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# FLAGS: TOWARDS A NEW UNDERSTANDING

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## 1. INTRODUCTION

This study is an attempt to see if any progress can be made on the vexed issue of flags in Northern Ireland. It was an issue that defeated the negotiators to the multi-party talks chaired Dr Richard Haass and Professor Meghan O’Sullivan in 2013. It found no resolution in the Stormont House Agreement of 2014, and the more recent accord, A Fresh Start, announced in November 2015, simply re-iterated the commitment of the Stormont House Agreement to set up a 15-person Commission on Flags, Identity, Culture and Tradition to explore the issue. This is now due to report in the latter part of 2017.

We had begun the study just after the Haass/O’Sullivan talks had concluded with the issue unresolved. At that point we had just published a study of the loyalist flag protest *The Flag Dispute: Anatomy of a Protest*, which we had co-authored with our colleagues Claire Dwyer, Katy Hayward, Peter Shirlow and Katy Radford. That was a case study in how anything that could go wrong did go wrong, and it pointed up the human, political and financial costs that follow from public policy failure.

It is of course easier to look back and explain how things went wrong than it is to look into the future and show how to get it right. That was the challenge we have taken on in this study. It would be wise however to immediately insert a modest disclaimer. We didn’t set out to find an all-encompassing solution, as we don’t believe that any definitive solution is possible. Rather, there has to be a constant testing of the ground, to see what forms of compromise the market might bear at any particular time. And, while we talk of the flags issue as if it were a single problem there are in fact two discrete problems that we set out to address: the official flying of flags on the headquarter buildings of district councils, and the unofficial flying of flags in outdoor spaces – or, as the problem is more often described, flags on lamp posts. Our intention has been to see what progress, if any, can be made on the two.

In order to inform our analysis we used opinion polls, focus group discussions, interviews with representatives of political parties, the Orange Order, the PSNI, the GAA, the Equality Commission, the Human Rights Commission, academic specialists in law and politics, chief executives and good relations officers from district councils, ex-combatant organisations and literally dozens of individuals from across the political spectrum. We were also given great assistance by a small advisory group which included retired civil servant Tony McCusker as chair, and also involved Louise Little from the Beyond Walls conflict transformation group, Charmain Jones from the Rural Community Network and Billy Gamble, retired civil servant.

We had to be careful in setting the terms for the study. The initial part is diagnostic, and seeks a clear understanding of the problem, before policy options are put forward. A more in-depth analysis of the sociology and psychology of the Northern Ireland attachment to flags is set out in our previous report; the focus here is very much on how policy might be tilted to lessen tensions. We also need to make explicit that while we look

at the problems created by flags in both the unionist and the nationalist communities, the heavier emphasis falls on unionist flags. This is simply because flags are much more central to unionist sensibilities. When the Institute of Irish Studies monitored flag display in Northern Ireland in the five years from 2006 to 2010 the ratio of unionist flags to nationalist flags was approximately 13 to 1 in that period. It is also the case that public controversies also tend to be heavily weighted towards the public display of the Union flag and other flags from within the unionist tradition. This doesn’t mean that the study ignores problems relating to the display of the Irish tricolour; on the contrary we go into these in some detail. The intention behind the study was to look at all problems relating to flags and we feel we have done this in a proportionate way.

The methodology for the polling exercise was agreed with the Lucid Talk polling agency. The polls were conducted over a period from the 24th September 2015 – 28th October 2015. A representative sample of 1,421 NI residents, aged 18+, were interviewed by telephone (approximately 90%), and direct face-to-face interview (approximately 10%). The sample of 1,421 was carefully selected to be demographically representative of NI residents within the targeted geographic area of NI. It is worth noting that the sample of 1,421 is larger than the normal 1,080 sample required for a representative sample of NI opinion. This was to allow representative and balanced samples to be obtained for each of the 11 NI Council areas. As well as the telephone and face-to-face interviews, there was an element of ‘deliberative polling’ – that is to say, two focus groups were convened of poll participants to test if people’s responses to questions changed in any way following a discussion of the issues.

The key findings of the polls were published in a two-page spread by the Belfast Telegraph on the 7<sup>th</sup> December 2015, and three follow-up articles were published in the newspaper’s online Debate section in January 2016, prompting a large volume of responses. The audited figures from the Belfast Telegraph for ‘full read’ (i.e. those who stayed on the page long enough to fully read the article) were as follows: 7,642 for the first article, 15,254 for the second, and 11,757 for the third. The comments left by these readers helped enrich our data collection on public attitudes.

In short, this study has drawn on a very wide range of sources, and taken opinion from a very diverse range of people. We are extremely grateful to all those who gave up their time to assist the project (see Appendix 2 for full list). We are also extremely grateful to the funder of the project, the Community Foundation for Northern Ireland. Without that support this project would not have been possible.

In thanking all of these people and organisations we should emphasise that they bear no responsibility for conclusions of the report or the opinions expressed. The authors alone are responsible for those.

*Paul Nolan, Dominic Bryan, February 2016.*

## 2. THE CONTEXT

### 2.1 The trouble with flags

The importance attached to flags in Northern Ireland tends to puzzle those from countries where flags do not excite similar passions. Outside observers also express disappointment that the peace process has still not managed to resolve what, on the face of it, appears to be a minor issue but one which somehow manages to fuel sustained bouts of civil unrest. It is of course not the only issue which generates political heat. In the period since the signing of the Good Friday Agreement in 1998 there have been disputes over images on banners, over murals on gable ends, over the design of the police badge, over the wearing of sports tops, over statues, over commemorations, over plaques, over poppies and the absence of poppies, over the Easter Lily, over the names of streets, towns and cities and, most frequently, over marching.

These are all forms of symbolic contestation, and they have blossomed in importance since the paramilitary ceasefires of 1994. They are, in a sense, the continuation of war by other means. The essential conflict remains the same as before the ceasefires: between those who feel they have a British identity and those who feel they have an Irish identity. For some people in Northern Ireland (or the north of Ireland) the 1998 Agreement offered a way out of that binary choice. Instead of being one or the other, any citizen could choose to be both: that is, to be both British and Irish at the same time, free to carry two passports as an expression of a more open form of national identity. In the 2011 census only 65% of the population chose an exclusive national identity. An exclusively British identity was chosen by 40%, and an exclusively Irish identity was chosen by 25%. A new option, Northern Irish, was selected by 21%, and the remaining 14% was divided between 'other' and 'none'.

