michael Copeland.
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Report

Introduction

1. The Committee on Standards and Privileges has considered a report from the Acting Commissioner for Standards on his investigation into a complaint against Mr Gerry Kelly MLA by from Messrs Jim Allister QC MLA, Luke Bloomer and Thomas Buchanan MLA. The Acting Commissioner's report and the complaints are appended to this report.

The Complaints

2. The Assembly Commissioner for Standards, Mr Douglas Bain, received letters of complaint against Mr Gerry Kelly MLA from Messrs Jim Allister QC MLA, Luke Bloomer and Thomas Buchanan MLA, all dated 12th August 2013 and challenging Mr Kelly's involvement in a procession in Castlederg. The procession, which took place on 11th August and was organised by the Tyrone Commemoration Committee, had been approved by the Parades Commission subject to various restrictions, and proceeded from the centre of the village to a new memorial, in front of which Mr Kelly delivered a speech to an audience of mostly fellow republicans. The speech received wide coverage in the media, from which the three complainants derived their account of the incident. As Mr Bain was, at that time, a Parades Commissioner, he deemed that he was subject to a perceived conflict of interest and recused himself from the investigation. The Assembly subsequently appointed Mr Stuart Allan as an Acting Commissioner in respect of the incident.
3. In his speech Mr Kelly praised the example of Seamus Harvey and Gerard McGlynn, who died in 1973 when an explosive device they had been transporting had exploded prematurely. The complainants believe that Mr Kelly's speech glorified terrorism and was grossly insensitive to the families of its victims. They also allege that the marchers did not observe the conditions imposed by the Parades Commission and that by his presence Mr Kelly condoned these illegal acts. Mr Allister and Mr Bloomer base their complaints on the Public Duty and Promoting Good Relations principles. Mr Buchanan also relies on the Accountability, Equality and Respect principles and the rules enjoining Members to prefer the public over their private interest and not to do anything which would bring the Assembly into disrepute.

The Commissioner's investigation and report

4. As part of his investigation the Acting Commissioner both interviewed and sought written evidence from Messrs Kelly, Allister and Buchanan. He also sought written evidence from the other complainant, the Parades Commission and the PSNI. The Acting Commissioner has included all the evidence he gathered with his report.
5. The Acting Commissioner established a number of facts which are set out in paragraph 22 of his report and include the following:
 - The Tyrone Commemoration Committee, on 11th July 2013, advised the Parades Commission for Northern Ireland that it proposed to hold a parade in Castlederg on Sunday 11th August 2013. The purpose of the parade was given in the notification as the 'Tyrone Volunteers Day Commemoration'.
 - The Parades Commission had regard to the fact that the parade was offensive to many in the local community.
 - Having considered all relevant information, the Parades Commission took the view that it was necessary to place conditions on the parade, which it did under its powers under section 8 of the Public Processions Act 1998. The Parades Commission deemed that these conditions were necessary and proportionate and were not such as to affect

significantly the individual's right to assemble. The Parades Commission believed that the conditions struck a fair balance between the needs of the community and the individual.

- Mr Gerry Kelly, MLA for North Belfast, had been invited by the Tyrone Commemoration Committee to give a speech at the end of the parade at the unveiling of a memorial stone to mark the deaths of republicans, including Seamus Harvey and Gerard McGlynn who had been killed in 1973 when an explosive device they had been transporting had exploded prematurely. Mr Kelly had been invited to make the speech as a prominent republican.
 - Mr Kelly made his speech at the end of the march (approximately 3.30pm) at the new memorial at Hillview Park before an audience of some 200 people who were mainly from the Catholic or republican tradition.
 - None of the complainers was present when the speech was delivered by Mr Kelly; they became aware of its contents from media reports.
 - There was no evidence that Mr Kelly had personally breached any of the conditions applied by the Parades Commission determination or had otherwise committed any offence at the parade on 11th August or during the speech given at the end of the parade.
6. The Acting Commissioner has concluded that – taking account of all the circumstances relating to the organisation of the parade and the unveiling of the memorial – there is no evidence that Mr Kelly was acting in his official capacity as a Member of the Assembly on that day. The Acting Commissioner therefore concludes that Mr Kelly was not in breach of the Code of Conduct. The Acting Commissioner's rationale is set out in paragraphs 27 to 32 of his report.
7. However, in the Acting Commissioner's opinion, even if it had been demonstrated that Mr Kelly was attending the event in his official capacity, a breach of the Code would not have occurred. The Acting Commissioner points out that the right to free speech is protected under the Code and by the European Convention on Human Rights (ECHR). Neither of these authorities protects it unconditionally, but the ECHR, with which the Code must be consistent, allows for it to be limited only in exceptional circumstances, for reasons of public safety or the prevention of disorder or crime, most notably.
8. The Acting Commissioner has concluded that Mr Kelly was entitled to express his opinion on the matters dealt with in his speech and that no aspect of that speech could reasonably be taken to conflict with the principles and duties set out in the Code or to amount to the encouragement of terrorism. He does take the view, however, that the speech will have caused distress and hurt to those within the Protestant or unionist tradition, particularly those living in the Castlederg area.
9. As for the suggestion that Mr Kelly, who is not alleged to have failed to comply with the ruling of the Parades Commission himself, is responsible for irregularities on the part of other marchers, the Acting Commissioner judges it unreasonable to construe his mere presence as an unqualified endorsement of their behaviour.

The Committee's Considerations

10. As per the Committee's usual procedure, Mr Kelly was provided with a copy of the Acting Commissioner's report. Mr Kelly was advised that he may provide the Committee with his comments in respect of any matter raised within the report. He was also advised that he may choose to appear before the Committee to make his comments in person and to respond to any questions that members of the Committee may have. Mr Kelly chose neither to provide the Committee with any additional comments nor to appear before it.

11. The Committee on Standards and Privileges considered the report at its meeting on Wednesday 5th March 2014 when the Acting Commissioner attended and answered members' questions. The Committee reflected on the matters raised in the report and on the answers given to their questions by the Acting Commissioner. Having done so, the Committee is satisfied that Mr Kelly has not breached the Code of Conduct. **The complaints are not upheld.**
12. When considering the Acting Commissioner's conclusions the Committee discussed the difficulty of establishing when a Member is acting in their role as an MLA and when they are acting as a private individual. This is not the first occasion on which this issue has arisen¹. The Committee has therefore decided to consider this matter further as part of the current review of the Code of Conduct².
13. The Committee agrees with the Acting Commissioner that Members are entitled to the high level of protection afforded by the European Convention on Human Rights when expressing political opinions. The Acting Commissioner noted that the right to free speech:

"...applies not only to opinions, information or ideas that are favourably received or regarded as inoffensive but also to those that offend, shock, disturb or might be regarded as irresponsible. The demands of pluralism, tolerance and broad mindedness are regarded as an essential part of a democratic society".³
14. This Committee and its predecessor have made clear that the Assembly should not seek to prevent or limit any political opinion being expressed legally⁴. The Committee has therefore proposed, as part of the current review, that the scope of the Code of Conduct be clarified to make clear it does not extend in any circumstances to the expression of lawful comments by Members.
15. The Committee accepts the Acting Commissioner's conclusion that Mr Kelly's speech will have caused distress and hurt to those within the Protestant or unionist tradition, particularly those living in the Castlederg area. The Committee urges all Members to exercise their right to free speech responsibly, mindful of the sensitivities of our different communities and the potential for certain comments to cause hurt to particular groups.
16. The Committee wishes to record its gratitude to Mr Allan for having carried out the role of Acting Commissioner.

1 The issue was considered most recently in the Committee's eighth report (NIA 154/11-15) on complaints against Mr Phil Flanagan.

2 See the Committee's Review of the Code of Conduct and Guide to the Rules Relating to the Conduct of Members: Issues Paper, via <http://www.niassembly.gov.uk/Assembly-Business/Committee/Standards-and-Privileges/>

3 See paragraph 40 of the Commissioner's report which cites *Lingens v Austria* (1986) 8 EHRR 407

4 See the Committee's sixth report (NIA 126/11-15) on a complaint against Mr Alex Maskey MLA and the previous Committee's reports 45/09/10R and 46/08/09R.



Northern Ireland
Assembly

Appendix 1

Report by the Acting Commissioner for Standards

Acting Commissioner for Standards, Northern Ireland Assembly

CONFIDENTIAL

Mr Paul Gill
Clerk of Standards
Committee on Standards and Privileges
Northern Ireland Assembly
Room 254
Parliament Buildings
Stormont
Belfast
BT4 3XX

12 February 2014

Dear Mr Gill

Code of Conduct for Members of the Northern Ireland Assembly

I enclose my report into the complaints by Mr J Allister QC MLA, Mr L Bloomer and Mr T Buchanan MLA against Mr Gerry Kelly MLA.

I should also like to take this opportunity of acknowledging the courtesy and consideration extended to me by all those who gave evidence during my investigation; this was much appreciated indeed.

Yours sincerely



Stuart Allan
Acting Commissioner for Standards
Northern Ireland Assembly

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**Northern Ireland
Assembly**

Report

by the

**Acting Commissioner for Standards
Northern Ireland Assembly**

on complaints by

(i) Mr J Allister QC MLA

(ii) Mr L Bloomer

(iii) Mr Thomas Buchanan MLA

against

Mr Gerry Kelly MLA

February 2014

This report is privileged and is the property of the Acting Commissioner for Standards, Northern Ireland Assembly.

It has been prepared for presentation to the Committee on Standards and Privileges (the Committee) of the Northern Ireland Assembly. Neither the report nor its contents should be disclosed to any person unless such a disclosure is authorised by the Acting Commissioner for Standards or the Committee.

The report remains confidential until such times as it is published by the Committee.

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Introduction

1. In August 2013, Mr Douglas Bain, Commissioner for Standards for the Northern Ireland Assembly received three separate complaints from Mr J Allister, QC MLA, Mr L Bloomer and Mr T Buchanan, MLA, that Mr Gerry Kelly, MLA had, by making a speech at the Tyrone Commemoration Committee parade on 11 August 2003, in the terms he did and otherwise by associating with the parade, breached the Members' Code of Conduct¹.
2. As Mr Bain was a member of the Parades Commission for Northern Ireland, which had issued a determination on the parade, he considered that he could be perceived to have a conflict of interest in relation to the complaints. He, therefore, invited the Assembly to appoint an Acting Commissioner to consider the complaints.
3. On 24 September 2013, the Assembly agreed to appoint me as Acting Commissioner for Standards in terms of section 23(1) of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 to investigate these complaints and to report. My formal letter of appointment was issued on 18 October 2013.
4. Having investigated these complaints this is my report to the Assembly.

The Complaints

5. All three complaints were very similar and, essentially, they were to the effect that Mr Kelly had, through making his speech in the terms in which he did and through his association with the parade, breached the Code of Conduct particularly the provisions relating to the duties and principles to uphold the law, promote good relations and act in the interest of the community as a whole.

Complaint Number 1

6. The complaint by Mr J Allister is dated 12 August 2013 and is set out in **Appendix 1A**.

Following my appointment I wrote to Mr Allister on 29 October 2013 (**Appendix 1B**) asking for further information and Mr Allister replied on 6 November 2013 (**Appendix 1C**).

Complaint Number 2

7. The complaint by Mr L Bloomer is dated 12 August 2013 and is set out in **Appendix 2A**.

Following my appointment I wrote to Mr Bloomer on 29 October 2013 (**Appendix 2B**) asking for further information and Mr Bloomer replied on 30 October 2013 (**Appendix 2C**).

¹ <http://www.niassembly.gov.uk/Your-MLAs/Code-of-Conduct/>

Complaint Number 3

8. The complaint by Mr T Buchanan is dated 12 August 2013 and is set out in **Appendix 3A**.

Following my appointment I wrote to Mr Buchanan on 29 October 2013 (**Appendix 3B**) asking for further information and Mr Buchanan replied on 31 October 2013 (**Appendix 3C**).

The Response

9. Mr Kelly maintains he was entitled to make the speech and to take part in the parade and denies any breach of the Members' Code of Conduct.
10. I wrote to Mr Kelly on 29 October 2013 asking for his comments on the complaints (**Appendix 4A**) and he replied on 14 November 2013 (**Appendix 4B**).

Relevant Provisions relating to the Complaints

11. The relevant provisions of the Members' Code of Conduct are as follows:-

Purpose of the Code

The purpose of the Code of Conduct of the Northern Ireland Assembly ('the Code') is to assist Members in the discharge of their obligations to the Northern Ireland Assembly (the Assembly), their constituents and the public at large.

Scope

It is important to note that this Code aims to cover the conduct of all Members with respect to anything Members say or do in their capacity as an elected Member of the Assembly. However, it does not, for example, cover:

- The conduct or activities of Members in their private and family life;
-
-

Furthermore, Members are entitled to legally express any political opinion that they may hold. In doing so, however, Members should have regard to the Principles of Conduct and should not express opinions in a manner that is manifestly in conflict with the Principles of Conduct.

It is also important to understand that the obligations of Members detailed in this Code are complementary to those that apply to all Members by virtue of the procedural and other rules of the Assembly including the rulings of the Speaker.

Principles of Conduct

Members shall observe the following principles of conduct, which include principles based upon the general principles of conduct identified by the Committee on Standards in Public Life as applying to holders of public office, and further principles agreed by the Assembly:

Public Duty

Members have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them.

Members have a general duty to act in the interests of the community as a whole.

Members have a special duty to their constituents and are responsible to the electorate who are the final arbiter of their conduct as public representatives.

.....

Accountability

Members are accountable for their decisions and actions to the people of Northern Ireland and must submit themselves to whatever scrutiny is appropriate to their office.

.....

Equality

Members should promote equality of opportunity and not discriminate against any person by treating people with respect regardless of race, age, religion, gender, sexual orientation, disability, political opinion, marital status and whether or not a person has dependents.

Promoting Good Relations

Members will act in a way that is conducive to promoting good relations by providing a positive example for the wider community to follow by acting justly and promoting a culture of respect for the law.

Respect

It is acknowledged that the exchange of ideas, and opinions on policies may be robust but this should be kept in context and not extend to individuals being subjected to unreasonable and excessive personal attack. Members should keep in mind that rude and offensive behaviour may lower the public's regard for, and confidence in, Members and the Assembly itself. Members should therefore show respect and consideration for others at all times.

.....

Rules of the Code of Conduct

Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Assembly and never undertake any action which would bring the Assembly into disrepute.

12. Other statutory provisions that have a particular bearing on the complaints include the Human Rights Act 1998², incorporating the European Convention on Human Rights, the Public Processions (Northern Ireland) Act 1998³ and the Terrorism Act 2006⁴.

The Investigation

13. The Parades Commission issued a determination on 1 August 2013 in respect of the proposed public procession at Castlederg which imposed on the persons organising or taking part in it conditions specified in the determination. The determination is set out in **Appendix 5**.
14. The transcript of the speech by Mr Kelly - which was made at the unveiling of a newly-built memorial at Hillpark View at the end of the parade - has been laid in the Library of the Assembly. The speech is set out in full in the findings of fact below.
15. On 11 August 2013 (after the parade had taken place) Mr Peter Osborne, Chairman of the Parades Commission, issued a press release commenting on the parades that had taken place in Northern Ireland over the weekend in question; specific mention was made of the Castlederg parade. The statement is attached as **Appendix 6**.
16. I wrote to the Chairman and Secretary of the Parades Commission on 29 October 2013 (**Appendix 7**) inviting comments and the Secretary replied on 25 November 2013 (**Appendix 8**).
17. With reference to allegations that there may have been criminal offences in connection with the Castlederg parade, I wrote to the Chief Constable of the Police Service for Northern Ireland on 29 October 2013 (**Appendix 9**) asking for further information in that regard. The Assistant Chief Constable replied on 7 November 2013 (**Appendix 10**).
18. As it was not practical for me to arrange an interview with Mr Bloomer, the second complainant, I invited him to let me have any further comments he wished to make and he did so in a letter of 26 November 2013 (**Appendix 11**).

² <http://www.legislation.gov.uk/1998?title=human%20rights>

³ <http://www.legislation.gov.uk/1998?title=public%20processions>

⁴ <http://www.legislation.gov.uk/2006?title=terrorism%20act>

19. On 10 December 2013 I interviewed Mr J Allister, the first complainer, and the agreed note of that interview is attached (**Appendix 12**).
20. On 10 December 2013 I interviewed Mr T Buchanan, the third complainer, and the agreed note of that interview is attached (**Appendix 13**).
21. On 10 December 2013 I interviewed Mr Kelly and the agreed note of that interview is attached (**Appendix 14**).