That softening around the centre did not result in a softening at the harder edges; in fact, the reverse has proved to be the case. Those with a strong sense of attachment to a particular national identity have felt alarmed by the erosion of the older certainties, and a new assertiveness has erupted on symbolic issues, particularly those like flags and parades that are played out in the public space. They act as a visual shorthand, a way of expressing strong feeling about a heritage that is felt to be under threat. The process has not been experienced in a symmetrical way by the two main communities. There are issues with flags and parades in the nationalist community, but these are dwarfed by the enormity of these issues within the unionist community.

Why should this be so? Put simply, the nationalist community does not feel its cultural identity under threat in the same way that the unionist community does. Ever since the first plantations at the beginning of the 17<sup>th</sup> century a central narrative of the Protestant community has been one of besiegement. In recent times this has been accompanied by a sense of loss, the feeling that the Ulster Protestant identity has lost its security because of the encroachments of an assertive

Irish nationalism. The power of this narrative is enhanced by the fact that a complementary narrative exists within the nationalist community: one which emphasises the gains that have been made and which looks forward to bolder advances in the future.

Demographic change seems to confirm both narratives. Less important than the actual ratios of Protestants and Catholics at the time the census was conducted is the direction of travel it seems to confirm. When the Northern Ireland state was first established the unionist population took comfort in its seemingly unassailable numerical advantage. The first post-partition census, conducted in 1926, showed that Northern Ireland has a Protestant/Catholic ratio of 66% to 34%. The 2011 census shows a changed picture with the two population groups moving towards a near equivalence: 48% come from a Protestant background and 45% from a Catholic background. The change in population ratios was most pronounced in Belfast, a city that throughout its history had always had a Protestant majority. The census figures show that the majority/minority positions have been reversed. Within the district boundaries of the new, enlarged city of Belfast the population breakdown is as follows: Catholics 49%, Protestants 42% and Others 9%. This was a seismic shift and long before the official figures were known the unionist populations of the city sensed the movement of the tectonic plates beneath their feet.

The crunch moment came on 3 December 2012 when Belfast City Council voted to take down the Union flag and, instead of adhering to the practice of flying it 365 days a year, it opted to fly it only on 18 designated days. The protests which followed were a howl of rage from the loyalist community. From the start of the protest in December 2012 through to the end of March 2013 there were 2,980 incidents, and 55,521 'acts of participation' - in one night alone there were 81 different 'seats of protest'. Most of the demonstrations were peaceful, but there were some extremely violent incidents, with the PSNI taking the brunt of the injuries. In total 160 police officers were injured in what was one of the most serious challenges to public order policing in Europe in recent years. The cost of the policing bill to the public purse was £21.8 million.<sup>1</sup>

In the end the protestors failed in their main aim. The flag did not go back up. But if that one flag stayed down at Belfast City Hall thousands more went up elsewhere. The summers of 2013, 2014 and 2015 have seen a sharp increase in controversies relating to flags. There have been rows over paramilitary flags, over the spread of flags into neutral areas or into arterial routes that run through Catholic areas, over the use of the Israeli and Palestinian flags, and in July 2015, over the brief appearance of swastikas in Carrickfergus and, in Craigavon, the flag of apartheid –era South Africa. The problem is not going away. If anything, it appears to have become more intractable.

<sup>1</sup> See Nolan, Bryan, Dwyer, Hayward, Radford and Shirlow (2014) *The Flag Dispute: Anatomy of a Protest*, Institute for the Study of Conflict Transformation and Social Justice, Queen's University Belfast.

It certainly defeated the best efforts of Richard Haass and Professor Meghan O’Sullivan, the chairs of the multi-party talks which ran from September 2013 to January 2014, concerning the issue of flags. In their final report Haass and O’Sullivan said that ‘This area proved the most difficult in which to reach consensus: there was no accord on policies surrounding the flying of flags on official buildings or the unofficial display of flags and emblems in public space’. Indeed, the report admits that ‘some members wished to forgo this area of the Panel’s work entirely.’ In the end, the report concludes that what makes the symbolic issue of flags so difficult is that the problem is located in the fundamental nature of the divide:

Without a larger consensus on the place of Britishness and Irishness – for which there must be a protected place alongside other identities, national or otherwise, represented in our society – we could not reach a common position on the flying of flags and the display of other emblems, which are in fact manifestations of those identities.<sup>2</sup>

The history of Northern Ireland bears out the idea that flags have always been at the core of the hard knot of its internal conflict.

## **2.2 The history of flags in Northern Ireland**

When the Northern Ireland state was first created its identity as part of the United Kingdom found an easy symbolic expression through the use of the Union flag. The flag that flew in England, Scotland and Wales would also be the flag of the new state. The fit however was less than exact because the actual design of the Union flag came about as a conscious attempt to symbolise the links not just between England, Scotland, Wales and the north of Ireland but with the whole of Ireland. It was the symbolic expression of the Act of Union of 1800, a constitutional arrangement which was in part a reaction to the first major republican attempt at secession, the rebellion of the United Irishmen in 1798. Bringing the different national identities together into one rectangle presented a very particular graphic design challenge. The design is complex and distinctive. The Cross of St George, the Cross of St Andrew and the Cross of St Patrick could only be yoked together by making the point of intersection slightly off-centre. This allows the three flags to sit in relation to each other in such a way that none of the three dominates the other two.

The Stormont Parliament that was established in 1921 did not feel the same need to harmonise national identities. The Union flag was promoted, and understood, as the expression of a British identity that stood in opposition to an Irish identity. That Irish identity had found a new form of expression in the Irish tricolour – though it is not strictly speaking correct to describe the tricolour as a new flag in 1921. It had already been adopted by the Young Ireland movement in 1848, the three vertical bars modelled on the flag of the French republic. Following

the failure of the would-be revolutionaries in the 19<sup>th</sup> century the Tricolour faded from view, but its appearance on the GPO in Easter 1916 helped launch it on its journey to become the symbolic expression of the Irish republic. The main flag hoisted over the GPO by Pearse and his men was in fact the more traditional representation of Ireland as a golden harp against a dull green ground, with the words ‘Irish Republic’ painted in gold letters. A third flag, the Starry Plough, which had been used by the Irish Citizen Army was hoisted by James Connolly on the Imperial Hotel across the street from the Post Office. Up to that point the Tricolour had been seen as a factional flag, associated first with the Irish Republican Brotherhood and then later with Sinn Féin, but once the Easter Rising seized the sympathies of the Irish people it was the Tricolour that came to express the new mood – not yet the symbol of the state, but a flag which summoned up the spirit of rebellion. Once the Free State administration took over the reins of government in 1922 it moved to incorporate the Tricolour as the flag of the nation – partly to forestall the anti-Treaty forces using it as a symbol of their resistance to the new order. From 1922 through to 1937 however it had a *de facto* rather than a *de jure* recognition – it was only in 1937 with the passing of the Constitution Act that the Tricolour became the official flag of the state.