Findings of Fact

22. I have found the following facts established:-

- i. The Tyrone Commemoration Committee, on 11 July 2013, notified the Parades Commission for Northern Ireland that it proposed to hold a parade in Castlederg on Sunday 11 August 2013. The purpose of the parade was given in the notification as the 'Tyrone Volunteers Day Commemoration'.
- ii. In considering the matter, the Parades Commission had been told that the notification of this commemorative parade had caused offence to many in the local community. The Parades Commission was aware of the concerns associated with parading in Castlederg, and it had received a notice from the Derg Valley Victims' Voice group advising of the group's intention to protest in relation to this parade. It had also received hundreds of e-mails, letters and telephone calls from many who were deeply offended by this parade and who opposed it in the strongest terms, and also from some who supported the parade. The Parades Commission recognised that there continued to be a strain on community relations in the area, and regretted that recent parade-related events in Castlederg had led to increased tensions and to a hardening of attitudes. In considering this parade, the Parades Commission was very much aware of the tragic events which caused the loss of many lives as a result of conflict.
- iii. The Parades Commission also heard representations from the Committee organising the parade which included assurances about the dignified conduct of the parade. The Parades Commission had also heard from Sinn Féin. In particular, the Parades Commission noted that the notification for the parade had stated those taking part "will be sensitive to the fact that the town centre contains the British Legion Centotaph and will take this on board when issuing bands with instructions prior to the commencement of the parade." The Committee had stated that Castlederg was a shared space and that this was the only parade from the nationalist tradition which sought to process through the centre of the town. It was suggested by the Committee that this could be set against the considerable number of parades from the protestant/unionist/loyalist tradition which took place in Castlederg each year.
- iv. The Parades Commission also heard from the organiser of the protest by the Derg Valley Victims' Voice in relation to the parade. It also heard from some of the bereaved relatives of those who lost their lives as a result of terrorism in the Castlederg area. The Parades

Commission also received written representations from DUP, UUP and TUV and heard from local DUP and UUP representatives.

- v. The Committee initially notified for the parade to process through the centre of Castlederg past the Cenotaph and around the Diamond. It then submitted a revised notification omitting the area with the Cenotaph and around the Diamond and indicating the intention for the parade to process from the Priest's Lane car park to High Street and into John Street, Ferguson Crescent and Castlefin Road to the notified dispersal point.
- vi. Having regard to the guidelines issued under section 5 of the Public Processions (Northern Ireland) Act 1998 and to its responsibilities under section 6 of the Human Rights Act 1998 and the European Convention on Human Rights, the Parades Commission considered that they had to undertake a balancing exercise, bearing in mind the statutory guidelines, in an attempt to reach a determination that would be fair and proportionate in all the circumstances.
- vii. Having considered the whole matter, the Parades Commission took the view that it was necessary to place conditions on the parade which it did under its powers under section 8 of the Public Processions Act 1998. The Parades Commission regarded the conditions to be imposed as necessary and proportionate and considered that they were not such as to affect significantly the individual's right to assemble. The Parades Commission believed that the conditions it imposed would strike a fair balance between the needs of the community and the individual.
- viii. The determination by the Parades Commission, including restrictions placed on the organiser and participants in the parade, is set out in Appendix 5. The determination required changes to the proposed route of the parade. The parade was required to assemble at the notified assembly point at Priest's Lane car park, but not to proceed to High Street, John Street, the Diamond, Main Street or Ferguson Crescent as notified. The parade was required to turn right and process directly on to Castlefin Road, resuming the remainder of its notified route, ending at Hillview Park.
- ix. The conditions for the parade are set out in the determination and include the following:
 - *All participants in this parade must behave with due regard for the rights, traditions and feelings of others in the vicinity; refrain from using words or behaviour which could reasonably be perceived as intentionally sectarian, provocative, threatening, abusive, insulting or lewd; obey the lawful directions of parade organisers and stewards at all times, from assembly to dispersal and comply with police directions and in accordance with legislation;*
 - *No paramilitary-style clothing is to be worn at any time during the parade and flags, bannerettes and symbols relating to a proscribed organisation shall in no circumstance be displayed;*
 - *No depictions of firearms or of uniforms which could reasonably be perceived as being the uniform of a proscribed organisation shall be displayed on drumskins or in any other manner.*

- x. The Secretary of State for Northern Ireland was invited by those opposing the parade to make an order prohibiting the holding of the parade, but declined to do so advising that the criteria set out in the legislation that would enable her to intervene were not satisfied in this case.
- xi. Mr Gerry Kelly, MLA for North Belfast, had been invited by the Committee to give a speech at the end of the parade at the unveiling of a memorial stone to mark the deaths of republicans, including Seamus Harvey and Gerard McGlynn who had been killed in 1973 when an explosive device they had been transporting had exploded prematurely. Mr Kelly had been invited to make the speech as a prominent republican.
- xii. Mr Kelly made his speech at the end of the march (approximately 3.30pm) at the new memorial at Hillview Park before an audience of some 200 people who were mainly from the catholic or republican tradition.
- xiii. The speech given by Mr Kelly was as follows:-

"Is mór an onóir domhsa cúpla briathar a rá inniu faoi na daoine as Tír Eoghain a fuair bás ar son saoirse na hÉireann le linn an chogaidh fhada⁵.

When I was asked some weeks ago to speak at the annual commemoration of the Tyrone Volunteers who lost their lives in the pursuit of Irish Independence and Freedom I was honoured to agree.

As I've listened over those weeks to the building media maelstrom of attacks on their memory and integrity my wish to speak at this gathering has grown in proportion to those attacks.

Let me state this clearly at the start: No Unionist MLA, Councillor, MP or Minister; no loyalist paramilitary or Loyal Order spokesperson - no matter how loud they shout, will prevent me or any other Republican honouring our comrades who gave their lives in the Struggle for Irish freedom and equality.

The Republicans and Nationalists of Castlederg / Aghyaran and of Tyrone remember the oppression of house raids, harassment, internment, collusion, imprisonment and shoot to kill. They also remember when the RUC, UDR and British Army in their thousands tried to prevent the dignified burials of our comrades killed in action.

The wrong place for Unionist politicians or Orange Order spokespersons to be at the moment is on any platform self-righteously pontificating about dead Volunteer's of the Irish Republican Army. Especially with the known closeness of the DUP to the Freeman Memorial Flute Band or North Belfast flute band which celebrates UVF man Brian Robinson or the platforms shared with loyalist paramilitaries.

There was a war, which the Orange Apartheid State caused through its institutionalised and endemic discrimination and

⁵ Translated – 'It is a great honour for me to say a couple of words today about the people from Tyrone who died for Ireland's freedom during the long war.'

oppression of the Catholic population over generations. It was described succinctly by Lord Craigavon as "A Protestant State for a Protestant People." Terrible things happened during that conflict. Terrible suffering was inflicted on all sides - by all sides. But let us not countenance a hierarchy of victims which would discriminate against Republicans and Nationalists not just in life, but in death also.

We are told by Unionists that Tyrone Republicans are insensitive to those who suffered at the hands of Republicans, in this area. Yet Castlederg is where Republicans have been involved in dialogue with the Loyal Orders and others within the Unionist section of our community for over 5 years. Despite the difficulties and hurt felt, the majority Nationalist population in the area have tolerated Loyal Order marches through the town which amount to almost 20 in this year alone. The majority Irish Nationalist town is also festooned with pro-British flags and emblems.

It was agreed in those talks that the centre of Castlederg should be a shared space. Yet when a single Republican commemoration parade is organised we are confronted with a deluge of orchestrated complaints. In effect we are being told that it is right for unionism to remember their British dead without interference but how dare Republicans remember their Irish dead in the same way. No discussion of the issue – just megaphone attack.

When the problem was identified publicly: as Republicans parading past the cenotaph, Castlederg Republicans took an initiative and I want to congratulate them for that. They said that, this year, they would not parade around the Diamond where the cenotaph and the Methodist Church were situated.

The Parades Commission, instead of recognising this as a huge step; instead of recognising that Republicans were involved in constructive dialogue for over 5 years –restricted the parade further. Even those restrictions weren't enough for Unionists. They then demanded that honouring our dead should be banned altogether. They demanded that the British Secretary of State ban the commemoration parade and then that the PSNI ban it.

As people here know, that has been done before in our history and it did not work then and it certainly will not work now. You cannot, with any law or legislation banish the feeling of respect and pride in the hearts of Republicans for their comrades.

But lest you think that the bigotry stops there, remember, not so long ago there was a Fleadh parade in Castlederg which was not Republican and what did the same Unionists do? They opposed it. A GAA pitch was to be built and named after Marius McHugh, a local man who died of cancer and left money in his will to help pay the costs. What did the Unionists do? They opposed it. In both cases they failed but unfortunately, it shows that this is not a new phenomenon.

Despite the present difficulties, Republicans withdrew a peaceful protest against the Apprentice Boys parade yesterday to de-escalate a worsening situation. If the Orange Order had done the same in Belfast last night we would not have had the verocious attacks on the police we witnessed last night - incidentally a considerable distance from the legal parade which had been filed for.

This was then followed up with sectarian attacks on Nationalist homes in North and East Belfast. The Loyalists also attacked a pub frequented by Catholics which had been previously attacked by Loyalist gunmen killing three Catholics.

The DUP spent their time blaming the Parades Commission as usual. Unionist Representatives have seldom shown strong leadership. The First Minister Peter Robinson has been uncharacteristically quiet. The most militant voice leads – whether that is a Willie Fraser or Jim Allister or some loyalist paramilitary. The DUP are inclined to follow.

So, having said all that, where does it bring us? Does it make me feel hopeless or helpless? No. Do I think dialogue should cease? No, I don't. It means, after today, we seek out those who we need to talk to in the Unionist part of our community and we find a way forward with them.

We recognise that there are two narratives about our past. That is the reality. It does not mean that we will agree on the past. I do not expect Unionists to agree with or even accept a Republican or Nationalist view of the past. No more than Unionists can expect Republicans to agree with their account of our history. I may not like the part played by the Crown Forces during the conflict but I absolutely accept their right to commemorate their dead with dignity. Indeed Alex Maskey was the first Sinn Féin Mayor to reach out through laying a wreath for Remembrance Sunday some years ago. Unionists may not like the part played by Republican Freedom Fighters in the conflict but they should accept their right to be commemorated with dignity.

If both sections of our community can come to terms with the fact of there being two narratives, at least two views of our past. That, I believe will help our whole society to move forward. We have, in fact, agreed on many things already – the GFA, St Andrews and Hillsborough agreements being prime examples. There are also things we don't agree on. But for the future, for a shared future there may have to be more compromises on all sides. If we can allow for the different narratives it may open up the space to do that.

Without dialogue, whether in Castlederg or Derry or Rasharkin or Belfast we cannot progress. So as Republicans we must stand by face to face dialogue as a method of resolution.

But today, let me say this on the 40th Anniversary of the deaths of Volunteer Seamus Harvey and Volunteer Gerard McGlynn who gave their lives so that we could be free.

These 2 young men could have made different choices in life. They could've avoided the risks of imprisonment or death – But they were leaders, people who led from the front. They chose to stand up against the oppression in our country, the intimidation of their people: Because of their profound love of Ireland and of their community.

They were not alone in Tyrone to step forward in Ireland's time of need. Tyrone has given of its best over the centuries. It has suffered and sacrificed more than its fair share in the conflict. There are 60 names on the roll of honour-most of them young men cut down in their prime.

It is worth saying – and I hope Unionism is listening, that they were ordinary young men who loved their families and friends and were loved in return. They got great satisfaction from playing sport and reading history and going to dances or courting or playing with their children or going to college or university. They were ordinary young men in the extraordinary circumstances of the early 1970's who rose to the challenge of the time. They had a vision of Equality and Freedom and they knew the risks they were taking to achieve it but they could not stand idly by or leave it to others.

It is a harsh reality of Resistance that we lose some of our best activists during armed conflict and Seamus and Gerard along with their other comrades whom we remember here today, paid with their lives. Forever young, they are remembered, loved and cherished by their families, friends and comrades and always will be.

We also remember those who lived their lives in service to the people and the cause of freedom. Some of whom have died in this area in the last few years.

I don't know what our dead comrades might have said if they were here today on this platform, but what I do know is that they left a legacy behind them. Their courage and their sacrifice inspired others who took up their mantle and continued their struggle.

What I do know is that they played their part in our long struggle with dedication and commitment using the tools available to them in the 1970s. As our comrades in 1916, or in 1803, or in 1798 used the tools available to them in their eras and indeed in any of the many uprisings, large or small which has peppered our Island's history.

What I do know is that we, who continue that struggle for Irish Unity and Independence, must use the tools available to us in 2013. We should not and cannot act as if it is 1916 or 1969 or 1980 or 1996 or even 2006. We cannot live in our past but we must learn from our past to secure and improve our future. There are those on both sides, a minority, who yearn for past certainties, who want to return to the conflict years. They will use any issue in a forlorn attempt to undermine progress or destabilise the peace. They will fail because they have no vision for the future of Ireland and therefore no strategy other than violence itself. The vast majority of people on the Island reject them.

James Connolly who was executed by the British in 1916, speaking of Wolfe Tone, the father of modern republicanism said: "We who hold his principles believe that any movement which would successfully grapple with the problem of national freedom must draw its inspiration, not from the moulding records of the past, but from the glowing hopes of the living present, the vast possibilities of the mighty future".

Ni Raibh Seamas Ó Conghaile ina phríosúnach don stair. A chomradaithi agus a chairde, inniú agus as seo amach tá muid ag deanamh ar stair féin agus ar dtodhchai féin. (Translated in the next paragraph).

James Connolly was no prisoner of History. Comrades and friends, today and into the future we are shaping our own history and destiny.

The united Ireland Sinn Féin seeks to build is inclusive, pluralist and where all the elements of the Irish nation are comfortable, secure and can find the fullest expression of their identity.

Sinn Féin is a party on the rise. In the North we are the undisputed voice of nationalism and are transforming a society moving out of conflict and into a new shared future. In the South we are providing the credible, radical republican opposition to the gombeenism, corruption and lack of vision of a political establishment which has failed the Irish people.

Republicanism on this island has never been so strong, so organized and so capable of achieving its objectives. This generation of republicans is laying the foundations for a New Republic — a 32-County Republic with social justice and equality at its core.

This generation has the greatest opportunity since Partition to finally achieve genuine national self-determination. We do not underestimate the challenges ahead. Indeed as Republicans we embrace challenge, we embrace activism and we embrace the responsibility that comes with activism.

Finally, and importantly we could not have got this far without the activism, dedication and self-sacrifice of the people we are here to honour today. Our best tribute to them, I would suggest is to rededicate ourselves to the achievement of the United Ireland for which they gave their lives."

- xiv. The speech by Mr Kelly was reasonably well received by his audience at Hillview Park. The speech was given further publicity in the media – including the Belfast Newsletter – after which it came in for considerable criticism particularly from those within the protestant or unionist tradition.
- xv. Three complaints, all dated 12 August 2013, were received by the Commissioner for Standards that Mr Kelly had breached the Code of Conduct for Members of the Northern Ireland Assembly. The complaints were from:
 - (i) Mr J Allister, QC MLA
 - (ii) Mr L Bloomer, and
 - (iii) Mr T Buchanan, MLA.

These letters of complaint, including letters from me seeking further clarification on matters and the complainers' responses, are as set out in Appendices 1 to 3.

- xvi. All three complaints were very similar and, essentially, they were to the effect that Mr Kelly, through making his speech in the terms in which he did and through his association with the parade, had breached the Code of Conduct particularly the provisions relating to the duties and principles to uphold the law, promote good relations and act in the interests of the community as a whole. In particular, the complainers considered that Mr Kelly's speech had glorified terrorism and the terrorist activities of the Irish Republican Army, especially by referring to the deaths of Seamus Harvey and Gerard McGlynn and holding them out as role models; Mr Kelly had ignored or been grossly

insensitive to the victims of terrorism and had failed to act in the public interest and in accordance with the standards expected of MLAs. The complainers also considered that there had been breaches of the conditions imposed by the Parades Commission and that by his participation in the parade which had included these breaches of the conditions he had endorsed and lent support to such law breaking.

- xvii. None of the complainers was present when the speech was delivered by Mr Kelly; they became aware of the terms of the speech following reports of the speech.
- xviii. The Parades Commission Chairman, Mr Peter Osborne, issued a press statement later on Sunday 11 August 2013⁶ regarding the parades that had taken place during that weekend. He said –
"Belfast and Derry/Londonderry stand in marked contrast to each other. Castlederg, even with its particular sensitivities and issues, passed off peaceably".
- xix. The Secretary to the Parades Commission in a letter to me dated 25 November 2013⁷ said –
*"As you have already noted the Commission is not aware of any material violence or disorder having occurred at this parade. The Commission did receive some complaints regarding inappropriate 'displays paramilitary insignia' on drum skins etc. and has written to the organiser offering him the opportunity to respond to these acquisitions.
 I have not to date, received a reply and based upon our experience of behaviours in respect of these compliance letters, I do not expect a response any way soon, if at all.
 I do not anticipate the Commission taking or wishing to take any further action."*
- xx. The Assistant Chief Constable said in a letter to me dated 7 November 2013⁸ –
*"A prosecution file has been submitted to the Public Prosecution Service in relation to potential criminal offences disclosed in connection with the parade in Castlederg on 11 August 2013.
 One element of this investigation concerned the speech by Mr Kelly. Following careful consideration and in consultation with both PSNI Legal Services Branch and the Public Prosecution Service, PSNI recommended no prosecution in relation the content of the speech made by Mr Kelly at the end of the Parade on the basis of there being no evidence of criminal conduct".*
- xxi. Mr Kelly has stated that he was entitled to and had the right to make his speech in the terms he did. In his speech he had made it clear he was proud to be a republican and that it was right and appropriate to remember those who had given their lives for Irish freedom. He also considered that the speech contained a message to unionism that dialogue was the only way to resolve the parades issue in Castlederg

⁶ See Appendix 6

⁷ See Appendix 8

⁸ See Appendix 10

and that there was also a message to dissident republicans that the period of war was over and that political solutions were the only way forward.