In the country at large however the display of the Tricolour became an immediately popular response to the Easter Rising and its unofficial use extended across the whole island, including the northern counties. As Bryson and McCartney<sup>3</sup> note, “The speed of the acceptance of the Tricolour is remarkable...an indication of the impact of the Easter Rising and the response by the British administration”. In his history of this period, *The Republic*, Charles Townshend describes ‘the explosion of tricolour flags in 1917-18’. The ‘craze’, as he describes it, led to the proliferation of flags everywhere. In Galway, for example, they were ‘flown high from telegraph poles, buildings and high trees’. The Royal Irish Constabulary (RIC) tried taking the flags down but were fighting a losing battle. In Abbeydorney, after the flag had been removed several times, the Tricolour was painted on to a piece of sheet iron and hoisted onto the steeple of the Abbey. In Armagh, the IRA leader Frank Aiken’s path to leadership ‘began with hoisting a flag opposite the RIC station in Camlough’.<sup>4</sup>

Following partition, the display of the Irish tricolour was not tolerated by the Stormont government. There was no specific legislation on flags, rather matters relating to flags and emblems were dealt with under the common law relating to public order which licensed police to act in any situation where they felt there was likely to be a breach of the peace. The Civil Authorities (Special Powers) Act of 1922 was used to control

<sup>2</sup> <http://www.northernireland.gov.uk/haass.pdf>

<sup>3</sup> An excellent account of the origin of the Union flag and the Irish tricolour is given in: Lucy Bryson and Clem McCartney, (1994) *Clashing Symbols? A report on the use of flags, anthems and other national symbols in Northern Ireland* Institute of Irish Studies: Belfast

<sup>4</sup> Charles Townshend (2013) *The Republic: The fight for Irish Independence, 1918-23* p.31 Penguin: London

the parades, demonstrations and symbolic displays deemed to be a threat to the state. In the 1930s this legislation was used to restrict republican events and to discourage Irish nationalist displays. This bias continued to find expression in legislation which de-legitimised any display of nationalist culture. For example, the Public Order Act (Northern Ireland) 1951 introduced regulations for parades that were 'non-customary' - in other words it was not aimed at customary, that is traditional, loyal order parades.

The use of the Union flag, however proliferated around the development of loyal order parading events, particularly the Twelfth of July, which in 1926 was made into a Public and Bank Holiday.<sup>5</sup> In addition during the 1930s Black Saturday (last Saturday of August) and a range of events organised by Apprentice Boys of Derry grew in prominence. Displays of bunting across streets and the displays of flags on houses, Orange Aches and Halls were prominent. It is worth noting that these annual decorations of flags and bunting used materials that were comparatively expensive and because of that they were taken down to be used in following years.

The coronation of Queen Elizabeth II in 1953 produced a series of disputes which placed the flying of flags on the Stormont agenda. One incident seems to have particularly prompted the concern. After three houses in Derrymacash near Lurgan put up Union flags, Catholic neighbours put up 11 Tricolours. The police persuaded everyone to take down their flags so as not to escalate the situation.<sup>6</sup> The decision angered some hard-line unionists and in response to their anger the Prime Minister, Sir Basil Brooke, promised 'that the Union flag will fly in any part of this country'. To further reassure the unionist backbenches and to provide a legislative framework the Flags and Emblems (Display) Act (Northern Ireland) was enacted in 1954. Part 1 of the Act made it a criminal offence to interfere with a display of a Union flag. Part 2 of the Act empowered police officers to take action against anyone using a flag or emblem in a way that might cause a breach of the peace. The Irish tricolour is not named in the legislation - apologising for this the Minister for Home Affairs, G. B. Hanna, explained that while this would have been his wish he was not empowered to do so as this was a matter of foreign policy reserved for the Westminster government. The message to the police however was a clear one: any display of the Tricolour was to be treated as a breach of the peace.

The burden of removing Tricolours wherever and whenever they appeared was not one that the RUC welcomed. A senior officer tried to persuade Home Affairs Minister against the legislation (Patterson 1999) arguing for a more pragmatic approach.<sup>7</sup> There were those on the nationalist side who

shared that perspective. For example, the Nationalist Party MP for South Down Joseph Connellan, writing in 1957 said that the failure of the IRA's border campaign showed that the majority of the Catholic population was opposed to violence, but that over-zealous policing could incite unnecessary hostilities:

...interference with trifling events could create very bad feeling. It would be better to ignore the carrying of the Tricolour in areas which are predominantly nationalist and where no offence could therefore be given to its display.<sup>8</sup>

On the other side of this argument were those unionists ever vigilant for any display of the Tricolour and who were determined to hold the police to account. At times the vigilance was so extreme as to seem self-parodying. In 1955 the Unionist MP for Londonderry, Sir Ronald Ross, spoke in the House of Commons to raise his concern that planes arriving at Aldergrove Airport from Dublin might have the Tricolour on display. A more serious development came when the Independent Unionists, a proletarian, anti-Big House political movement with its base in the Shankill Road began organising rallies in the Ulster Hall to protest about 'appeasement' by the unionist establishment on issues that included, *inter alia*, the need to defend the Union flag. Soon a new champion emerged to spearhead the new discontent. A young firebrand preacher called Rev Ian Paisley organised rallies in the Ulster Hall to demand that the Union Flag be flown over all public buildings. In their biography of Paisley, Moloney and Pollak<sup>9</sup> describe an incident which captures the mood of the time:

After one rally in 1958 Paisley led a large crowd to Henry Street in the mixed Catholic/Protestant docks area where, with a large force of nervous RUC men looking on, they hoisted a Union Jack over a children's play area and burned the Irish Tricolour. The agitation paid off the next year when Belfast Corporation ordered all schools in the city to fly the union flag.