- xxii. Mr Kelly stands by all that he said in the speech at Castlederg on 11 August.
 - xxiii. There was no evidence that Mr Kelly had personally breached any of the conditions applied by the Parades Commission determination or had otherwise committed any offence at the parade on 11 August or during the speech given at the end of the parade.
23. The findings of fact were issued to Mr Kelly in draft form and he has written to the effect he finds them satisfactory. He observes that my use of the term "terrorism" may not necessarily align with his use of the term but that my usage does not alter the facts of the events on 11 August 2013 in Castlederg.

Decision

Background

24. All three complainants, in this case, were very similar and, essentially, they were to the effect that Mr Kelly, through making his speech in the terms in which he did and through his association with the parade, had breached the Code of Conduct especially the provisions relating to the duties and principles to uphold the law, promote good relations and act in the interests of the community as a whole. Further, the complainers considered that Mr Kelly's speech had glorified terrorism and the terrorist activities of the Irish Republican Army, particularly by referring to the deaths of Seamus Harvey and Gerard McGlynn and holding them out as role models, had ignored or been grossly insensitive to the victims of terrorism and had failed to act in the public interest and in accordance with the standards expected of MLAs. The complainers also considered that there had been breaches of the conditions imposed by the Parades Commission and that by his participation in the parade which included these breaches he had endorsed and lent support to such law breaking.
25. The Castlederg parade was itself controversial and opinion about the parade divided the community. The Parades Commission issued a determination which imposed conditions on the routing of and conduct at the parade.
26. The speech by Mr Kelly was made to predominantly republican supporters at the end of the parade at an unveiling of a newly-built memorial to republicans at Hillview Park.

Capacity as an MLA

27. Mr Kelly was invited to make the speech at the memorial unveiling as a prominent republican. Castlederg was not part of his constituency (which is North Belfast).

28. Mr Kelly was not undertaking any duties as an MLA when he attended at Castlederg and there was no evidence that he was acting in his capacity as an MLA that day.
29. The complainers have maintained that Mr Kelly is a well-known MLA, representing Sinn Féin, and the public would have assumed he would have been attending at Castlederg as an MLA.
30. It is self-evident that Mr Kelly is an MLA and that those present at Castlederg that day would have known that. But it does not follow that people would have assumed he was present in an official capacity as an MLA and there was no evidence to suggest such a link.
31. The Code covers the conduct of Members with respect to anything they say or do in their capacity as an elected Member of the Assembly. However, it does not, for example, cover (amongst other things) the conduct or activities of Members in their private and family life.
32. On this key aspect, I have concluded that – taking account of the whole circumstances relating to the organisation of the parade and the unveiling of the memorial – there is no evidence that Mr Kelly was acting in his official capacity as a Member of the Assembly when he took part in the parade and made his speech that day. It, therefore, follows that Mr Kelly was not in breach of the Code of Conduct.

The Speech

33. I consider it important to address the complaints about Mr Kelly's speech and attendance at the parade, had Mr Kelly been acting in his capacity as an MLA.
34. Regarding the speech, this was made at the end of the parade at the unveiling of a memorial dedicated to republicans. The speech is set out in full in finding of fact (xiii) in paragraph 22 above.
35. The audience was predominantly – if not entirely – made up of those from the catholic or republican tradition. The speech clearly came and was delivered from the republican part of the political spectrum. It was well received by the audience but later, when it was given coverage in the media, it came in for considerable criticism, particularly from those within the protestant or unionist tradition. Essentially, the complainers say that the speech glorified terrorism. I consider that the speech will have caused distress and hurt to those within the protestant or unionist tradition, particularly those living in the Castlederg area.
36. Mr Kelly has stated that he was entitled to and had the right to make his speech in the terms he did. In his speech he had made it clear he was proud to be a republican and that it was right and appropriate to remember those who had given their lives for Irish freedom. He also considered that the speech contained a message to unionism that dialogue was the only way to resolve the parades issue in Castlederg and that there was also a message to dissident republicans that the period of war was over and that political solutions were the only way forward.

37. The Code provides that Members are entitled to legally express any political opinion that they may hold. In doing so, however, Members should have regard to the principles of conduct and should not express opinions in a manner that is manifestly in conflict with these principles⁹. The European Convention on Human Rights¹⁰ provides the right to freedom of expression which is not absolute in its terms but conditional. The exercise of the freedom of expression is subject to restrictions as prescribed by law and necessary in a democratic society in the interests of (among others) public safety or the prevention of disorder or crime.
38. I have considered the speech made by Mr Kelly with care and attention. In particular, I have considered the context of the making of the speech, its general impact and its detailed, specific terms, as well as the criticisms of the complainers and the explanation afforded by Mr Kelly.
39. Having done so, I have concluded that Mr Kelly was entitled to express his opinion on the matters dealt with in his speech and that no aspect of that speech could reasonably be taken to conflict with the principles and duties set out in the Code or to amount to the encouragement of terrorism. On the latter aspect I have noted that no prosecution is being brought on the basis of there being no evidence of criminal conduct on his part.
40. I have to observe that the right to freedom of expression¹¹ was engaged when Mr Kelly made his speech and he was entitled to the high level of protection afforded by the right in relation to the expression of his political opinions. The right applies not only to opinions, information or ideas that are favourably received or regarded as inoffensive but also to those that offend, shock, disturb or might be regarded as irresponsible. The demands of pluralism, tolerance and broad mindedness are regarded as an essential part of a democratic society¹².
41. It, therefore, follows that – even if he had been acting in an official capacity as an MLA – the speech made by Mr Kelly was not in breach of the Code of Conduct.

The Parade

42. Regarding the parade, this was – as I have already said – controversial and divided the community of Castlederg.
43. The complainers argue that by associating himself with the parade, Mr Kelly had effectively endorsed breaches of the Parades Commission determination conditions (such as the wearing of paramilitary uniforms and the flying of flags of a proscribed organisation) by others.
44. There was no evidence that Mr Kelly personally had breached any of the determination conditions and this was readily conceded by the complainers.

⁹ See footnote 1 supra

¹⁰ See footnote 2 supra

¹¹ See footnote 2 supra

¹² See *Lingens v Austria* (1986) 8 EHRR 407

45. The Chairman of the Parades Commission has said that Castlederg, even with its particular sensitivities and issues, passed off peaceably. The Secretary of the Parades Commission said the Parades Commission was not aware of any material violence and disorder at the parade and, although he had written to the organiser regarding the wearing of paramilitary insignia, he had received no reply but did not anticipate taking further action.
46. The complainers have said that, by being present at the parade where there may have been improper conduct by others, Mr Kelly effectively associated himself with such conduct and breached the Code. I think that is going too far and to argue that mere presence at a parade may imply responsibility for others' conduct would be wholly inappropriate.
47. I have, therefore, concluded – and I say this without any great hesitation – that, in relation to this aspect of the complaints, Mr Kelly did not breach the Code of Conduct.

Summary of Conclusion

48. For the reasons given above, I have concluded that Mr Kelly did not breach the provisions of the Members' Code of Conduct in respect of any of the matters complained of.

Observation

49. In this report, I have commented on the rights to freedom of expression within the law and on how important it is for political opinions – no matter how controversial or diverse – to be respected.
50. The Code provides that Members are entitled to express any political opinion that they may hold but goes on to limit this by adding that in doing so Members should have regard to the principles of conduct and should not express opinions in a manner that is manifestly in conflict with these principles.
51. An issue arises whether the caveat – which is broadly expressed – is wholly consistent with the specific areas for restricting freedom of expression set out in the European Convention on Human Rights.
52. I have noted that the Committee on Standards and Privileges, at its meeting of 20 January 2014, agreed – as part of its review of the Code – to give consideration to what extent, if at all, restrictions should ever be placed on Members' right to free speech.
53. I commend that approach.

Stuart Allan
Acting Commissioner for Standards
Northern Ireland Assembly

12 February 2014

APPENDICES



APPENDIX 1A

Ref: JA/SM/General/5997

Mr Douglas Bain
Northern Ireland Assembly Commissioner for Standards
Room 283
Parliament Buildings
Stormont
Belfast
BT4 3XX

12th August 2013

Dear Mr Bain,

I write to make a formal complaint against Gerry Kelly MLA following his attendance at a parade and a speech he delivered at the event on Sunday 11th August in Castlederg, Co Tyrone.

The Code of Conduct states that: "Members have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them" and "Members will act in a way that is conducive to promoting good relations by providing a positive example for the wider community to follow by acting justly and promoting a culture of respect for the law." The Parades Commission determination in relation to the Castlederg parade clearly stated that no paramilitary-style clothing was to be worn at any time during the parade and that there were to be no depictions of weaponry. Both of these conditions were, as you can see from the enclosed photographs, breached.

Furthermore, the Code states: "Members have a general duty to act in the interests of the community as a whole." It is evident that in celebrating the lives of two men who were blown up by their own bomb in the town they intended to attack the event addressed by Kelly has seriously damaged community relations.

I also invite you to study Kelly's speech at the event in light of these aspects of the Code. I have enclosed a copy of the same and would draw your attention to where he accuses the opponents of the commemoration of "bigotry". As you will be aware, the victims of Republican violence in Castlederg took the lead in opposing the parade and it was those who lost loved ones who protested within sight of the Republican marchers. To accuse these people of acting because of bigotry is grossly insulting.

Also, you will note that Kelly claims that Seamus Harvey and Gerard McGlynn "gave their lives so that we could be free." They did not, as suggested, give their lives. Their lives were, rather, providentially taken from them before they could get their bomb to Castlederg. They were not freedom fighters but rather men bent on murder and destruction. I would ask you to investigate whether it is compatible with the Code of Conduct for Kelly to have said this in the town they intended to blow up.

James H Allister QC MLA, 38 Henry Street, Harnyville, Ballymena, Co Antrim BT42 3AH

Tel: 028 25 640250

You will also note how Kelly lauds terrorism saying: "These 2 young men could have made different choices in life. They could've avoided the risks of imprisonment or death – But they were leaders, people who led from the front. They chose to stand up against the oppression in our country, the intimidation of their people: Because of their profound love of Ireland and of their community."

Given that MLAs have a duty under the Code to uphold the law, promote good relations and act in the interests of the community as a whole I would contend that here again Kelly broke the Code. I look forward to you investigating these matters and returning to me.

Yours Sincerely



J H Allister QC MLA

Note:- A copy of Mr Kelly's speech was attached to Mr Allister's letter.

This is printed in full in the Report.









Commissioner for Ethical Standards in Public Life in Scotland

APPENDIX 1B

CONFIDENTIAL

Mr James H Allister QC MLA
38 Henry Street
Harryville
Ballymena
Co Antrim
BT42 3AH

Reference: SA/JA/NIA

29 October 2013

Dear Mr Allister

Northern Ireland Assembly
Members' Code of Conduct
Complaint against Mr Gerry Kelly MLA

As you are aware I have been appointed as Acting Commissioner for Standards to investigate your complaint – and other similar complaints – against Mr Gerry Kelly MLA relating to his conduct at a parade on Sunday 11 August 2013 in Castlederg, Co Tyrone. I was appointed as Acting Commissioner by the Northern Ireland Assembly as the Commissioner, Mr Douglas Bain, considered he had an interest or it may have been perceived he had an interest in these complaints as he is a member of the Parades Commission.

I am writing to acknowledge your letter of complaint dated 12 August 2013 and to say that I am currently considering your complaint, along with the other complaints.

It would also be appreciated if you could let me have further comments on the following:-

- 1) With reference to Mr Kelly's speech, could I ask you to explain if you were personally present to hear this speech and, if so, can you confirm that Mr Kelly made the speech substantially in the terms set out in the print of the speech which you enclosed with your complaint?
- 2) If you are in the position to do so, could you describe how the speech impacted on those hearing the speech?
- 3) You indicate that the photographs which you enclosed showed there had been a breach of the conditions attached to the Parades Commission determination regarding the wearing of paramilitary-style clothing and depictions of weaponry. Would you be kind enough to explain to me, in more detail, how the photographs evidence a breach of these conditions?

Commissioner for Ethical Standards in Public Life in Scotland

39 Drumsheugh Gardens Edinburgh EH3 7SW

T: 0300 011 0550 E: info@ethicalstandards.org.uk W: <http://www.ethicalstandards.org.uk>

- 4) Is it any part of your complaint that Mr Kelly personally breached any of these – or any other - conditions?

I look forward to receiving your comments on these points and any other further comments that you would care to make. It would be appreciate if I could have your reply not later than **14 November 2013**.

I look forward to hearing from you.

Yours sincerely

Stuart Allan
Acting Commissioner for Standards
Northern Ireland Assembly

Commissioner for Ethical Standards in Public Life in Scotland

39 Drumsheugh Gardens Edinburgh EH3 7SW

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M'IC
APPENDIX 1C

Your ref:SA/JA/NIA

Our Ref:JA/KC/General/5997-2

Stuart Allan
Acting Commissioner for Standards
Northern Ireland Assembly
39 Drumsheagh Gardens
EDINBURGH
EH3 7SW

06 November 2013

Dear Mr Allan,

Re Complaint against Gerry Kelly MLA

Thank you for your letter dated 29th October 2013. I will address each of your questions in turn:

- 1) While I was in Castleberg on the day Mr Kelly delivered his speech I did not hear it as I was standing with the victims of IRA terrorism rather than the supporters of IRA terrorism. On 9th September 2013 the matter was debated in the Northern Ireland Assembly and Mr Kelly read an abridged version of his speech into the record. So, I suggest there can be no doubt as to the content of Mr Kelly's speech, as he confirmed it himself on the record. Of course, using the privilege of the Assembly does not alter the unsuitability of the speech as made in public in Castleberg. At the close of what he had to say Kelly added:
"That is an abridged version of my speech. As there is so much interest in it, which took me by surprise more than most, I will put a copy of it in the Library so that people might read it."

I have obtained a copy of the speech which was placed in the Assembly Library and enclosed it with this letter.

- 2) The impact of the speech is self-evident on reading it. In celebrating the lives of two men who were blown up by their own bomb in the town they intended to attack the event addressed by Kelly has seriously damaged community relations. He accuses the opponents of the commemoration of "bigotry". The victims of Republican violence in Castleberg took the lead in opposing the parade and it was those who lost loved ones

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James H Allister QC MLA, 38 Henry Street, Harryville, Ballymena, Co Antrim BT42 3AH
Tel:028 25640250



who protested within sight of the Republican marchers. To accuse these people of acting because of bigotry is grossly insulting and encourages Republicans living in the Castlederg area to regard those who lost loved ones to the IRA in a very negative and unjust light.

Saying, "These 2 young men could have made different choices in life. They could've avoided the risks of imprisonment or death – But they were leaders, people who led from the front. They chose to stand up against the oppression in our country, the intimidation of their people: Because of their profound love of Ireland and of their community" of two terrorists clearly encourages people to regard criminals as role models.

- 3) The Parades Commission determination on the parade can be viewed on their website here <http://www.paradescommission.org/fs/files/det-tyrone-commeration-parade-11-aug-2013.pdf>. Again I have enclosed a copy for your information. It clearly states: "No paramilitary-style clothing is to be worn at any time during the parade and flags, bannerettes and symbols relating to a proscribed organisation shall in no circumstances be displayed" and "No depictions of firearms or of uniforms which could reasonably be perceived as being the uniform of a proscribed organisation shall be displayed on drumskins or in any other manner".

The photographs which I enclosed with my initial complaint clearly show a) a banner depicting assault rifles, b) a drumskin bearing an image of two hooded gunmen and c) marchers in paramilitary uniform.

Additionally, I would draw your attention to the photo which accompanies this report in the News Letter <http://www.newsletter.co.uk/news/regional/gerry-kelly-s-castlederg-ira-parade-comments-to-be-probed-1-5521546> (print out enclosed) which clearly shows the Stary Plough and Sun Burst flags – both of which have been associated with violent Republicanism since their inception.

- 4) Kelly took part in the parade which included these breaches of the law. I contend that he lent his support to the law breaking by his presence. By so doing he endorsed and supported this law breaking.

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Tel: 028 25640250



I trust this information will help you progress my complaint.

Thanking you in anticipation.

Yours sincerely,



James H Allister QC MLA

Enc

Note:- A copy of Mr Kelly's speech was attached to Mr Allister's letter.

This is printed in full in the Report.