As a number of commentators have pointed out the RUC's application of the Flags and Emblems Act was remarkably inconsistent, veering between a pragmatic blind eye to displays of the Tricolour to an assiduous searching out of any instances where the law could be used against nationalist cultural displays.<sup>10</sup> In a series of episodes in the early 1960s it was never clear why on some occasions use of the Tricolour led to police action and on other occasions it did not.

5 Bryan, Dominic (2000) *Orange Parades: Ritual, Tradition and Control* London, Pluto Press. p.36

6 Bryson and McCartney, *ibid.* P.145

7 Patterson, H. (1999) 'Party versus Order: Ulster Unionism and the Flags and Emblems Act' *Contemporary British History* 13(4): 105-129

8 Cited in Richard English (2006) *Irish Freedom: the History of Nationalism in Ireland*, p.364 Macmillan: Basingstoke

9 Ed Moloney and Andy Pollak (1986) *Paisley*, p.83 Poolbeg Press: Dublin

10 See Jarman, N. (1997) *Material Conflicts: Parades and Visual Displays in Northern Ireland*. (Oxford: Berg); Neil Jarman and Dominic Bryan (1998) *From Riots to Rights Nationalist Parades in the North of Ireland* Coleraine, Centre for the Study of Conflict; and Bryson and McCartney, *op.cit.*, pp146-149.

Perhaps the most infamous use of this legislation was in the autumn of 1964, when a tricolour was displayed in the window of the election headquarters of the republican Billy McMillen. The building was in Divis Street at the bottom of the Falls Road and the sight of the Irish tricolour in that solidly nationalist area was unlikely to cause any breach of the peace. Paisley however promised just that, threatening to go into the area to remove the flag unless the RUC removed it first. On the 1st October the police moved in to take the flag from the front window of the building, and the subsequent rioting was the worst the city had seen since the 1930s. One of those present on the nationalist side was the young Gerry Adams, and the incident is also noteworthy for the fact that it was the first time he and Ian Paisley, two men who were to dominate politics in Northern Ireland for decades to come, crossed paths.

As Paisley continued his rise, those who followed him on marches, rallies and demonstrations tended to drape themselves in the Union flag – though in a gradual shift, as hardline unionists became more and more disillusioned with what they saw as the appeasement policy of successive British governments, a new flag came to express the increasingly ethnic identity of Ulster loyalists. The Ulster Banner, or the Ulster flag, as it is more often referred to, became the flag that symbolised loyalist discontent. This flag was introduced at the time of the Queen's coronation in 1953. Bryson and McCartney explain that it was not intended to replace the Union flag, but to supplement it as a 'distinctive Ulster symbol'.<sup>11</sup> The banner has gone through various changes since then but retains symbols that are expressive of loyalist values - the Crown, the Star of David, and the Red Hand of Ulster – set against the Cross of St George. Once Stormont was prorogued in 1972, and following the Northern Ireland Constitution Act of 1973, the Ulster Banner ceased to have any official standing, but there followed a huge increase in its unofficial use as a symbol of loyalism and, correspondingly, a decrease in the attachment to the Union flag.

That process was accelerated by the Anglo-Irish Agreement of 1985, when once again unionism felt it had been betrayed by the British government. The Unionist MP Harold McCusker decided he would never fly the Union flag again.<sup>12</sup> The increasingly inward-looking trend within loyalism could be seen in the proliferation of new flags: some which were embellishments of the Ulster flag, some which commemorated historical events, and very many which signalled allegiance to paramilitary groups. The ceasefires of 1994 and the signing of the Belfast Agreement in 1998 did not diminish the display of flags. The fact that the main loyalist paramilitary organisations had signed up to the Agreement did not result in any moderation of this form of ethnic assertion. On the contrary, it was in the period immediately after the peace accord that

the 'flag explosion' occurred. In their study *Public Displays of Flags and Emblems* Bryan and Gillespie<sup>13</sup> note that the quantum leap in the number of flags first manifested itself in Newtonabbey in 2000. The local UFF had put up 1,500 flags in the area. As they explained it, the increase was 'because of daily events and the need to promote Protestant culture generally'.<sup>14</sup>

There were other factors which help explain what made flags so ubiquitous in loyalist areas at that time. The year 2000 also saw violent feuds between the UDA and the UVF and flags served to mark out territory - very literally, lamp post by lamp post. A second reason – and one which is still important today – is that global production methods enabled flags designed on laptops in Belfast or Portadown to be mass produced at low cost in China or Taiwan. This has led not just to an increase in the number of flags; it has changed the nature and significance of the flag as an object. As Bryan and Gillespie observe, "In the past people would buy a flag as a comparatively expensive item and display it on their house but take it in to be re-used on future occasions. Now large numbers of cheap flags are purchased and left to become tattered on lamp posts".<sup>15</sup>

In December 2012 Northern Ireland saw the beginning of the second 'flag explosion', this one much bigger than the one that began in 2000. The decision by Belfast City Council to take down the Union flag at the City Hall had an unintended consequence: while one flag came down thousands and thousands more flags went up. A further unexpected development was the restoration of the Union flag as a symbol of loyalist defiance. It has not displaced the other myriad loyalist flags, but it has regained a centrality it had lost. In the summer of 2015 it was positioned alongside the Ulster flag on a joint flag stanchion on arterial routes throughout Northern Ireland. The loyalist flag protest may not have succeeded in getting the flag restored to its 365 days a year position at Belfast City Hall, but every summer since then Northern Ireland has been festooned with flags. For some, that is a happy situation, for others a deeply troubling one.

### 2.3 The evolution of policy

There is at present no clear legislative framework in Northern Ireland to govern the display of flags in public spaces, nor is there an agreed set of customs to determine what is or is not acceptable. Instead of coherence there is a patchwork of laws (not always enforced), legislative gaps, and contested practices. Any attempt to understand the force field in which decisions are made must first understand the context in which policy has evolved since the Belfast Agreement of 1998. Given the importance that flags have come to assume in the period since then, it is surprising how little they feature in the actual

<sup>11</sup> Op.cit

<sup>12</sup> Steven McCafferty (2013) 'Some in Ulster still say no to Margaret Thatcher' *The Detail* <http://www.thedetail.tv/articles/some-in-ulster-still-say-no-to-margaret-thatcher>

<sup>13</sup> Dominic Bryan and Gordon Gillespie (2005) *Transforming Conflict: Flags and Emblems* Institute of Irish Studies: Belfast

<sup>14</sup> BBC website, 13/5/2000 'Loyalist paramilitary flags explosion' [http://news.bbc.co.uk/1/hi/northern\\_ireland/799804.stm](http://news.bbc.co.uk/1/hi/northern_ireland/799804.stm)

<sup>15</sup> Bryan and Gillespie, op.cit.

document. In fact, flags do not receive any direct mention at all. The closest the Agreement comes to mentioning the issue is in Para 5 which deals with the general issue of flags and symbols:

All participants acknowledge the sensitivity of the use of symbols and emblems for public purposes and the need in particular in creating new institutions to ensure that such symbols and emblems are used in a manner which promotes mutual respect rather than division. Arrangements will have to be made to monitor this issue and consider what action might be required.

Given the scale of the problems that the Agreement set out to resolve – decommissioning, reform of policing, north-south arrangements and the release of prisoners among others – it is perhaps not surprising that flags and emblems featured so low in the agenda. As soon as the new power-sharing arrangement came into being, however, the issue emerged as a neuralgic point for both nationalism and unionism. Two Sinn Féin members had been given departmental oversight: Martin McGuinness became Minister for Education, and his colleague Bairbre de Brun became Health Minister. Both instructed their civil servants that, in a break with custom, the Union flag would not fly outside their offices. Unionists were incensed, saying this decision represented a breach of the consent principle that underpinned the Agreement. Sinn Féin responded that the decision was in line with the parity of esteem principle which was the cornerstone of the Agreement.

The Secretary of State, Peter Mandelson, was vexed by the stand-off which he saw as an unnecessary distraction from the more serious issues in implementing the Agreement and attempted to dispatch the problem by introducing the Flags (Northern Ireland) Order 2000 and the Flags Regulations (Northern Ireland) 2000. In essence, the new legislation sought to provide clear and authoritative guidance and, since it was Westminster legislation, it could only be repealed by further legislation in the House of Commons. The government buildings where the flag should fly were specified as were the number of designated days (18).

That might have settled the matter but for two omissions. The legislation characterised government buildings as those which housed members of the NI Civil Service, but this definition did not include district councils, which is where the flags issue was to erupt with force. Years later, after Belfast City Council voted to take down the Union flag, former First Minister David Trimble, who had put pressure on Mandelson to take action, reflected ruefully on the legal gap that had been created: “In hindsight, that legislation should have covered civic buildings. But it wasn’t seen as a problem at the time which, of course, it is now”.<sup>16</sup>

The other blind spot concerned unofficial flags, or, as they are sometimes described, flags on lamp posts. The year 2000, when the Flags Order was introduced, also happened to be the year that saw the start of the ‘flags explosion’, described earlier. The appearance of Union flags, Ulster flags and, most particularly, of paramilitary flags on arterial routes that have sparked questions about the legal restraints that could be placed on such displays. On 18 July 2002 the Minister of State for Northern Ireland, Jane Kennedy MP, responded to a question from the Liberal Democrat MP Lembit Opik about the use of legal remedies in relation to paramilitary symbols in Northern Ireland. In reply the Minister stated:

It must be emphasised that any such prosecution ... is strictly dependent on the individual circumstances of the case. For instance what may intimidate, provoke etc. a particular reaction at an interface, may not have the same effect in the middle of a Loyalist or Republican estate.<sup>17</sup>

This captures the essence of the problem: the meaning that attaches to the display of any flag is context-specific and legislation cannot adequately cover the range of contexts in which such displays occur.

In the period since the Good Friday Agreement three initiatives have been tried: one, a broad policy framework called *A Shared Future*; two, a *Flags Protocol* designed to coordinate the efforts of all the agencies with any responsibilities for flags; and three, the monitoring of flags and emblems as recommended in the 1998 Agreement. Unfortunately, the monitoring conducted by the Institute of Irish Studies<sup>18</sup> arrived at the conclusion that the other two initiatives had failed to deal in any meaningful way with the problem.

The policy document, *A Shared Future*, issued in 2005, set out an ambitious plan for community relations in Northern Ireland. It presented a vision of a society ‘founded on partnership, equality and mutual respect’. It dealt directly with the issue of flags but recognised the complexity of the signals that they send out and the meanings that are taken from them.

Whilst many people would be in favour of clearer guidelines or rules of enforcement around the flying of flags or painting of kerbstones nearly all those interviewed stressed the importance of changing the context within which displays of symbols take place. It is vital to understand why people feel the need to make symbolic displays. It has been clear in many of the cases studied that flag flying was part of a tit-for-tat display around territory. As such, improved relationships around interfaces can see the reduction of flags or changes in the murals (Para 2.1.4, p.19)

<sup>17</sup> Hansard, 18 July 2002.

<sup>18</sup> Bryan, Stevenson, Gillespie, and Bell (2010) *Public Displays of Flags and Emblems Survey 2006-2009* Institute of Irish Studies: Belfast.

The emphasis on the need to understand the societal processes did not prevent the authors of the document from putting forward recommendations for direct action in relation to flag displays. A *Shared Future* makes it clear that practices legitimising illegal organisations and effectively threatening communities are unacceptable. A range of actions are proposed in the document:

- In town and city centres and arterial routes and other main thoroughfares 'the display of any flags on lamp posts should be off limits.
- The removal of all paramilitary flags.
- The control of flags and emblems in sensitive areas (near buildings such as schools, hospitals and churches) .
- That popular flying of flags for commemoration and celebration should be limited to particular times and dates.

A range of agencies, including the Community Relations Council, the Department of the Environment (Regional Development) and others, were seen to be key to the success of the strategy as a whole, but it was the Flags Protocol (discussed later in this document) which was given the central role on operational issues.

Other governmental efforts have been made to formulate policy. In 2012 the Office of the First Minister and Deputy First Minister issued a consultation document *Cohesion, Sharing and Integration* designed to put a new community relations strategy in place (the Assembly had never embraced *A Shared Future* which was seen by the Executive as a direct rule programme). On the subject of flags the consultation document stressed the importance of removing "threatening and divisive symbols such as paramilitary flags, racist and sectarian graffiti, paramilitary markers and territorial markers, where these are used in an attempt to intimidate". The language seems strong but the commitment is only to remove markers where it can be shown that the intention was to intimidate – as opposed to allowing the judgement be made by those who feel intimidated. In the event, this measure was never put to the test as the negative response to the *Cohesion Sharing and Integration* consultation document resulted in its withdrawal.