PLEASE QUOTE OUR REFERENCE ON ALL COMMUNICATION

James H Allister QC MLA, 38 Henry Street, Harryville, Ballymena, Co Antrim BT42 3AH
Tel:028 25640250

FOR: COMMISSIONER FOR STANDARDS ONLY

APPENDIX 2A

Portadown
County Armagh

12th August 2013

My ref: GKellyMLA02

By email:

Mr Douglas Bain
Commissioner for Standards
Room 283
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

RE: FORMAL COMPLAINT AGAINST MR GERRY KELLY MLA

Dear Mr Bain,

I am writing in connection with the above mentioned matter. I wish to make a formal complaint against the actions and presence Mr Gerry Kelly MLA at the Tyrone Volunteer's Castlederg parade held on the 11th August 2013.

The Code of Conduct states that: "*Members have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them*" and "*Members will act in a way that is conducive to promoting good relations by providing a positive example for the wider community to follow by acting justly and promoting a culture of respect for the law.*" Mr Kelly MLA fell intolerably short of this, he did not promote 'good relations' and he did not 'promote a culture of respect for the law'. Mr Kelly MLA did not promote 'good relations' simply by his presence at the parade which was an act of 'remembrance' of deceased IRA terrorists some of whom were killed by their own bomb which was bound for Castlederg itself. Mr Kelly MLA did not 'promote a culture and respect for the law' as he was present and spoke at a Parade which contravened the Parades Commission's determination, specifically the members of the parade contravened point 'G' of the determination (determination is attached to this email) which states that: "*no paramilitary-style clothing is to be worn at any time*" and "*flags, bannerettes and symbols relating to a proscribed organisation shall in no circumstances be displayed.*" This lawful determination was breached as can be demonstrated by photographs and media, please see <http://www.newsletter.co.uk/news/regional/in-pictures-gerry-kelly-s-speech-in-full-1-5376906>

Furthermore, the Code states: "*Members have a general duty to act in the interests of the community as a whole.*" It is evident that in celebrating the lives of two men who were blown up by their own bomb in the town they intended to attack the event addressed by Kelly has seriously damaged community relations.

I also invite you to study Kelly's speech at the event in light of these aspects of the Code. I have enclosed a copy of the same and would draw your attention to where he accuses the opponents of the commemoration of "bigotry". As you will be aware, the victims of Republican violence in Castlederg took the lead in opposing the parade and it was those who lost loved ones who protested within sight of the Republican marchers. To accuse these people of acting because of bigotry is grossly insulting.

FOR: COMMISSIONER FOR STANDARDS ONLY

Mr Kelly MLA also asserts in his speech that Seamus Harvey and Gerard McGlynn "gave their lives so that we could be free" this is an absurd and truly disgusting, repulsive thing to say. Harvey and McGlynn were intent on taking other people's lives. I would ask you to investigate whether it is compatible with the Code of Conduct for Kelly to have said this in the town they intended to blow up.

You will also note how Kelly lauds terrorism saying: "These 2 young men could have made different choices in life. They could've avoided the risks of imprisonment or death – But they were leaders, people who led from the front. They chose to stand up against the oppression in our country, the intimidation of their people: Because of their profound love of Ireland and of their community."

Given that MLAs have a duty under the Code to uphold the law, promote good relations and act in the interests of the community as a whole I would contend that here again Kelly broke the Code.

I cannot re-iterate enough how insensitive this whole 'Castlederg incident' has been to victims of the IRA terror campaign.

I would also like the Commissioner to note that I am neither a protestant or catholic, unionist or republican, I am a concerned member of the public, reporting and complaining against the improper conduct of our MLAs.

I look forward to your investigation and response to my complaint

Yours sincerely



Mr L Bloomer

Note:- A copy of Mr Kelly's speech and of the determination were attached to Mr Bloomer's letter. The speech is printed in full in the Report and the determination is printed in appendix 5.



APPENDIX 2B

Commissioner for Ethical Standards in Public Life in Scotland

CONFIDENTIAL

Mr L Bloomer

Portadown
County Armagh

Our Reference: SA/LB/NIA
Your Reference: GKellyMLA02

29 October 2013

Dear Mr Bloomer

Northern Ireland Assembly
Members' Code of Conduct
Complaint against Mr Gerry Kelly MLA

As you may be aware I have been appointed as Acting Commissioner for Standards to investigate your complaint – and other similar complaints – against Mr Gerry Kelly MLA relating to his conduct at a parade on Sunday 11 August 2013 in Castlederg, Co Tyrone. I was appointed as Acting Commissioner by the Northern Ireland Assembly as the Commissioner, Mr Douglas Bain, considered he had an interest or it may have been perceived he had an interest in these complaints as he is a member of the Parades Commission.

I am writing to acknowledge your letter of complaint dated 12 August 2013 and to say that I am currently considering your complaint, along with the other complaints.

It would also be appreciated if you could let me have further comments on the following:-

- 1) With reference to Mr Kelly's speech, could I ask you to explain if you were personally present to hear this speech and, if so, can you confirm that Mr Kelly made the speech substantially in the terms set out in the print of the speech to which you refer in your complaint.
- 2) If you are in the position to do so, could you describe how the speech impacted on those hearing the speech?
- 3) You indicate that the photographs etc which you referred to in your complaint showed there had been a breach of the conditions attached to the Parades Commission determination regarding the wearing of paramilitary-style clothing and the display of flags, bannerettes and symbols of a proscribed organisation. Would you be kind enough to explain to me, in more detail, how the photographs etc evidence a breach of these conditions?
- 4) Is it any part of your complaint that Mr Kelly personally breached any of these - or any other - conditions?

Commissioner for Ethical Standards in Public Life in Scotland

39 Drumsheugh Gardens Edinburgh EH3 7SW

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B.1 16-06-11

I look forward to receiving your comments on these points and any other further comments that you would care to make. It would be appreciate if I could have your reply not later than **14 November 2013**.

I look forward to hearing from you.

Yours sincerely

Stuart Allan
Acting Commissioner for Standards
Northern Ireland Assembly

Commissioner for Ethical Standards in Public Life in Scotland

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APPENDIX 2C

CONFIDENTIAL

Mr S Allan
Acting Commissioner for Standards
Northern Ireland Assembly
39 Drumsheugh Gardens
Edinburgh
EH3 7SW

My ref: GKellyMLA02
Your ref: SA/LB/NIA

30th October 2013

RE: NIA Members' Code of Conduct Complaint – Mr Gerry Kelly MLA

Dear Mr Allan

I begin by thanking you and your office for taking on the role of Acting Commissioner for Standards as Mr Douglas Bain had an interest or perceived interest in this case as he is a member of the Parades Commission for Northern Ireland. I'm sure the task is an onerous one. I would like to state (as I do with all complaints and discussions of this nature) that I am neither a member of the protestant/unionist or the catholic/republican/nationalist communities. I am an independent person, interested in politics and interested in the behaviour of MLAs and other people involved in public life.

I have answered your questions as requested and I have added further comments as well that may help with your investigation.

- 1) I was not personally present to hear Mr Kelly's speech and therefore I am not qualified to answer the rest of question one.
- 2) I was not personally present to hear Mr Kelly's speech, however, I feel I can at least partially answer this question. Mr Kelly was grossly insensitive to the victims of IRA combatant forces. The IRA murdered and maimed hundreds if not thousands of people during the bloody period known as 'The Troubles'. There was a protest happening close to where Mr Kelly made his speech. The majority of the protesters were family members and friends of people who had been murdered and maimed by IRA combatant forces in the County Tyrone area. I'm sure those people who have been affected by these forces felt extremely upset and a sense of awe that a Member of the Legislative Assembly actually attended and gave a keynote speech at the event. I'm sure that Derg Valley Victim's Voice group would be able to tell you the precise effect the speech and this parade had on them, their email address is listed on their website as: justice@dvvv.org.uk

- 3) The photographs (<http://www.newsletter.co.uk/news/regional/in-pictures-gerry-kelly-s-speech-in-full-1-5376906>) clearly show paramilitary-style clothing and the display of flags, bannerettes and symbols of a proscribed organisation.
- 00:13-00:18 (slideshow) – shows flags, bannerettes and paramilitary-style uniforms as forbidden by point 'G' of the Parades Commission's lawful determination.
 - 00:46-00:53 (slideshow) – shows Mr Gerry Kelly MLA reading from his prepared keynote speech.

The Parades Commission's determinations are legitimate law they have been given delegated powers to deal with contentious parades in Northern Ireland. Therefore people who act in contravention of these determinations are contravening the law of Northern Ireland. MLA's have a duty to build a culture of respect for the rule of law: *"Members will act in a way that is conducive to promoting good relations by providing a positive example for the wider community to follow by acting justly and promoting a culture of respect for the law."* The Parades Commission determination (attached to the email) also determined at point 'G' that: *"no paramilitary-style clothing is to be worn at any time"* and *"flags, bannerettes and symbols relating to a proscribed organisation shall in no circumstances be displayed."* Mr Kelly MLA should not have taken part in this event if members had been breaking the law, which the members of the parade did.

- 4) Mr Kelly may not have breached the Parades Commission's determination, however, everything that I have highlighted (in my original complaint to Mr Douglas Bain) from the MLA Code of Conduct he did breach.

Additional information/comments:

On June 21st, during the Tour of the North parade in Belfast City Mr Kelly MLA decided to challenge Police Service of Northern Ireland (PSNI) officers and asked them to remove a nationalist youth who had been arrested from the back of the PSNI public order vehicle. The PSNI officers did not comply with Mr Kelly's demands and tried to drive away. However, Mr Kelly MLA took it upon himself to stand and obstruct a public order vehicle from leaving (the PSNI were in the middle of dealing with a public order/riot situation). Mr Kelly MLA ended up on the bonnet of a PSNI vehicle as a result of obstructing a Constable in the execution of his duty (a criminal offence under section 66 of the Police (Northern Ireland) Act 1998). This behaviour is not what I expect of MLAs in the Northern Ireland Assembly. This behaviour is unacceptable. Mr Kelly has a history of criminal offences which demonstrate his due disregard for the law, for example he bombed the Central Criminal Court (Old Bailey) in London in 1973, he was an offender unlawfully at large after participating in a mass break-out of the Maze 'H blocks' prison in 1983, in which he shot a Prison Officer in the face.

Mr Kelly's behaviour cannot go unsanctioned, he did not behave as an MLA should have. **I therefore maintain that the Commissioner for Standards should find that Mr Kelly did in fact breach the NIA MLA Code of Conduct.**

If I have not answered your questions fully or you would like any further information or comments then **please do not hesitate to contact me at all.**

Yours sincerely



Mr L Bloomer



Northern Ireland
Assembly

Cllr Thomas Buchanan MLA

West Tyrone DUP Advice Centre, 5 Dublin Road, Omagh BT78 1ES
Tel: 028 8224 7702

E-mail: cllrthomasbuchananmla@hotmail.com

Copied to Commissioner

14/8/13

JUB

Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Mr Gill
Clerk of the Standards and Privileges Committee
Assembly Commissioner for Standards
Room 254 / 283
Parliament Buildings
Belfast
BT4 3XX

STANDARDS &

14 AUG 2013

PRIVILEGES

12th August 2013

Dear Mr Gill,

Re: Investigation of Gerry Kelly MLA

I write with reference to the attendance and speech by Gerry Kelly MLA at the so-called Tyrone Volunteers Commemoration event in Castlederg on 11/09/13.

I request that the Commissioner for Standards establish if these actions are in breach of the Code of Conduct for MLAs. The promotion of the event directly identifies Gerry Kelly as an MLA so therefore relates to his work as an MLA bringing it under the scope of the Code. Also his speech at the event was insulting and offensive to the victims of IRA Terrorism.

His behaviour could represent a breach of five of the principles of the Code:

"Public Duty

Members have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them.

Members have a general duty to act in the interests of the community as a whole. "

The glorification of terrorism is a criminal offence. His decision to heap praise on those who died while actively breaking the law (transporting a bomb) is in clear breach of the duty to uphold the law.

"Accountability

Members are accountable for their decisions and actions to the people of Northern Ireland and must submit themselves to whatever scrutiny is appropriate to their office. In carrying out public business, including making public appointments, awarding contracts, or



recommending individuals for rewards and benefits, Members of the Assembly should make choices on merit."

His decision to attend and the aggressive and pointed nature of his comments show that he was fully conscious of what he was doing when he attended the event. He must be made accountable for his actions.

"Equality

Members should promote equality of opportunity and not discriminate against any person by treating people with respect regardless of race, age, religion, gender, sexual orientation, disability, political opinion, marital status and whether or not a person has dependents."

The affront to the Unionist and Protestant communities of the area was blatantly clear before and at the event yet Gerry Kelly chose to attend and deliver grotesque remarks in praise of murder. This did not treat people with respect based on their identity.

"Promoting Good Relations

Members will act in a way that is conducive to promoting good relations by providing a positive example for the wider community to follow by acting justly and promoting a culture of respect for the law."

The harm to good relations by supporting a terrorist event and making an inflammatory and insulting speech at such an event is obvious. The speech which was directly dismissive of all concerns about the parade shows a clear rejection of any regard for good relations.

"Respect

It is acknowledged that the exchange of ideas, and opinions on policies may be robust but this should be kept in context and not extend to individuals being subjected to unreasonable and excessive personal attack. Members should keep in mind that rude and offensive behaviour may lower the public's regard for, and confidence in, Members and the Assembly itself. Members should therefore show respect and consideration for others at all times."

His attendance and speech at the event was rude and offensive to the victims of republican violence in Castlederg. His dismissive comments about objectors were salt in the wounds. At no point did he show respect for victims instead he came to praise the murderers. Simply put it would be hard to imagine a better example of disrespect and no consideration for others.

The rules he is in breach of are as follows:

"Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest."



His allegiance to the PIRA was placed before the public interest in rejecting the use of violence and no consideration was given to the re-traumatisation of PIRA victims by his participation in the event and the speech he gave.

“Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public’s trust and confidence in the integrity of the Assembly and never undertake any action which would bring the Assembly into disrepute.”

His justification of murder in past decades undermines trust and confidence and brings the Assembly into disrepute. As the main democratic institution it is imperative that the rejection of terrorist violence is unambiguous at all times. It sends a deeply dangerous message to the present generation, whom dissident terrorist organisations are actively trying to recruit, when an MLA praises those who have murdered and maimed innocent people.

I am happy to assist the Committee in this investigation and arrangements can be made through my office in Room 352, Parliament Buildings if any further information is needed.

Yours sincerely,



Thomas Buchanan MLA



APPENDIX 3B

Commissioner for Ethical Standards in Public Life in Scotland

CONFIDENTIAL

Councillor Thomas Buchanan MLA
West Tyrone
DUP Advice Centre
5 Dublin Rd
Omagh
BT78 1ES

Reference: SA/TB/NIA

29 October 2013

Dear Councillor Buchanan

Northern Ireland Assembly
Members' Code of Conduct
Complaint against Mr Gerry Kelly MLA

As you are aware I have been appointed as Acting Commissioner for Standards to investigate your complaint – and other similar complaints – against Mr Gerry Kelly MLA relating to his conduct at a parade on Sunday 11 August 2013 in Castlederg, Co Tyrone. I was appointed as Acting Commissioner by the Northern Ireland Assembly as the Commissioner, Mr Douglas Bain, considered he had an interest or it may have been perceived he had an interest in these complaints as he is a member of the Parades Commission.

I am writing to acknowledge your letter of complaint dated 12 August 2013 and to say that I am currently considering your complaint, along with the other complaints.

It would also be appreciated if you could let me have further comments on the following;

- 1) With reference to Mr Kelly's speech, could I ask you to explain if you were personally present to hear this speech and, if so, can you confirm that Mr Kelly made the speech substantially in the terms set out in the print of the speech published in the Belfast Newsletter (a copy of which is enclosed)?
- 2) Could you describe how the speech impacted on those hearing the speech?

I look forward to receiving your comments on these points and any other further comments that you would care to make. It would be appreciate if I could have your reply not later than **14 November 2013**.

Commissioner for Ethical Standards in Public Life in Scotland

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I look forward to hearing from you.

Yours sincerely

Stuart Allan
Acting Commissioner for Standards
Northern Ireland Assembly

Enc: Belfast Newsletter Speech

Commissioner for Ethical Standards in Public Life in Scotland

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Stormont
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APPENDIX 3C

Cllr Thomas Buchanan MLA
West Tyrone DUP Advice Centre, 5 Dublin Road, Omagh BT78 1ES
Tel: 028 8224 7702
E-mail: cllrthomasbuchananmla@hotmail.com

Mr Stuart Allan
Acting Commissioner for Standards
Northern Ireland Assembly
39 Drumsheugh Gardens
Edinburgh
EH3 3SW

Date: 31st October 2013
Our Ref: 187 - 2013
Your Ref: _____

04 NOV 2013
OFFICE OF PSCS

Dear Mr Allen

Re: Complaint against Gerry Kelly MLA

I refer to your correspondence of 29th October 2013 relating to above and set out my response below.

Reference Question 1

I was not personally present at the location where Mr Kelly delivered his speech as firstly such a parade and speech was an insult beyond comprehension to the innocent victims of IRA Terrorism in Castlederg whom Mr Kelly both supported and advocated. Also my life would have been in danger had I ventured to be amongst this gathering where republicans celebrated and glorified in the death of murderers and the death and destruction they caused to many innocent people in Castlederg.

However with regard to the substantial nature of Mr Kelly's speech in the terms set in the print in Belfast Newsletter I can confirm same, given the media coverage and especially Sinn Fein's own publican on YouTube.

Question 2

Those hearing the speech were left in no doubt by Mr Kelly that he was unrepentant for the murder and bloodshed of the past, that it was the correct thing to do and indeed that he would do the same thing again. To advocate such as a political representative and one looked upon to give leadership was appalling and nothing short of a recruitment drive to capture the hearts of the youth and insensitive than to get involved in dissident republican activity.

The impact of this speech on those hearing it is a matter of grave concern as the dissident republican threat in Northern Ireland remains at an all-time high.

There is no doubt Mr Kelly has on this as on previous occasions breached the code of conduct of elected representatives within the Northern Ireland Assembly and I do trust you will ensure that this breach is properly dealt with irrespective of the consequences.

I look forward to a favourable outcome.

Yours sincerely


Cllr Thomas Buchanan MLA

Please quote above reference number on all return correspondence.



Commissioner for Ethical Standards in Public Life in Scotland

APPENDIX 4A

CONFIDENTIAL

Mr Gerry Kelly MLA
Northern Ireland
Assembly
Parliament Buildings
Stormont
Belfast
BT43XX

Reference: SA/GK/NIA

29 October 2013

Dear Mr Kelly

**Northern Ireland Assembly
Members' Code of Conduct**

As you are aware I have been appointed as Acting Commissioner for Standards to investigate complaints against yourself relating to your conduct at a parade on Sunday 11 August 2013 in Castlederg, Co Tyrone. I was appointed as Acting Commissioner by the Northern Ireland Assembly as, the Commissioner, Mr Douglas Bain, considered he had an interest or it may have been perceived he had an interest in these complaints as he is a member of the Parades Commission.

I am enclosing copies of the three complaints as follows;

- 1) Letter of complaint dated 12 August 2013 from Mr J Allister QC MLA, with the enclosures referred to therein being a print of your speech published in the Belfast Newsletter and three photographs of the parade,
- 2) Letter of complaint dated 12 August 2013 from Mr L Bloomer, together with the attachment referred to therein except for the speech which is copied in 1) above,
- 3) Letter of complaint dated 12 August 2013 from Councillor Thomas Buchanan, MLA.

I am currently considering whether the complaints are admissible and I should be grateful to receive any comments you would care to make on the complaints.

When responding it would be helpful if you would clarify the following;

- 1) The terms of the speech which it is alleged you made has been printed in the Belfast Newsletter. Can you confirm (a) that you were in attendance at the parade in Castlederg on 11 August 2013 and that you made a speech in the terms (or substantially in the terms) set out in the print?
- 2) Could you help me by explaining in detail where you made the speech and to whom was it addressed? When was the speech delivered?

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- 3) How many people could hear the speech and, in your view, what was the reaction to the speech?
- 4) In your view were you present at the parade in your capacity as a Member of the Legislative Assembly or otherwise?

It would be appreciated if I could receive your comments not later than **14 November 2013**.

I look forward to hearing from you.

Yours sincerely

Stuart Allan
Acting Commissioner for Standards
Northern Ireland Assembly

Enc: Copy of complaints

Commissioner for Ethical Standards in Public Life in Scotland

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APPENDIX 4B

[REDACTED]

From: Gerry Kelly [REDACTED]
Sent: 14 November 2013 21:41
To: info
Subject: Gerry Kelly MLA

Dear Mr Allan,

Thank you for your letter of 29th October 2013. Unfortunately, through no fault of yours or mine I did not receive it until 11th of November when it was brought to me from another office in Stormont. For that reason I am emailing you now.

You asked a number of questions which I will try to answer:

I placed a copy of the full speech I made at Castlederg on Sunday 11th August 2013, in the library at Stormont, on 9th September last. It is better to use that as a reference rather than the Newsletter article. I made the speech to a gathering of Irish Republicans and Nationalists in a Nationalist/Republican estate on the edge of Castlederg. The crowd was hard to gauge but I guess there may have been up to 200 people there.

People were in attendance at the unveiling of a stone memorial to two Volunteers of the Irish Republican Army who died in an explosion 40 years ago during the long conflict that occurred in the North of Ireland. As far as I could see the reaction of those gathered for the speech and commemoration was very positive. I was invited to speak at the event some months before in my capacity as a long standing and fairly well known Irish Republican.

I hope I have answered the questions you have asked.

Yours sincerely

Gerry Kelly

APPENDIX 5

DETERMINATION MADE IN RELATION TO THE TYRONE COMMEMORATION COMMITTEE PARADE NOTIFIED TO TAKE PLACE IN CASTLEDERG ON SUNDAY, 11 AUGUST 2013

INTRODUCTION

1. Section 8 (1) of the Public Processions (Northern Ireland) Act 1998, provides that:

“The Commission may issue a determination in respect of a proposed public procession imposing on the persons organising or taking part in it such conditions as the Commission considers necessary.”

2. The Commission has noted the details provided on the Form 11/1 submitted on 11 July 2013 concerning the Tyrone Commemoration Committee parade in Castlederg on Sunday, 11 August 2013. The Commission has given careful consideration as to whether to exercise its power under Section 8. It has done so within the relevant legal and statutory framework, constituted in the main by the 1998 Act, the various instruments made thereunder (in particular the “Guidelines” and the Human Rights Act 1998).
3. In considering whether to exercise its power under Section 8, the Commission has taken into account its previous determinations in relation to Castlederg. It has also paid careful attention to the nature, purpose and all other aspects of the event notified by the organisers. Further, the Commission has considered all information received. The Commission has also had regard to the principles published in its annual reports. Having done so, the Commission has concluded that, in the particular circumstances, it should exercise its power under Section 8 to make a determination in the terms outlined in the following paragraphs.

BACKGROUND

4. The Commission notes that purpose of this parade as stated on the notification is "TYRONE VOLUNTEERS DAY COMMEMORATION".
5. The organiser initially notified for the parade to process through the centre of Castlederg past the Cenotaph and around the Diamond. He has now submitted a revised Form 11/1 notification indicating his intention for the parade to process from the Priest's Lane car park to High Street and into John Street, Ferguson Crescent and Castlefin Road to the notified dispersal point.
6. The Commission has been told that the notification of this commemorative parade has caused offence to many in the local community. The Commission is aware of the concerns associated with parading in Castlederg, and it has received a Form 11/3 from the Derg Valley Victims' Voice group notifying a protest in relation to this parade. It has also received hundreds of e-mails, letters and telephone calls from many who are deeply offended by this parade and who oppose it in the strongest terms, and from some who support the parade. The Commission recognises that there continues to be a strain on community relations in the area, and regrets that recent parade-related events in Castlederg have led to increased tensions and to a hardening of attitudes. In considering this parade, the Commission is very much aware of the tragic events which caused the loss of many lives as a result of the conflict. Unquestionably this and other recent events in Castlederg have led to a re-opening of painful wounds.
7. The Commission has heard representations from the committee organising the parade which included assurances about the dignified conduct of the parade. The Commission has also heard from Sinn Féin. In particular, the Commission notes that, in the Form 11/1 notification for the parade, those taking part "will be sensitive to the fact that the town centre contains the British Legion Cenotaph and will take this on board when issuing bands with instructions prior to the commencement of the parade." They have stated that Castlederg is a shared space;

and that this is the only parade from the nationalist tradition which seeks to process through the centre of the town. It is suggested that this can be set against the considerable number of parades from the Protestant/Unionist/Loyalist tradition which take place in Castlederg each year.

8. The Commission has heard from the organiser of the protest by the Derg Valley Victims Voice in relation to the parade. It has also heard from some of the bereaved relatives of those who lost their lives as a result of terrorism in the Castlederg area. The Commission has also received written representations from the DUP, UUP, and TUV and has heard from local DUP and UUP representatives.
9. As with previous considerations of certain parades, the Commission faces the most challenging task in addressing this parade. As before, the decision which the Commission takes will inevitably result in hurt and anger on the part of many, irrespective of whether that decision is perceived to favour those organising and supporting the parade or those who are deeply, and genuinely, opposed to it.
10. It is a matter of regret to the Commission that, in fulfilling its statutory duty, it must continue to face decisions of this nature which present enormously difficult challenges given the personal and emotional issues surrounding this event.
11. The Commission has previously commended the valuable and constructive work which has been done towards a resolution of parading issues. The Commission would appeal to those engaged in seeking a resolution to parading issues in Castlederg not to allow recent tensions to damage irreparably the progress which has been made; and to renew their efforts to seek a resolution to these issues.
12. The Commission believes that should the parade process the entirety of its notified route, there will be an adverse effect on community relations and a potential for public disorder.

CONSIDERATION

13. The Commission is obliged by statute to have regard to the Guidelines issued under Section 5 of the Public Processions (Northern Ireland) Act 1998 and has done so. The Commission has also been alert to its duties as a public authority under Section 6 of the Human Rights Act 1998. The Commission believes that, from the perspective of the parade organisers, the Convention rights engaged are those protected by Articles 9 and 10 and, in particular, Article 11. None of those rights is absolute.
14. Further, the human rights of other persons, to whom the Commission also owes a legal duty, must be equally considered. Those who live, work, shop, trade and carry on business in the affected locality enjoy rights under Article 8 of the Convention and Article 1 of the First Protocol thereto. In common with Articles 9, 10 and 11, none of these rights is absolute. The Commission has also been mindful to take into account its positive obligations under Article 2 of the Convention. In this respect, the Commission is aware that public disorder always has the potential to have serious and fatal consequences.
15. It is not possible for all of those who would claim the benefit of the Human Rights Act 1998 to exercise and enjoy their Convention rights to the fullest extent, where rights are in competition with each other. The Commission, therefore, has had to undertake a balancing exercise, bearing in mind the statutory Guidelines, in an attempt to reach a determination which is fair and proportionate in all the circumstances. In addition to having regard to the Guidelines the Commission has had regard to the criteria specified in Section 8 (6) of the Public Processions (Northern Ireland) Act 1998.
16. The Commission has also had regard to the issue of engagement. One of the seven fundamental principles identified by the North Report is that all those involved should work towards resolution of difficulties through local accommodation. As required by the statutory Guidelines, the Commission has had regard to the seven North principles.

17. As indicated at page 15 of its second Annual Report, the Commission (while avoiding an excessively prescriptive approach) considers the essence of engagement to be attempts at genuine communication between protagonists to a particular parading dispute. A series of "pointers" to what constitutes genuine engagement is listed on page 16 of that report.
18. As stated in paragraph 4.4 of the Guidelines, the Commission takes into account any communications between parade organisers and the local community or the absence thereof. Further, the Commission will assess the measures, if any, offered or taken by parade organisers to address genuinely held relevant concerns of members of the local community.
19. The Commission has also taken into account the possibility that if a large-scale policing operation is required the disruption to the local community and the possible infringement of protected Convention rights will increase commensurately.
20. The Commission has had regard to the nature of this parade, the purpose of which is described earlier in the determination.
21. Having considered all the evidence, information and advice available to it, the Commission takes the view that it is necessary to place conditions on the parade. Whilst recognising the fundamental importance of the right to freedom of assembly, the Commission finds it necessary to exercise its powers under Section 8 of the Public Processions (Northern Ireland) Act 1998 to place restrictions on the parade.
22. In fulfilling these conditions, the Commission pursues the legitimate aims laid down in Article 10 (2) and 11 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, of seeking to prevent disorder and to protect the rights and freedoms of others.

23. In determining whether the conditions are necessary in a democratic society and proportionate, the Commission has regard, inter alia, to the criteria set down in Section 8 (6) of the Public Processions (Northern Ireland) Act 1998 and to its own Guidelines made under Section 5 of the Act and to which under Section 8 (5) it shall have regard when making a determination.
24. Having regard to the factors set out above the Commission considers that the conditions it now imposes are necessary and proportionate to the aim pursued. The conditions are not such as to affect significantly the individual's right to assemble. The Commission believes that the conditions it imposes strike a fair balance between the needs of the community and the rights of the individual. Further, the Commission wishes to emphasise that its determination must not be viewed as a victory for parade objectors over parade organisers. As appears from the foregoing paragraphs the legal, factual and human issues are of considerable complexity and require, ultimately, the formation of a carefully considered and finely balanced judgement on the part of the Commission.

DETERMINATION

The Parades Commission's determination is that the following restrictions are placed on the organiser and participants in the parade by the Tyrone Commemoration Committee in Castlederg on Sunday, 11 August 2013.

- A. The parade shall assemble at the notified assembly point at Priest's Lane car park, but shall not process to High Street, John Street, the Diamond, Main Street or Ferguson Crescent as notified. It shall instead turn right and process directly on to Castlefin Road, resuming the remainder of its notified route.**
- B. Only the bands notified on the Form 11/1 shall participate in the parade.**
- C. When the parade is in progress there shall be no undue stoppages or delays.**
- D. The parade organisers shall ensure that the band leader and all band members are given written details of the restrictions listed above in accordance with section 2.3 of the Code of Conduct.**
- E. The organisers and all participants in the parade shall comply with the conditions set out at Appendices A and B of the Commission's Code of Conduct. For ease of reference, these are reproduced below.**
- F. As shown at Appendix B of the Code of Conduct, the Commission re-affirms that all participants in this parade must behave with due regard for the rights, traditions and feelings of others in the vicinity; refrain from using words or behaviour which could reasonably be perceived as intentionally sectarian, provocative,**

threatening, abusive, insulting or lewd; obey the lawful directions of parade organisers and stewards at all times, from assembly to dispersal and comply with police directions and in accordance with legislation.

- G. The Commission further re-affirms the importance of respectful behaviour in the vicinity of interface areas, namely that there shall be no singing, chanting, or loud drumming and that marching should be dignified. More generally, no paramilitary-style clothing is to be worn at any time during the parade and flags, bannerettes and symbols relating to a proscribed organisation shall in no circumstances be displayed.
- H. No depictions of firearms or of uniforms which could reasonably be perceived as being the uniform of a proscribed organisation shall be displayed on drumskins or in any other manner.
- I. The parade organisers shall arrange for the presence of an adequate number of stewards to ensure that all parade participants act in an orderly manner.
- J. The parade organisers shall ensure that the band leaders and all band members are given written details of the restrictions listed above in accordance with section 2.3 of the Code of Conduct.
- K. The parade organisers shall ensure that all stewards and participants obey any direction given by the police in relation to this parade.

Signed:
(On behalf of the Commission)

Date: 17 August 2013 .

APPENDIX A**Guidance for Anyone Participating in Parades****A. Behaviour**

All participants in parades should:

- behave with due regard for the rights, traditions and feeling of others in the vicinity;
- refrain from using words or behaviour which could reasonably be perceived, as being intentionally sectarian, provocative, threatening, abusive, insulting or lewd;
- obey the lawful directions of parade organizers and stewards at all times, from assembly to dispersal;
- abide by the conditions of this Code of Conduct; and
- comply with police directions and in accordance with legislation.

B Dress

No paramilitary-style clothing is to be worn at any time during a parade.

C Parade

Whenever possible, the parade should be positioned on one side of the carriageway so as to allow for the free flow of traffic, or as otherwise stipulated by police.

D Route

Participants should keep to the designated route as directed by the police.

E Alcohol

Alcohol should not be consumed immediately prior to, or during a parade. An organizer or steward, who believes a participant to be under the influence of alcohol, should take the necessary measures to remove that person from the parade.

F Bands and Music

Each band must clearly display its name. Restrictions on the playing of music will be in accordance with the conditions as set out in Appendix B of this Code.

No musical instrument will bear any inscription or mark of a proscribed organization.

G Flags etc.

Flags and other displays often have a legitimate historical significance, but in no circumstances should such items relating to a proscribed organization 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 organizers 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; and
- 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 organizers 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.

APPENDIX B

Guidance for Anyone Participating in Parades in the Vicinity of Sensitive Locations

A Places of Worship

Only hymn tunes should be played.

When church services are taking place, no music should be played.

There should be no irreverent behaviour.

Marching should be dignified.

B War Memorials and Cemeteries

Only hymn tunes should be played.

Behaviour should be respectful.

Marching should be dignified.

C Where the Majority Population of the Vicinity are of a Different Tradition, and in Interface Areas.

Behaviour should be respectful.

There should be no excessively loud drumming.

Participants should refrain from conduct, words, music or behaviour which could reasonably be perceived as intentionally sectarian, provocative, threatening, abusive, insulting or lewd.

Marching should be dignified.