It was not until May 2013 that a community relations policy document was finally released under the title *Together: Building a United Community*. The objectives of the document are broad in their sweep, but a number of 'wicked' issues were bracketed together to be dealt with by an all-party group. The commitment was made to:

Establish an All Party Group with an independent chair, to consider and make recommendations on matters including parades and protests: flags; symbols, emblems and related matters; and the past.

The charring of the all-party group was undertaken by Richard Haass and Professor Meghan O'Sullivan and the discussions

ran through from September 2013 to December that year, before collapsing in failure on New Year's Day 2014. Haass and O'Sullivan attempted to bring some fresh thinking to the issue, at one point suggesting the idea of a new flag for Northern Ireland, an idea rejected forcefully by all the parties. The final, failed draft produced by Haass and O'Sullivan said parties reached "no agreement" on proposals regarding the flying of flags at government buildings and official sites. Those proposals included keeping the Union flag at City Hall on designated days only, a new flag for Northern Ireland and the prospect of a 'circumscribed role for the sovereign flag of Ireland in conjunction with the Union flag'. Attention had also been paid to unofficial flags, but again with no agreement 'other than reaffirming that paramilitary flags and other paramilitary displays must be banned'. In the absence of any solutions the Haass/O'Sullivan draft concluded with a weak recommendation for a Commission on Identity, Culture and Tradition. The primary function of this Commission would be 'to hold structured discussions in public throughout Northern Ireland on a wide variety of issues related to identity, culture, and tradition'.

The Haass/O'Sullivan talks never escaped from the shadow of the loyalist flag protest. The political temperature remained too high for compromises to be considered. The fact that a number of the best-known flag protestors were actually in the Stormont Hotel during the negotiations, and were consulted by members of the unionist negotiation teams, also served to limit the scope for any new initiative.<sup>19</sup>

The next attempt to deal with the issue came with the Stormont House Agreement. This time the main focus for the parties was not to do with issues of symbolic contestation, but with the crisis arising from the failure to set a budget. In December 2014 the parties announced that agreement had been reached on welfare reform and also on the issue of dealing with the past, but the twin issues of flags and parades were given only cursory attention in the document. A 15-person Commission on Flags, Identity, Culture and Tradition was to be established by June 2015 with a brief to report within 18 months. No further detail was supplied and in this bare form the proposal sounded very much like the Commission proposed by Haass/O'Sullivan. As *Belfast Telegraph* columnist Brian Rowan put it 'the issue of flags is parked more or less where Haass left this issue some 12 months ago'.<sup>20</sup>

The subsequent failure by the parties to implement the Stormont House Agreement led to additional prolonged negotiations throughout 2015, resulting in a further package agreement called *A Fresh Start* in November of that year. This re-affirmed the paragraph in the *Stormont House Agreement* for a Commission on Flags, Identity and Culture. The new timeline sees the Commission being established in March 2016 and reporting by November 2017.

<sup>19</sup> See Jamie Bryson (2014) *My only crime was loyalty* A Kindle publication: Belfast, and Nolan et al, op.cit pp 130-131.

<sup>20</sup> *Belfast Telegraph*, 24 December 2014

## 2.4 The legal framework

The legal context of flags in Northern Ireland is, generally speaking, quite different from that in other parts of the UK – even where, as with the case of the Flags (Northern Ireland) Order 2000, the governing legislation comes from Westminster. The cultural meaning of flags is also quite different and within the UK has changed significantly in recent years. Concerned by the increasing identification of the Union flag with the extreme right, British governments have tried in recent years to reclaim it as a flag of mainstream British identity. Speaking on this issue in 2006 Gordon Brown said, ‘The union flag should be a symbol of unity around our values...and we should assert that the Union flag is for tolerance and inclusion’. He frequently used the Union flag as the visual background whenever he spoke, and in 2007 decided to encourage local as well as central government to display it more, saying: “When I came into government I realised that you could only fly the flag on 18 days in the year and I thought that was wrong.”

The Conservative Party has continued to develop this as a policy direction. The green paper, *The Governance of Britain* issued in July 2007 included provision for consultation on altering the guidelines for the flying of official flags. Approximately 60 % of those surveyed said they would like to see the Union flag flown on all government buildings 365 days a year. As a result new guidelines were issued in March 2008 which made it explicit that the Union flag could be flown from government buildings all year round and not just on the 18 designated days. In November 2012 the Department of Communities and Local Government followed this up by introducing new liberalised regulations which widened the range of flags that could be flown from official buildings. The hierarchy within the range of flags is tightly prescribed and follows this order: Royal Standards, the Union flag, the flag of the host country (England, Scotland or Wales), flags of other nations, the Commonwealth flag, the European Union flag, county flags, flags of cities or towns, banners of arms and house flags.

The plethora of flags that can be flown on official buildings in England, Scotland and Wales makes it difficult to make comparisons with the policies of district councils in Northern Ireland, where the issue has focused almost exclusively on the flying of the Union flag. A previous study by Bryan and Gillespie in 2005 showed that, for example, Newcastle-Upon-Tyne the Union flag, the EU flag and the council flag all flew 365 days a year while in Dundee the Union flag flew alongside the Saltire and the city flag.

As of January 2016 the situation in Scotland has become even more complex. Whilst the Saltire, Union flag and European flag are flown daily from the Parliament building new regulations require that ‘the Saltire must be flown in the superior position, with the Union flag in the second superior position and

the European flag in the third’.<sup>21</sup> These new regulations, expressive of an increasingly confident Scottish nationalism, dictate a complex set of protocol which sometimes sees the Saltire flown when the Union flag is not. There is now a range of policies on council buildings around Scotland but in general the Scottish Saltire is flown everyday with the Union flag and other flags flown on designated days.

The liberalisation in England that that came with the 2012 regulations has also served to make the picture more jumbled than before as the regulations are permissive rather than prescriptive. Councils, along with government offices, are given freedom to fly more flags but they are not required to do so by law. Indeed, while Prime Ministers Brown and Cameron appeared decisive in their promotion of the flag beyond the 18 designated days, there was nothing in the previous regulations to prevent the flying of the flag 365 days a year. It was simply a convention, albeit one widely adhered to, that the Union flag flew on particular dates, mainly royal birthdays and significant anniversaries, and that historic practice had taken on the force of tradition.