APPENDIX 6



SEARCH FOR A PARADE

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Press Releases

Press Release Sunday 11th August 2013

Press Release Sunday 11th August 2013

PRESS STATEMENT

ISSUED SUNDAY 11 AUGUST 2013

RE: STATEMENT FROM PARADES COMMISSION CHAIRMAN PETER OSBORNE

Over the past weekend we have witnessed both the ability to parade and protest with dignity and respect and we have witnessed a total disregard for the law, property and life. The men and women of the PSNI have been truly courageous in the face of intolerable provocation.

All of us, and very civic leader, has a responsibility to support the police and uphold the law.

The rights afforded to paraders and protestors come with legal obligations to act both peaceably and within the law. It is clear that there are some who while wanting to avail of their rights under the law feel that they are not bound by their responsibilities to adhere to the law.

Belfast and Derry/Londonderry stand in marked contrast to each other. Castlederg, even with its particular sensitivities and issues, passed off peaceably.

On Saturday 5,000 Apprentice Boys held their annual parade in Derry/Londonderry without rancour and with a sense of celebration and cooperation.

By contrast on Friday we witnessed in Belfast scenes of unwarranted lawlessness by people intent on violence. No excuses justify the violence.

Violence is never inevitable and the responsibility for any violence rests firmly and squarely with those who organise it and who perpetrate it.

Balancing the rights of marchers with concerns of protestors is hugely challenging for the Commission but we will continue to do so in a fair and balanced way.

People have choices. In years to come whether our grandchildren demonstrate respect for each other's identity and traditions will depend on their relationship with each other, and that will depend on what we, in this generation, do now. If this generation, as leaders and parents, doesn't start showing more respect, tolerance and sensitivity toward others from a different tradition why should we expect our children to teach that to their children?

Statement ends.

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27/09/2013



APPENDIX 7

Commissioner for Ethical Standards in Public Life in Scotland

CONFIDENTIAL

Reference: SA/JA/NIA

Mr Peter Osborne
Chair
The Parades Commission
Windsor House
9-15 Bedford Street
Belfast
BT2 7EL

29 October 2013

Dear Mr Osborne

Northern Ireland Assembly **Members' Code of Conduct** **Complaints against Mr Gerry Kelly MLA**

I have been appointed as Acting Commissioner for Standards to investigate three complaints received about the alleged conduct of Mr Gerry Kelly MLA whilst at a parade on Sunday 11 August 2013 in Castlederg, Co Tyrone. The complaints are centred on the terms of speech given by Mr Kelly at the parade. It is alleged that his conduct breached the Code of Conduct for Members of the Northern Ireland Assembly.

I was appointed as Acting Commissioner by the Northern Ireland Assembly as the Commissioner, Mr Douglas Bain, considered that he had an interest or it may be perceived he had an interest in these complaints as he is a member of the Parades Commission.

I am currently making initial inquiries into the matter. I am writing to give you an opportunity to make any comments, or provide information, which you believe would be helpful to me in this matter by way of context. In particular, it would be helpful if you could advise me whether or not any investigations are currently on-going or any actions are in contemplation related to the conduct of the parade and the conditions which were specified by the Commission. My focus is, of course, in relation to Mr Kelly individually. I have noted the terms of a press release issued by the Parades Commission which assessed the parade as having passed off peaceably.

I am writing in similar terms to the Secretary to the Commission. It would be appreciated if I could receive your comments by **14 November 2013**. If it would be more convenient for you, I am happy to receive a joint response to my letters.

Commissioner for Ethical Standards in Public Life in Scotland

39 Drumsheugh Gardens Edinburgh EH3 7SW

T: 0300 011 0550 E: info@ethicalstandards.org.uk W: <http://www.ethicalstandards.org.uk>

I should also be grateful if you would treat this matter, in so far as possible, on a confidential basis.

I look forward to hearing from you.

Yours sincerely

Stuart Allan
Acting Commissioner for Standards
Northern Ireland Assembly

Commissioner for Ethical Standards in Public Life in Scotland

39 Drumsheugh Gardens Edinburgh EH3 7SW

T: 0300 011 0550 E: info@ethicalstandards.org.uk W: <http://www.ethicalstandards.org.uk>

APPENDIX 8



12th Floor
Windsor House
9-15 Bedford Street
BELFAST
BT2 7EL
T: 028 9089 5900
F: 028 9032 2988

Email: [REDACTED]
Web: www.paradescommission.org

Mr Stuart Allan
Acting Commissioner for Standards
Northern Ireland Assembly
39 Drumsheugh Gardens
Edinburgh
EH3 7SW

27 NOV 2013
OFFICE OF PSCS

Your ref. SA/JA/NIA

25 November 2013

Dear Mr Allen

Northern Ireland Assembly Members Code of Conduct.

Thank you for your letter dated 29th October 2013 regarding your investigation.

I apologise for the delay in replying to you and can confirm that I have consulted with the Commission Chair and he is content that this should be treated as a joint response.

As you have already noted the Commission is not aware of any material violence or disorder having occurred at this parade. The Commission did receive some complaints regarding inappropriate 'displays paramilitary insignia' on drum skins etc. and has written to the organiser offering him the opportunity to respond to these acquisitions.

I have not to date, received a reply and based upon our experience of behaviours in respect of these compliance letters, I do not expect a response any way soon, if at all.

I do not anticipate the Commission taking or wishing to take any further action.

Yours sincerely



Anthony Carleton

Secretary, Parades Commission



APPENDIX 9

Commissioner for Ethical Standards in Public Life in Scotland

CONFIDENTIAL

Reference: SA/JA/NIA

Mr Matt Baggott CBE QPM BA (Hons)
Chief Constable
Command Secretariat
Police Service of Northern Ireland
Police headquarters
Brooklyn
65 Knock Road
Belfast
BT5 6LE

29 October 2013

Dear Mr Baggott

Northern Ireland Assembly
Members' Code of Conduct
Complaints against Mr Gerry Kelly MLA

I have been appointed as Acting Commissioner for Standards to investigate three complaints received about the alleged conduct of Mr Gerry Kelly MLA whilst at a parade on Sunday 11 August 2013 in Castlederg, Co Tyrone. The complaints are centred on the terms of speech given by Mr Kelly at the parade. It is alleged that his conduct breached the Code of Conduct for Members of the Northern Ireland Assembly.

I was appointed as Acting Commissioner by the Northern Ireland Assembly as the Commissioner, Mr Douglas Bain, considered that he had an interest or it may be perceived he had an interest in these complaints as he is a member of the Parades Commission.

I am currently making initial inquiries into the matter. I am writing to give you an opportunity to make any comments, or provide information, which you believe would be helpful to me in this matter by way of context. In particular, it would be helpful if you could advise me whether or not any investigations are currently on-going or any proceedings are in contemplation related to Mr Kelly individually. I have noted the terms of a press release issued by the Parades Commission which assessed the parade as having passed off peaceably.

It would be appreciated if I could receive your comments by **14 November 2013**.

Commissioner for Ethical Standards in Public Life in Scotland

39 Drumsheugh Gardens Edinburgh EH3 7SW

T: 0300 011 0550 E: info@ethicalstandards.org.uk W: <http://www.ethicalstandards.org.uk>

I should also be grateful if you would treat this matter, in so far as possible, on a confidential basis.

I look forward to hearing from you.

Yours sincerely

Stuart Allan
Acting Commissioner for Standards
Northern Ireland Assembly

Commissioner for Ethical Standards in Public Life in Scotland

39 Drumsheugh Gardens Edinburgh EH3 7SW

T: 0300 011 0550 E: info@ethicalstandards.org.uk W: <http://www.ethicalstandards.org.uk>

APPENDIX 10

Personal, Professional, Protective Policing



GEORGE HAMILTON
ASSISTANT CHIEF CONSTABLE, RURAL REGION

Mr Stuart Allan
Acting Commissioner for Standards
Northern Ireland Assembly
39 Drumsheugh Gardens
Edinburgh
EH3 7SW

7 November 2013

Our Ref:

Your Ref: SA/JA/NIA

11 NOV 2013

OFFICE OF PSCS

Dear *Mr Allan*

Thank you for your letter to the Chief Constable of 29 October concerning complaints against Mr Gerry Kelly. The Chief Constable has asked that I respond on his behalf.

A prosecution file has been submitted to the Public Prosecution Service in relation to potential criminal offences disclosed in connection with the parade in Castlederg on 11 August 2013.

One element of this investigation concerned the speech by Mr Kelly. Following careful consideration, and in consultation with both PSNI Legal Services Branch and the Public Prosecution Service, PSNI recommended no prosecution in relation the content of the speech made by Mr Kelly at the end of the Parade on the basis of there being no evidence of criminal conduct.

A transcript of Mr Kelly's speech, as published on Sinn Fein's Internet pages is attached for your information.

If I can be of any further assistance please do not hesitate to contact me.

Yours sincerely



GEORGE HAMILTON
Assistant Chief Constable

Assistant Chief Constable Rural Region
PSNI Headquarters, 65 Knock Road, Belfast, Northern Ireland, BT5 6LE



APPENDIX 11

CONFIDENTIAL

Mr S Allan
Acting Commissioner for Standards
Northern Ireland Assembly
39 Drumsheugh Gardens
Edinburgh
EH3 7SW

My ref: GKellyMLA02
Your ref: SA/LB/NIA
26th November 2013

RE: NIA Members' Code of Conduct Complaint – Mr Gerry Kelly MLA

Dear Mr Allan

I am writing today to thank-you for your offer of meeting with me at Parliament Buildings, Belfast and your phone call relating to same. However, the date which you propose doesn't suit my availability, extremely regrettably. I am at the University of East Anglia until 13th December 2013 and will be in Northern Ireland for a month after – for Christmas vacation.

I would have been extremely enthusiastic to meet you at Parliament Buildings to discuss my complaint made against Mr Gerry Kelly MLA.

I would just like to emphasise the fact that Mr Kelly MLA is in fact an MLA and there are certain standards of behaviour expected and required of MLA. It is clear to me that Mr Kelly MLA breached the Ministerial Code of Conduct – not only breached, but seriously breached the Code. His behaviour is not what I expect of any of the MLAs in the Stormont Assembly. He essentially glorified the terroristic activities of the Irish Republican Army (of which he himself was a member) and in particular the cowardly actions of Mr Harvey and Mr McGlynn who were themselves assassinated by their own bomb – this bomb was destined to cause absolute mayhem, chaos and tragedy in the very town Mr Kelly MLA made this horrendous speech. To aggravate this situation further there was a peaceful protest held by victims of Irish Republican Army terrorists taking place in Castlederg. Mr Kelly MLA would have been aware of this fact as the protest was widely reported in the media before the event.

The complete insensitivity shown to these victims and their families is quite frankly shocking. This is no way to achieve a peaceful, calm and prosperous Northern Ireland which the majority of the population wants. It creates further divides and divisions physically and mentally – the hatred ingrained in the generation which grew up during and after 'The Troubles' cannot be furthered etched into the minds of the people of Northern Ireland.

Northern Ireland is once again becoming a fractious place. Numerous murders committed by various paramilitary groups have occurred in startling numbers over the recent weeks, along with a partially exploded bomb which was left in a large and busy shopping precinct in Belfast – to which the PSNI have responded to by increasing police presence and the instigation of police vehicle check-points. This is déjà vu – today's Belfast is rapidly bearing a remarkable resemblance to the tortured Belfast which would have been so clear to see

twenty years ago. It is not acceptable. And when MLAs who are supposed to help the healing process of all in Northern Ireland, go against their duties and responsibilities this calls for severe disciplinary actions or even 'sacking' MLAs who do not conform. Mr Kelly MLA is perpetuating (albeit not on his own, he is aided by other members of political parties too) the existing and heightening tensions in Northern Ireland which is clear to see.

I therefore submit that the Commissioner for Standards (Acting) **should find Mr Kelly MLA in breach of the Ministerial Code of Conduct** and that **he recommends disciplinary sanctions**, insofar as the Acting Commissioner sees fit.

Again, I would like to thank-you, Commissioner for offering to speak with me, however, the reasons outlined earlier in this letter have prevented me from agreeing which to me, is a great shame.

I wish you well in your investigations in this matter and hope that my submissions to you are helpful in your deliberations.

If I can be of any further assistance in your investigations, **please do not hesitate to contact me at all, I am always contactable.** You can contact me again via my addresses, my mobile and email listed in this letter.

Yours sincerely



Mr Luke Bloomer

Portadown
Co. Armagh
Northern Ireland

APPENDIX 12



**Northern Ireland
Assembly**

INVESTIGATION INTO COMPLAINT – GERRY KELLY MLA

Meeting with Mr Jim Allister QC MLA

10 December 2013
Room 28, Parliament Buildings

Start: 12.30 pm End: 1.20 pm

Present: Stuart Allan, Acting Commissioner for Standards
 Jim Allister QC MLA
 Samuel Morrison, TUV
 Pauline Wilson (Note taker for Mr Allan)

1. Mr Allan opened the interview by thanking Mr Allister for attending, and for providing him with a further note regarding his complaint. He explained that the note of the meeting would be sent to him for his comments and asked that he return them within 14 days.
2. Mr Allan asked Mr Allister about how long he had been an MLA. He explained that he was elected in May 2011 and that he represents North Antrim.
3. Mr Allan asked him about who - in general terms - makes up the community in Castlederg. He explained that Castlederg is a very mixed area. It is very much an area targeted by the IRA campaign, with 29 murders in what is a small town and district. There is a great sense among the victims' families that they have been picked upon by the IRA who have carried out a focused campaign of murdering local protestants, unionists and members of the security forces and accomplished that with several bombings in the town. At the parade Sinn Féin were celebrating the lives of two individuals who set out on the day they died to cause further havoc in Castlederg. They blew themselves up before they reached their target. Gerry Kelly was leading that celebration of their lives and saying that they gave their lives so that they could be free. Mr Allister thought that this was an obscene thing to say given that they were terrorists - seeking to take the lives of the innocent. He went on to say the terrorists died in the Irish Republic and not in Castlederg, and he

could only conclude that the parade was in Castlederg because that was the target. Castlederg is still a very raw place. It was an exercise to glorify not only those two but other republican action in County Tyrone. It was incredibly insensitive.

4. Mr Allan asked about the parades in general and would the majority be church based. Mr Allister said that the unionist community would be more into it than the nationalist community; it has many parading organisations, so the majority would be of a unionist designation.
5. Mr Allan asked Mr Allister did he know who the organisers were – the Tyrone Commemorative Committee. Mr Allister said that the marshalls were wearing bibs with the Sinn Féin logo, so obviously it was Sinn Féin under a 'marching name'.
6. Mr Allan showed Mr Allister the 3 different routes; the first being the original route proposed by the Tyrone Commemoration Committee, the second an amended route and the third the route finally approved by the Parades Commission.
7. Mr Allan asked was it a case of the parade itself irrespective of route being opposed in principle. Mr Allister replied that he didn't think it was having a parade as such it was the nature of the event - celebrating the lives of dead terrorists who brought devastation to Castlederg, the boldness of having a parade, and the insensitivity of it were the core issues. The apparent breaches of Parades Commission determination conditions by the showing of paramilitary emblems and by the comments by Mr Kelly were also factors.
8. Mr Allan went on to say he understood that even when the organisers suggested changing the route, taking out the cenotaph, that that was still not acceptable to the community and even when the final route was approved by the Parades Commission, a lot of people were still opposed to it. Mr Allister agreed they had opposed it because the route was still going to the heart of the town. Mr Allister said that a lot of police officers were murdered in and around Castlederg, including UDR soldiers. Only two of these murders have been solved by convictions.
9. Mr Allan asked Mr Allister what his views were on the Parades Commission approving it. Mr Allister said it's difficult in that you have to balance the rights of freedom of expression to parade, and the rights of objectors and that's always a difficult balance to achieve but this one was particularly sensitive. It was the nature of the parade, celebrating the lives of those who had committed murder, left orphaned children, bereaved wives and mothers. They see it as a glorification of the fact that their loved ones were murdered. The Parades Commission if they were going to approve it at all should have rerouted it well away from the town centre.

10. Mr Allan asked if he thought it should it have been refused and Mr Allister replied that that was his preference. Comments were made to the press to that effect at the time.
11. Mr Allan informed him that as he understands it the Parades Commission can't refuse parades and that a banning order has to be made by the Secretary of State and asked Mr Allister if his thinking was correct. He replied saying that a banning order comes from the Secretary of State; the Parades Commission can however and often does curtail a parade. Mr Allan was advised that the Secretary of State was invited to ban it but didn't, and asked Mr Allister if that was correct. Mr Allister was not sure but Mr Morrison was able to say that the Secretary of State was asked to ban it and had not.
12. Mr Allister explained that there was a very dignified church service held at the cenotaph, attended by several hundred people while the republican parade was going on. Then after the church service, the families who were directly affected, went down to the closest point of the parade to protest against the passing parade. They had banners and photographs of their loved ones. The rest of the people stayed at the cenotaph including Mr Allister. Mr Allister said the service was a religious church service and local ministers took part, and in total took about 15 minutes.
13. Mr Allister said that the monument was a sizeable structure. There was no planning permission; that is normal practice for Sinn Féin not to apply for planning permission.
14. Mr Allan moved on to Mr Kelly's speech and said that a copy had been placed in the Assembly Library. Mr Allan asked Mr Allister who did he think would have heard his speech. Mr Allister replied that he didn't hear it as he was at the cenotaph but that all the people in the vicinity would have heard it. It was also broadcast by the media and the press published significant parts of it. The Belfast Newsletter printed it verbatim. It was also broadcast on TV. Mr Allister said he heard bits of it through the public broadcast.
15. Mr Allan said that Mr Allister's letter of complaint set out the principles of the Code he thought Mr Kelly had breached, including *MLAs being under a duty to uphold the law, to promote good relations and to act in the interest of the community*. He asked him if he thought they were the main principles allegedly breached by Mr Kelly. Mr Allister said he wanted to draw attention to all the references to the Code principles set out in his letter. Mr Allister said he thought Mr Kelly went out of his way to eulogise two terrorists as role models to young people and he recited part of Mr Kelly's speech. He doesn't think it should have been the behaviour of an MLA.
16. Mr Allan asked whether Mr Allister considered that Mr Kelly himself had personally breached any of the Parades Commission conditions and was

there anything he wanted to say about Mr Kelly's conduct generally at the parade.

17. Mr Allister had no evidence that Mr Kelly personally breached the conditions about paramilitary uniforms etc but quite clearly he was the prime person at the event and by his presence he clearly endorsed the apparent breaches of the Parades Commission conditions. Mr Kelly is a very prominent member of Sinn Féin; he doesn't represent Castlederg, he represents North Belfast, and was the main act at the parade.
18. Mr Allan asked Mr Allister, if it were to be accepted that there were breaches to the conditions of the march and given Mr Kelly's close association with the march, did he associate impropriety of the march with Mr Kelly. He replied that he did, in that Mr Kelly is such a significant figure in Sinn Féin, he could have intervened, and not allowed the wearing of paramilitary clothing or the showing of any paramilitary emblems and enforced the rulings of the Parades Commission. He led the parade and therefore he endorsed the breaches.
19. Mr Allan asked Mr Allister whether he considered Mr Kelly might have personally committed any offence. He replied in that he was sure that Mr Kelly was well acquainted with the Parades Commission rulings – he was aware of the paramilitary uniforms on display and Mr Allister thought there was an obligation on him to mitigate the breaches of conditions.
20. Mr Allan touched on expression of freedom and referred to Article 10 of the ECHR. He asked Mr Allister what he would say to the argument that although what Mr Kelly said might be regarded as unpalatable, intemperate or obnoxious there is still a right for him to say what he said. Mr Allister replied that the matter was not just informed by Article 10 freedom of expression but it was also informed in the case of a MLA by the Code of Conduct they are to live by. Mr Allister thought that Mr Kelly was in difficulty because of the language used ie the glorification of terrorism, and he said his contention was that that could not be squared with the obligations of the Code which in effect inhibits absolute freedom of expression. The Code was compliant with ECHR.
21. In Mr Allister's letter he identified specific issues that he considered were most offensive – Mr Allan asked him did he want to draw anything else to his attention. Mr Allister thought he had made his points.
22. Mr Allan asked Mr Allister what did he think when Mr Kelly expressed surprise at the reaction to his speech. He (Mr Allan) referred to Mr Kelly's statement to the Assembly on 9 September and his subsequent press statement on 16 September to the effect that his speech was to revive dialogue with unionism and a bid to inform dissident republicans that politics was the way forward. Mr Allister found it utterly disingenuous; it was a manifestation of bigotry. The purpose of his speech was to glorify and eulogise those who had murdered.

23. Mr Allan asked Mr Allister did he think there was any element of the speech that was aimed at “dissident” republicans in the sense that Mr Kelly was trying to get them to walk away from the route of violence and come into dialogue. Mr Allister referred to a passage where Mr Kelly suggests they are obtaining the same objective as the dissidents by a different political route. He justified and eulogised the whole campaign of the IRA and painted individuals as role models. This was just another example of Mr Kelly being disingenuous.
24. Mr Allister also went on to say it was because of what happened in Castlederg that the largest unionist party claimed they abandoned their support for the Maze project because Sinn Féin could not be trusted to use the peace and reconciliation centre properly.
25. Mr Allister gave Mr Allan some background information to the Maze project.
26. The Maze prison site, derelict for some time, was the site of the IRA hunger strikes in 1981, and that itself is a central place for republican mythology. The two main parties DUP and Sinn Féin had agreed they would build a peace and reconciliation centre on the Maze site. Having obtained £20M of EU funding DUP pulled out of agreement. The DUP blamed Sinn Féin’s actions at Castlederg, said they couldn’t be trusted and that they would misuse the project. Within one week Mr Robinson had sent a letter pulling out of project.
27. Mr Allan informed Mr Allister that he had received a response from the Secretary to the Parades Commission saying -

“... the Commission is not aware of any material violence or disorder having occurred at the parade. The Commission did receive some complaints regarding inappropriate ‘displays paramilitary insignia’ on drum skins etc, and has written to the organiser offering him the opportunity to respond to these acquisitions.

I have not to date, received a reply.”
28. Mr Allan asked Mr Allister did he have any views on that reference. He said he didn’t think there was any violence but he had complaints from some of the victims who were at the front line that there were inappropriate cat calls from the paraders which was offensive and breached Parades Commission conditions.
29. Mr Allister said they had made complaints to the PSNI about breaches of the Parades Commission rulings.
30. Mr Allan said the police have said there is a prosecution file on Castlederg but when he asked them specifically about the speech, they said that after consideration there were to be no proceedings on the basis that there was no evidence of criminal conduct.

31. Mr Allister said there were different standards to potential breaches of criminal law and potential breaches in the Code of Conduct and just because there was no police prosecution it wasn't fatal to the suggestion that there had been a breach of the Code of Conduct.
32. Mr Allan asked regarding the response that there was no evidence of criminal conduct whether Mr Allister's position was that he would say there was no evidence sufficient to meet the criminal test. Mr Allister agreed.
33. Mr Allan went on to say that the Parades Commission commented on the parades at that time to say that Belfast and Londonderry stood in marked contrast with each other and that the parade at Castlederg, even with its sensitivities, passed off peacefully. The Apprentice Boys Parade in Londonderry passed by with a sense of celebration and co-operation and then in Belfast there were scenes of unwanted lawless on people intent on violence. It seemed that the Commission were sending out a message in the wider scheme of parades activity that the Castlederg parade appeared to pass off reasonably and peacefully; Mr Allister was asked for his comments.
34. Mr Allister replied that might be if you judge it by the Richter scale of riots but that was not appropriate. Great restraint has been shown by the people of Castlederg. The benchmark is not just about violence.
35. Mr Allan then asked Mr Allister was there anything else he wanted to add.
36. Mr Allister said they had covered all the issues.
37. Mr Allan thanked Mr Allister for coming to interview, said the note of the meeting would be typed up and sent to him for his comments and asked that he return any comments within 14 days.
38. The meeting ended.

APPENDIX 13



**Northern Ireland
Assembly**

INVESTIGATION INTO COMPLAINT – GERRY KELLY MLA

Meeting with Mr Tom Buchanan MLA

10 December 2013
Room 28, Parliament Buildings

Start: 11.00 am End: 12.00 noon

Present: Stuart Allan, Acting Commissioner for Standards
 Tom Buchanan, MLA
 Pauline Wilson (Note taker for Mr Allan)

1. Mr Allan opened the interview by thanking Mr Buchanan for attending, and for providing him with a further note regarding his complaint. He explained the procedure in that the note of the meeting would be typed up and sent to him for his comments and asked that he return this within 14 days.
2. Mr Allan asked Mr Buchanan about how long he had been an MLA. Mr Buchanan explained he serves as a Democratic Unionist Party (DUP) MLA for West Tyrone which includes Castlederg. He was elected to Omagh District Council in 1993 and elected to the Northern Ireland Assembly in 2003.
3. Mr Allan asked him who - in general terms - makes up the community of Castlederg. Mr Buchanan explained that Castlederg is a mixed area of nationalists and unionists, although there would be more unionists businesses, particularly around the town centre.
4. Mr Allan showed Mr Buchanan three different routes for the parade in question; the first being the original route proposed by the Tyrone Commemoration Committee, the second an amended route and the third the route finally approved by the Parade Commission. Mr Buchanan informed Mr Allan of the various types of parades that happen ie annual traditional church parades, Orange Order Institution, Royal Black Institution, apprentice boys, church services and the annual band parades. All parades he said pass with no difficulty or

disturbance. They have had parades rerouted; they weren't happy but accepted the change.

5. Mr Buchanan said that there would be more unionist parades than republican parades. He added, however, while the unionists parades are a celebration of their culture and a number of them relate to church services, the Castlederg parade in contrast was a commemoration and glorification of terrorism and murder which can in no way be linked.
6. Mr Allan asked Mr Buchanan what did he know about the organisers of the parade on 11 August 2013, ie the Tyrone Commemoration Committee. He replied saying he thought it was made up of nationalists, their aim is to commemorate those who went out and murdered unionist people in cold blood. Unionists who put on the uniform to serve the country stand behind law and order and this group seeks to commemorate those who carried out some of the worst atrocities in Northern Ireland.
7. He went on to say that two of the people that the parade was for were Seamus Harvey and Gerard McGlynn who were members of the IRA. They were transporting a bomb which was due for the Castlederg town centre when it exploded prematurely on the southern side of the Kilclean border. It happened 40 years ago and there is a small memorial stone on the side of the road where it happened.
8. Mr Allan asked was there any opposition from the community in holding this particular parade. Mr Buchanan said that from the very outset there was a huge public outcry. The families of the victims had to learn to live with their grief and heartache, and with the parade they would have to relive their pain all over again. The outcry was not only from the families of the victims but from other unionists and nationalists/republicans living in Castlederg. There were Roman Catholic businesses who did not want the parade to go ahead. This goes to show the extent of opposition and they felt their views were not respected.
9. Mr Allan asked Mr Buchanan for his views on the Parades Commission change in the route. Mr Buchanan thought that the proposed reroute did not go far enough (there was discussion then about the route and reference was made to the map). Mr Buchanan informed Mr Allan that the parade was to go past the police station where the first murder took place in Castlederg, which would be very insensitive for the family of the policeman who was shot and murdered, and if it did go past the police station then they wanted a police line there to block that section off. The parade was to go past where another incident had taken place – the man had been shot but died four years later. That family spoke out and said they didn't want it to happen. The parade was passing where two people had been murdered and no one brought to justice.

10. Mr Buchanan said they had asked for the Parades Commission to ban the parade, but the Parade Commission said they can't ban the parade; it's up to the Secretary of State. The Secretary of State didn't ban it so the Parades Commission let it go ahead, and the route was to pass the police station.
11. Mr Allan asked Mr Buchanan whether the Secretary of State had been asked to ban the march. Mr Buchanan clarified the Secretary of State was met by the Castlederg Victims Voice and some of the councillors from the area. Mr Buchanan was unavailable and could not attend that meeting. The Secretary of State concluded it was a matter for the Chief Constable and the Parades Commission.
12. Mr Buchanan told Mr Allan of the huge memorial stone that had recently been erected in a small park on grounds belonging to the Housing Executive and that no planning permission had been sought or granted. This is where the commemoration service took place and Gerry Kelly spoke here, at the unveiling of the memorial.
13. During the route of the parade they halted for a short time at the site where one of the murders took place. That caused much hurt to the people.
14. The parade took around 15 minutes from the start to the memorial stone. While the republicans were parading, there was a church service at the cenotaph conducted by local ministers. After this service, the families of those victims went to the police barrier and made a protest; they had banners and photographs of their loved ones. Mr Buchanan attended the service at the cenotaph.
15. Mr Allan went on to say it was not clear how many attended the republican parade; some say about 200 but the parade had approval for up to 500. Mr Kelly gave his speech at the end of the parade ie at the memorial stone and he (Mr Allan) asked Mr Buchanan who did he think would have actually heard it directly. Mr Buchanan did not hear the speech but thought that all the republicans who were there at the parade would have heard it. He went on to say that it used to be a mixed area (that area where the memorial stone has been placed) but the protestant residents were intimidated out; from his recollection out of 328 houses only one protestant remains. He said that nationalists who were there would have heard and these would have included a dissident element.
16. Mr Allan moved on to Mr Kelly's speech and he said that Mr Buchanan had articulated his objections to the speech in his letter of complaint but asked him if he had anything further to add about the impact of the speech. Mr Buchanan said that it added further insult to the families of the victims. The speech was uploaded to 'You Tube' printed in newspapers and parts of the speech aired on television and it added further insult and injury to the victims in Castlederg. It was bad enough

for the parade to go ahead in Castlederg but all the media added to it; all the media coverage further added to the hurt and pain of victims and their families.

17. Mr Buchanan thought that a political leader such as Gerry Kelly is an MLA and he breached the Code of Conduct; in his speech he was enticing young people to follow the same route, he spoke of volunteers (Harvey and McGlynn) who gave their lives so that we could be free, it was a breach of law and order, he was saying that what they had done was right but in fact these people were out to commit murder and cause mayhem. Mr Buchanan read out some of the statements from the speech. He thought that Mr Kelly, a public representative, effectively sought to encourage the young people to go down the path of terrorism.
18. Mr Allan said the speech would have had some impact on the people who were listening to it but asked whether there was a wider impact because the speech was printed and published in various newspapers. Mr Buchanan said the Sinn Féin had it on their own You Tube for everyone to see and for their own people and supporters who could not attend. It was a recruitment drive for dissident republicanism. Sinn Féin will stand and condemn the actions of dissident republicans on one hand and on the other hand in the way this speech was put forward this was a recruitment drive for them. It is so wrong for a public representative to stand and make a recruitment drive and encourage people to follow an organisation that's out to cause murder and break the law.
19. Mr Buchanan said that the reality is clear, that Sinn Féin have been recruiting for themselves; Sinn Féin will deny that. Their words condemn them.
20. Mr Allan said he wanted to pick up on one or two points relating to the provisions of the Code of Conduct.
21. Mr Buchanan in his letter of complaint, had said that bearing in mind the principle of public duty, glorifying terrorism is a criminal offence. Was Mr Buchanan saying that what Mr Kelly said in his speech itself amounted to terrorism or as he saying that the whole circumstances including the route of the parade, the reason it was being held and the way the speech was delivered was terrorism in a general understanding of the term. Mr Buchanan stated that what Mr Kelly said in his speech was encouraging others to go down the route of terrorist activity and as a public representative who signed up to abide by law and order, he breached the Code of Conduct. That is why his complaint was put forward.
22. Mr Buchanan said that Mr Kelly had a public duty to uphold the law and that he committed a criminal offence – encouraging others to follow the path of terrorism.

23. Mr Allan referred to Mr Buchanan's letter re other heads of complaint under the Code, such as equality, promoting good relations and respect and asked did he have anything to add. Mr Buchanan replied saying that he thought the points he made in his letter were clear. He added that Mr Kelly was so very wrong and that some sanctions should be placed on him. He said the public representatives have a duty and responsibility and that is to give leadership within the law, encourage people to turn away from criminal activity and to abide by the law.
24. Mr Allan asked if it was Mr Buchanan's view that Mr Kelly cannot say he was acting in giving the speech other than as a MLA. Mr Buchanan said that Mr Kelly was the guest speaker at the parade service and was there as an MLA and at no time did he say he was there as an individual or representing any other organisation.
25. Mr Allan said that Mr Kelly says he was invited "as a well know Irish Republican". He (Mr Allan) asked would Mr Buchanan dispute that, and Mr Buchanan agreed that Mr Kelly was. There was talk about a prison officer being shot in Long Kesh. He stated that Mr Kelly mentioned in his speech that we have turned away from violence and that the political process is the way to go and then he encourages people to go down the path of terrorism.
26. Mr Allan commented upon a number of alleged breaches by participants of conditions set out in the Parades Commission determination but specifically did Mr Buchanan know whether Mr Kelly personally breached any conditions. He replied saying he didn't know whether Mr Kelly broke any conditions but what he did know is that some of the bands broke the conditions in their uniforms and pictures displayed on drums and banners they held. The Parades Commission had gathered some information and have passed it to the Public Prosecution Service. He replied that they had breach the rulings in that there was in an appropriate display of paramilitary clothing and that there were displays of paramilitary insignia on drum skins etc.
27. Mr Allan went on to ask Mr Buchanan was he in a position to say whether Mr Kelly personally committed any offence. Mr Buchanan thought that Mr Kelly should have shown some responsibility in that he would have known that the Parade Commission rulings had been breached even before the parade started because of the uniforms and band pictures etc and as an elected representative he was committing an offence by taking part in that procession.
28. Mr Allan informed Mr Buchanan that he wrote to the PSNI and in their response (taken from letter of 7 November to Mr Allan from Assistant Chief Constable) they said -
"One element of this investigation concerned the speech by Mr Kelly. Following careful consideration, and in consultation with both PSNI Legal Service Branch and the Public Prosecution Service, PSNI

recommended no prosecution in relation to the content of the speech made by Mr Kelly at the end of the parade on the basis of there being no evidence of criminal conduct."