The Conservative/Liberal Democrat coalition government, and more latterly the Conservative government, have not relied entirely on legislation but have also used ‘nudge’ methods to promote the flag. For example, David Cameron flew the Union flag over Downing Street during the World Cup in 2014. This was done very consciously to promote a ‘one nation’ sense of shared national identity (even though only England had qualified), partly as a way of responding to the debate on multiculturalism, and partly as a response to the growth of Scottish nationalism north of the border. As part of this drive the British government announced in November 2014 that the flag would be incorporated in a new design for driving licences, but made it clear that this would not be applied in Northern Ireland because of ‘the particular sensitivities surrounding symbols in the Province’. This decision is in line with the general statement of policy given in 2007:

There are particular sensitivities in Northern Ireland. The flying of flags there is governed by the Flags Regulations (Northern Ireland) 2000. The Government believes this is the most appropriate way to deal with the matter.<sup>22</sup>

To say that there are ‘particular sensitivities’ in Northern Ireland is something of an understatement, but the accompanying statement that flying of flags is governed by the Flags Regulations (Northern Ireland) 2000 manages to overstate the degree of regulation. While it is correct to cite this as the main piece of legislation in Northern Ireland, it is also correct to see it as limited in its scope as it deals only government departments. A much wider set of laws, rules and regulations

<sup>21</sup> See <http://www.scottish.parliament.uk/abouttheparliament/54382.aspx>.

<sup>22</sup> *Governance of Britain, 2007*, CM 7170, p.58.

impact upon the display of flags and they involve a wide range of agencies, with a diverse range of powers.

### The legal position on flags in Northern Ireland:

#### a) On government buildings

As described previously, the Flags (Northern Ireland) Order 2000, and the subsequent Flags Regulations (Northern Ireland) 2000 relate only to government buildings. A government building is defined in the Order as follows: "A building is a government building for this purpose if it is wholly or mainly occupied by members of the Northern Ireland Civil Service." Seven buildings are specified, six in Belfast and one in Bangor Co Down. The Belfast buildings are: Adelaide House, Castle Buildings, Churchill House, Clarence Court, Dundonald House, Upper Newtownards Road, Belfast, and Netherleigh House. The Bangor building is the home of the Department of Education, Rathgael House. The Regulations document contains a schedule of the 15 designated days when the flag is to be flown (see Appendix 2). The days were not those specified by the Department of Culture, Media and Sport but a bespoke list devised by the Secretary of State. For example, in a nod to nationalism St Patrick's Day was included (though it is not clear that nationalists would want to see St Patrick's Day celebrated by a display of the Union flag). In 2002 an amendment was introduced. Following the deaths of the Queen Mother and Princess Margaret their birthdays were omitted while three extra days were included in that particular year to celebrate the Queen's Jubilee.

The most glaring omission in the Regulations concerns district council buildings. There was no rationale behind the omission, it was simply an oversight. Reflecting on it later at the time of the loyalist flag protest David Trimble, who had been First Minister at the time, said "In hindsight that legislation should have covered civic buildings. But at the time it wasn't seen as a problem which of course it is now"<sup>23</sup> There were other curiosities in the drafting. The specification was for particular buildings rather than for the government departments they housed - a particularly odd approach given that at the time the Regulations were drafted there was considerable discussion about the Department of Education moving from its base in Rathgael House. Even more inexplicably, the government building which might be considered the most important of all, the Northern Ireland Assembly building at Stormont, was not included. Issues relating to flags at Stormont remained the province of the Stormont Commission, which employs the DCMS guidelines on designated days. The Regulations also did not provide any ruling on police stations (which now fly the PSNI's own flag) and court houses. This latter omission was subsequently addressed through an amendment to the Justice (Northern Ireland) Act 2002, and currently there are 21 courthouses which follow the custom of designated days.<sup>24</sup>

Despite the patchwork of problems, the legal challenge to the Flags Regulations (Northern Ireland) 2000 did not come from any of these issues but from a very different quarter. Sinn Féin took a case to the High Court, arguing that the primacy afforded to the Union flag was 'not in keeping with the Good Friday Agreement'. The case was comprehensively rejected by Judge Kerr who ruled that the Flags Order did not breach the Human rights Act, the Good Friday Agreement or Section 72 of the Northern Ireland Act. His reasoning was that a designated days approach was fair and balanced:

That approach appears to me to exemplify a proper regard for 'partnership, equality and mutual respect' and fulfil the government undertaking that its jurisdiction in Northern Ireland shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions.<sup>25</sup>

That decision settled the legal argument in relation to government buildings. The regulations have been followed ever since without controversy. What happened was that controversy then attached itself to the flying of flags at district councils and the unofficial or popular flying of flags on lamp-posts.

#### b) On district council offices

District Councils may not have been subject to the Flags Order but they are not free from legislative oversight. The governing legislation is the Northern Ireland Act (1998), which came into force on 1<sup>st</sup> January 2000. Section 75(1) of the Act placed a statutory duty on all public bodies to have 'due regard to the need to promote equality of opportunity', while Section 75(2) placed a further duty on them to have 'regard to the desirability of promoting good relations'. Designated public authorities were mandated to undertake a systematic review of every policy, including where necessary an Equality Impact Assessment (EQIA). Since good relations had been given no legal definition, the councils looked for guidance from the Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission. Neither agency was prescriptive in its statements; rather they advised that these were issues to be determined by each council and the sensitivities to be considered were context-specific. In its comments on the Justice (NI) Bill in 2002 the NIHRC set out its position:

The NIHRC takes no view on whether it would be appropriate for the courts to adopt symbols from both traditions, or a neutral symbol such as the scales of justice, because neither approach is demanded by human rights principles; equally it would, however, observe that neither approach would be inconsistent with human rights principles.<sup>26</sup>

<sup>23</sup> Belfast News Letter, 15 Dec 2012 'Trimble in designated days row'

<sup>24</sup> Written answers to questions, Hansard, 1<sup>st</sup> March 2013 Vol.82

<sup>25</sup> Judge Kerr's ruling in the case of Murphy's Application for a Judicial Review (2001) NIQB 34 (4 October 2001)

<sup>26</sup> NIHRC on comments to the Justice (NI) Bill submitted to the House of Commons, 27/2/2002

The Equality Commission advised councils that, while the flying of the union flag was a recognition of the constitutional position of Northern Ireland, the display of flags and emblems was one which required adherence to a range of other principles:

The Commission seeks to promote a spirit of inclusivity and mutual respect and urges the avoidance of contentious displays which act as a badge for community or political allegiance and promote division in the workplace.... Where an employer is seeking to provide or maintain fair participation, or to ensure that all of its services are widely utilised by all sections of the community, the Commission recommends particular sensitivity concerning displays which are wholly or mainly associated with one section of the community<sup>27</sup>

The Commission did not rule that the flying of the flag was of itself injurious to good relations; equally, it did not rule that not flying the flag would be injurious to good relations. Rather, it emphasised the importance of context and how particular actions might be interpreted.