29. Mr Allan asked Mr Buchanan did he have any observations on the above.
30. He replied that that was no surprise. He was disappointed in the police response that no action was being taken because he thought there were sufficient and ample grounds for the police to take the matter forward; it is clear from the content of his speech that he was encouraging young people to join a dissident republican organisation.
31. Mr Allan then spoke to Mr Buchanan about the European Convention of Human Rights – Article 10 – freedom of expression and asked him about the general principle that people do have the right to express their views particularly on public interest matters – no matter how unpalatable they may be.
32. He responded saying that you can't deny anyone from expressing their views but that there has to be a line drawn when someone is encouraging, enticing and recruiting people to join an organisation that is out to break the law. Rather than taking people away from violence, Mr Kelly's speech was encouraging people back into that way of things. Mr Buchanan thought that that was where Article 10 was breached by Mr Kelly at the parade.
33. Mr Allan again referring to Mr Kelly's speech asked whether there were any parts that were particularly objectionable and offensive to Mr Buchanan. Mr Buchanan referred to the sections of his letter of complaint in which he quoted what Mr Kelly said.
34. Mr Allan referred to the debate of the Assembly on 9 September 2013 and to a subsequent press statement on 16 November where Mr Kelly said -
"that Castlederg was a bid to revive talks with unionists in the town, and also to inform dissident republicans that politics was the only way forward. In that speech I said I was proud to be a republican and we remembered those who gave their lives for Irish freedom, it also contained a message to unionism that dialogue was the only way to resolve the parades issue in Castlederg there was also a message to dissidents that the period of war was over."
35. Mr Allan asked Mr Buchanan what were his thoughts on the above. He replied saying that a lot of work had been done by the bands and nationalists, and that a lot of parades had taken place in Castlederg with no trouble, and that that was all down to the years of hard work between the two communities. Castlederg had a good community spirit but that was before Mr Kelly made his speech. He went on to say that Sinn Féin were told not only by the unionist community but also by

the nationalist people of Castlederg, that if the parade went ahead it would set community relations back by 20/30 years.

36. Mr Allan asked if Mr Buchanan was saying that the holding of the parade had set back the dialogue process. Mr Buchanan agreed he was saying that and that the organisers had been warned that that would happen.
37. Mr Allan asked Mr Buchanan whether he thought that Mr Kelly as an MLA should have distanced himself from the invitation by the Commemoration Committee to speak at the parade. Mr Buchanan replied that that was correct and that Mr Kelly had been asked through the media by himself and Arlene Forster to consider his invitation, to consider the consequences and step back but he refused. Mr Kelly came to Castlederg, made his speech and left the community to pick up the pieces.
38. Mr Allan concluded the meeting by asking if there was anything Mr Buchanan wished to add. Mr Buchanan said he thought everything had been covered, it was unfortunate that this incident took place in Castlederg and that it would take a long time to rebuild.
39. Mr Allan thanked Mr Buchanan for coming to interview and said that the notes of the meeting would be typed up and sent to him for his comments and asked that he return them with any comments within 14 days.
40. The meeting ended.

APPENDIX 14



**Northern Ireland
Assembly**

INVESTIGATION INTO COMPLAINT – GERRY KELLY MLA

Meeting with Mr Gerry Kelly MLA

10 December 2013
Room 28, Parliament Buildings

Start: 2.30pm End: 3.40pm

Present: Stuart Allan, Acting Commissioner for Standards
 Gerry Kelly, MLA
 Sean Murray, Sinn Féin
 Pauline Wilson (Note taker for Mr Allan)

1. Mr Allan opened the interview by thanking Mr Kelly for attending. He explained the procedure in that the note of the meeting would be typed up and sent to him for his comments and asked that he return these within 14 days.
2. Mr Allan asked Mr Kelly when did he become an MLA. He replied that it was in May 1998 and that he serves North Belfast.
3. When asked about Castlederg, Mr Kelly informed Mr Allan that Castlederg was a rural area, it was a mixed community made up mainly of nationalists. Although it could be called a nationalist town, there had been approximately 20/21 loyalist/unionist parades held within the year. He talked about the 'Fleadg', that is held for the whole community; the unionists objected to it. He said that anything relating to Irish is looked down upon from the unionists as sectarian.
4. Mr Allan asked him about the organisers of the parade – the Tyrone Commemorative Committee. Mr Kelly explained that they have a culture of parading and commemoration services. On this occasion it was for two people who were killed in an explosion, 40 years ago, a monument was being opened in a nationalist/republican area, on the edge of Castlederg. He went on to say he was invited to speak at this opening.

He was an ex-combatant, ex-prisoner and invited regularly to commemorative services.

5. Mr Kelly informed Mr Allan that he was invited to make the main speech.
6. Mr Allan asked whether he was there because of his republican background and or as an MLA. He replied saying he has a lot of history; he was involved as a combatant in the IRA and he was asked in that capacity. There is a group National Grid Association, throughout all of Ireland, which is an organisation that takes care of monuments going back a lot of years. These services take place all over. It was taking place in Castlederg because there was a new monument being opened for two volunteers, who died very young.
7. Mr Allan asked Mr Kelly about the size of the monument. Mr Kelly said the monument was a large structure. There had been a lot of support from the community, a lot of voluntary work and a lot of fund raising had taken place. It was very expensive; there is a remembrance garden, and on the monument are the names of those who died from the area. When Mr Kelly was asked about the land which was used for the monument he said that sometimes the monuments are on private land and people sometimes hand over the land.
8. Mr Allan showed Mr Kelly three different routes for the parade in question; the first being the original route proposed by the Tyrone Commemoration Committee, the second an amended route and the third the route finally approved by the Parade Commission. Mr Kelly said that several objections had been raised to the route and that the triangle known as the diamond was therefore taken out of the route. Mr Kelly went on say that there are orange parades held in nationalist areas and vice versa, but that this parade became contentious; the shops were festooned with British regalia, union jacks, bunting, which annoyed the nationalists in the area. He gave an example of good dialogue in Castlederg; constructive talks took place between the MP for West Tyrone and the orange order and they came to the conclusion that the diamond was to be a shared space. His belief was that unionists made this political and it became contentious.
9. Mr Kelly spoke to the organising Committee, discussions took place for several hours. He was aware there were contentious issues around the route, and he convinced them to re-route. It was very difficult as they thought they had a right to march around the diamond as the unionists do. Mr Kelly said he has considerable experience at influencing and convincing people.
10. Mr Allan went on to read a section from a press statement by the Parades Commission issued on Sunday 11 August 2013.
"Belfast and Derry/Londonderry stand in marked contrast to each other. Castlederg, even with its particular sensitivities and issues, passed off peacefully."

On Saturday 5,000 Apprentice Boys held their annual parade in Derry/Londonderry without rancour and with a sense of celebration and cooperation.

By contrast on Friday we witnessed in Belfast scenes of unwarranted lawlessness by people intent on violence. No excuses justify the violence.”

11. Mr Allan said it could be taken from the press statement that the Castlederg parade, by comparison with others, appeared to pass off reasonably; what was Mr Kelly's view. Mr Kelly agreed and once the decision was made, the events during the day went off very peacefully.
12. Mr Kelly said that at the memorial stone, there were approximately 150/200 people, made up mainly from republicans and that there was no trouble in relation to his speech. Mr Kelly thought the people were pleased with his speech.
13. Mr Allan asked how did the speech get into the public domain. Mr Kelly replied it was the media; the media increased the tension of it, with him being an ex-prisoner etc. The media made it controversial in that it picked up on parts of the speech and they then went to political unionists to seek their views; it just escalated from there. It was printed in the Belfast Newsletter and played on the local news. When Mr Allan asked about You Tube, Mr Kelly replied he did not know it on was You Tube.
14. When asked about his speech, Mr Kelly said that he had used the speech many times before, and that he changes parts of it for each occasion. It was a scripted speech and significant preparation went into it. The speech was to welcome people, talk about the area, explain there was much hurt, that people died at a young age, that they had decided to fight for their community, and that they had died honourable people. He went on to say that the British and unionist people celebrate and commemorate their dead and that they should allow others to do the same. Towards the end of his speech he would always talk about dissidents – sending out the message that those who are involved in violence should desist.
15. Mr Allan asked whether some dissidents wouldn't be pleased with that comment and Mr Kelly informed him that he had received a number of death threats for saying things like that but he believes that is the way forward. For a republican to say they should desist is an important message, even more so coming from Mr Kelly who is well known, has been involved in fighting and is now saying the fighting is over. The essence of the speech in political terms is that they have achieved the political way forward.
16. Mr Allan asked whether any from the unionist side who opposed the parade. Mr Kelly replied in that one good example was Jim Allister. He

was there and he disagrees with the Good Friday Agreement, St Andrews Agreement, the Hillsborough agreement; he believes those agreements bring terrorists and others into Government and is totally opposed to that. Mr Allister is very open about what he says. Over 82% of people supported the Good Friday Agreement. The structures of that Agreement involved things which were hard for unionists to accept and also hard for the nationalists to accept. He referred back to his speech in that nationalists have the right to commemorate the same as anybody else.

17. In his speech he was trying to cover a serious of issues and say to dissidents that they are wrong. There is a democratic way forward. Things have moved on. The speech referred to dialogue with unionists and politics being the only way forward.
18. Mr Kelly went on to say that Sinn Féin is the only political party which has an outreach group for communicating with the unionists group, but the unionists don't have an outreach to nationalists.
19. There are several different prints of the speech, but it was agreed they should refer to the one that Mr Kelly placed in the Assembly Library. Mr Kelly mentioned that there was an error on page 2, the name "McKee" should have been "McHugh". There was a debate in the Assembly about Mr Kelly's speech and he put a copy of the full speech in the Library, as people were misquoting him.
20. Mr Allan referred to the statement Mr Kelly gave to the press on 16 November which was in the following terms –

"Mr Kelly said that his speech in Castlederg was a bid to revive talks with unionists in the town and also to inform dissident republicans that politics was the only way forward.

'In that speech I said that I was proud to be a republican and that we remember those who had given their lives for Irish freedom.

It also contained a message to unionism that dialogue was the only way to resolve the parades issues in Castlederg. There was also a message to dissidents that the period of war was over.

Unionism seems to want just one narrative of our history, but we will never agree on that history. However, we have to allow for everyone's different stories to be told and for people with opposing viewpoints to accept each other.

If we can move to that stage, then the opportunity is opened up for a shared future.

Mr Kelly said that despite the best efforts of unionist leaders to have the Castlederg parade banned, republicans would continue to honour their dead.

He added that the speech he delivered in Castlederg was one that he had made on numerous other occasions beforehand."

Mr Allan asked if these comments encapsulated what he wanted to say and did he stand by the comments. Mr Kelly replied that they were and he stood by them.

21. Mr Allan asked Mr Kelly did he want to add anything to what was said in the debate. Mr Kelly said that you can't put everything into a speech. He felt that political unionism was trying to make commemorations controversial and unacceptable. He went on to say regarding the flag issue, that in North Belfast in particular, only a handful (out of some 3,000 parades a year) were contentious but they caused big problems.
22. Mr Kelly said that he could rewrite that speech and be more specific about the dissidents, but when writing a speech you do it for the audience, you can't please everybody. He tries to balance it off so that you speak to your own audience first and balance it off by reaching out to others. He was speaking to a group of republicans.
23. Mr Allan asked on hindsight would he do anything differently, and the answer was no.
24. Mr Allan stated that there had been complaints to the police about Mr Kelly's speech and that they had written back to him (Mr Allan) saying that following careful consideration, and in consultation with both PSNI Legal Services Branch and the Public Prosecution Service, PSNI recommended no prosecution in relation the content of the speech made by Mr Kelly at the end of the Parade on the basis of there being no evidence of criminal conduct.
25. Mr Allan added that the Parades Commission had sent a letter to Mr Allan advising they are not aware of any material violence or disorder at the Castlederg parade. They did receive complaints about inappropriate displays of paramilitary insignia and have written to the organiser but as yet have not received a response.
26. Mr Kelly told him he did not know there would be no proceedings against him. He said that he is on the Policing Board and speaks to the police a lot. When asked why did he think the police did not tell him he responded if they felt they had to talk to him they would have done so, and evidently they felt there was no need.
27. Mr Allan said that the complaints alleged breaches of the principles set out in the Code of Conduct, duty to uphold the law, equality, promotion of good relations etc, and asked Mr Kelly for his views.

28. He replied that he could take them one at a time, but community relations jumped out at him in that any time a unionist politician talks about any of these issues he thinks that itself does damage to community relations. He then went on to say that part of the difficulty is that we are in a divided society and that they are trying to find ways on moving forward, to find balance between political differences. The Unionists want the maintenance of the UK, and Mr Kelly wants to pursue a united Ireland. Mr Kelly said he could talk about equality for a very long time.
29. Mr Allan asked Mr Kelly for his views, taking into consideration the broad thrust of the speech, in relation to Article 10 of the European Convention on Human Rights – freedom of expression. Mr Kelly responded in saying that you need to speak within bounds, there is a balance which he tries to keep, he defends his history. He says things that people do not agree with; he says them because they are his beliefs. He thinks the speech was about equality and about commemoration. He added unionism has a different view, unionism wants a single narrative. He went on to say it is important to have the ability to have different views and to accept there are many other narratives.
30. Mr Allan stated that the Code of Conduct provides that members are entitled to legally express any political opinion that they may hold but goes on to say that in doing so members should have regard to the Principles of Conduct and should not express opinions that manifestly conflict with these Principles. Mr Allan asked for Mr Kelly's comments.
31. Mr Kelly responded that you need to use common sense; he does not alienate people, he believes in a united Ireland and he needs to convince unionists that that is the best option for the people of Ireland. He said the difficulty is that every time someone makes a speech, someone will be looking for something in that speech so that it can be brought in front of the Committee on Standards and Privileges. The Committee could have a very busy time. Mr Kelly said he could have complained numerous times about what unionists have said in their speeches. Freedom of expression was so important, he said. Mr Kelly clarified that there was no detrimental reference to individual persons in the speech. Mr Kelly added that because there is privilege in the Chamber, unionists have said things but they wouldn't say outside of the Chamber. They have personalised it; they can be very personal in the Chamber. Republicans don't do that. What the unionists say, in other circumstances, would be defamation.
32. Mr Allan then asked Mr Kelly was there anything further he wanted to add and Mr Kelly said they had covered all issues.
33. Mr Allan thanked him for attending the interview, said the note of the meeting would be typed up and sent to him for his comments and asked that he return any comments within 14 days. The meeting then ended.



Northern Ireland
Assembly

Appendix 2

Minutes of Proceedings of the Committee relating to the Report

Wednesday, 5 March 2014

Room 21, Parliament Buildings

Present: Mr Alastair Ross (Chairperson)
Ms Anna Lo (Deputy Chairperson)
Mr Steven Agnew
Mr Cathal Boylan
Mr Declan McAleer
Mr Fra McCann
Mr Ian McCrea
Mrs Sandra Overend

In Attendance: Mr Paul Gill (Assembly Clerk)
Ms Ursula McCanny (Assistant Assembly Clerk)
Mr Jonathan Watson (Clerical Supervisor)

Apologies: Ms Paula Bradley
Mr Colum Eastwood
Mr Mervyn Storey

1.42pm The meeting commenced in closed session.

5. Correspondence on Complaints Against a Member

Members noted the Clerk's Paper and the report from the Acting Assembly Commissioner for Standards.

Mr Boylan declared an interest as having attended the event in question.

The Deputy Chairperson welcomed Mr Stuart Allan, Northern Ireland Assembly Commissioner for Standards, and invited him to brief the Committee on his report.

Mr Allan briefed the Committee on his report and answered questions from Members.

3.14pm The Chairperson, Mr Alastair Ross, joined the meeting.

3.19pm Ms Anna Lo left the meeting.

The Chairperson thanked Mr Allan for his briefing. The Chairperson also thanked Mr Allan for all of his assistance to the Assembly and wished him well in his retirement.

3.28pm Mr Allan left the meeting.

The Committee discussed Mr Allan's report.

Agreed: The Committee agreed with the finding of Mr Allan's report.

Agreed: The Committee agreed that the Clerk should draft a report on the matter, for consideration and approval at the Committee's next meeting.

[EXTRACT]

Monday, 10 March 2014

Room 21, Parliament Buildings

Present: Mr Alastair Ross (Chairperson)
Mr Steven Agnew
Mr Cathal Boylan
Ms Paula Bradley
Mr Colum Eastwood
Mr Fra McCann
Mr Ian McCrea
Mr Mervyn Storey

In Attendance: Mr Paul Gill (Assembly Clerk)
Ms Ursula McCanny (Assistant Assembly Clerk)
Mr Jonathan Watson (Clerical Supervisor)

Apologies: Ms Anna Lo

5. Consideration of a Report from the Acting Assembly Commissioner for Standards on complaints against Mr Gerry Kelly MLA

Agreed: Members discussed and agreed the draft Committee Report, as amended, and ordered that the report be printed today.

[EXTRACT]



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