The tool that is used in each case to determine the impact on good relations is an Equality Impact Assessment (EQIA). The standard format as laid down by the Equality Commission requires a seven stage process to gauge the potential impact of any new policy and, after its introduction, a way to monitor (and mitigate) adverse impact. From the outset this process was hobbled by the absence of definition for the term 'good relations' as it left it open for consultees to employ their own understanding of what might or might not improve good relations. Those consulted included council staff, the political parties represented on the council, the general public, visitors and user groups. Perhaps unsurprisingly, very different ideas emerged about how councils should implement their Section 75 obligations. Very quickly the pattern became clear. The unintended and ironic outcome of the councils' attempts to implement good relations policies was in each case the widening of the division between the nationalist and the unionist parties.

In Limavady, for example, the council meeting on 22<sup>nd</sup> February 2008 had to be abandoned and police called in to protect against violence when the issue of flags and emblems was discussed. In that case Sinn Féin, the largest party in the council, had initiated an equality audit in order to create a completely neutral environment. The itemisation of such trivial items as a Charles and Diana mug led to accusations from unionist councillors that the council was being 'cleansed' of Britishness. Attempts to recognise and celebrate both traditions also proved contentious when put into practice. Limavady again provides the example of the difficulties

inherent in this approach. The nationalist majority on the council was a narrow one but was sufficient to vote through a bilingual policy for its notepaper, insignia and signage. The council's logo was redesigned to incorporate both Irish and English and in December 2008 new high visibility jackets were issued to outdoor workers bearing the council's name in English and the original Irish, *Léim a' Mhadaidh*. Some workers refused to wear the jackets, and the issue of the council's cultural policy rumbled on, erupting regularly on issues relating to flags. As the Londonderry Sentinel reported on the 3<sup>rd</sup> October 2012:

In the past few years alone, local politicians have walked out of meetings, council business has been suspended and furious bust ups and spats have taken place inside and outside the council chamber – all over the issue of flag-flying throughout the Limavady Borough.<sup>28</sup>

The most explosive debate of all of course was the one in Belfast City Council on 3 December 2015 which led to the decision to move from the previous position of flying the union flag 365 days a year to flying it only on 18 designated days (one more than the 17 laid down in the Flags Regulations (Northern Ireland) 2000 for government buildings).

Since then the problems have become even more complicated. Two factors helped keep the issue on the boil. First unionist outrage at the Belfast City Council prompted a series of local responses. Craigavon Council, for example, which had displayed the flag on 18 designated days in the belief that it was in line with council policy throughout the UK, began a review of its policy. An EQIA was commissioned at a cost of £15,000. It recommended that the Council should not change from its designated days policy, but the recommendation was ignored by the Council which voted in January 2015 to move to a 365 days display of the flag.

The second complicating factor has been the replacement of the 26 district council system with 11 new 'super councils'. Each one of the 11 now has to write a new set of policies to conform to the Section 75 requirement. The new council boundaries create a changed dynamic with in some cases the reversal of nationalist and unionist majorities, an outcome that immediately creates uncertainty. The Craigavon Council decision to introduce a 365 days policy was the last act of the old council – or, to look at it another way, the opening act of a new chapter to be played out in the newly merged super council known as Armagh, Banbridge and Craigavon.

At present the legal requirement to have policies in line with Section 75 duties is waiting for an outworking within each council. The situation inherited from the 'legacy' councils is a jumble of different policies – moreover there is no consistency between the protocols governing government buildings,

<sup>27</sup> Letter from the Equality Commission to the Chief Executive of Fermanagh District Council dated 12 March 2002.

<sup>28</sup> Londonderry Sentinel, 3/10/12

the NI Assembly and the district councils. A summary of the different policies will serve to illustrate the level of confusion:

- The NI Assembly takes its direction from the Assembly Commission. On the 17th June 2015 it agreed to accept the recommendation of an EQIA and to fly the Union flag from Parliament Buildings on designated days as defined by the by the Department for Culture, Media and Sport (currently 18 days per annum). This represents an increase of three days on the policy laid down by the Flags Regulation (NI) (Amendment) 2002 (see below).
- The seven government buildings specified in the Regulations document follow the arrangements for the flying of the Union flag from government buildings in Northern Ireland are set out by the Flags Regulations (NI) 2000, as amended by the Flags Regulation (NI) (Amendment) 2002. This was originally a list of 17 days but two were removed following the deaths of the Queen Mother and Princess Margaret.
- Belfast City Council and five of the other legacy councils continue with the 18 days a year policy, using the list defined by the UK Government's Department of Culture, Media and Sport. The other five are: Ards, Armagh, Ballymoney, Dungannon and Lisburn councils. Within that overall policy there are some additional complexities. For example, Ards additionally flies the Union flag all year round in a number of areas and Lisburn flies it all year round at the local war memorial.<sup>29</sup>
- Ten legacy councils continue to fly the flag 365 days a year. They are Antrim, Banbridge, Ballymena, Carrickfergus, Castlereagh, Coleraine, Craigavon, Larne, Newtownabbey and North Down Councils. Castlereagh Council flies the Union flag all year round from seven buildings, Newtownabbey from five and Ballymena from three. Larne additionally flies the Northern Ireland flag from its headquarters for the first two weeks of July.

- Eight legacy councils fly no flags at all. They are Cookstown, Derry, Fermanagh, Limavady, Magherafelt, Moyle, Newry and Strabane councils.

A detailed list of the actual designated days for government departments and the NI Assembly is set out in Appendix 1. In addition there are a series of additional protocols to govern the flying of other flags. For example, following a decision on 6 January 2014 Belfast City Council flies the Commonwealth flag on the second Monday in March which is Commonwealth Day. St Patrick's Cross is flown on St Patrick's Day and on 9 May the European Flag is flown to mark European Day. In keeping with DCMS protocol these additional flags are flown under the Union flag on a lower flagpole. The same requirement governs the flying of the Armed Forces Flag for six consecutive days in June, and the flying of the Red Ensign Flag on 3 September to mark Merchant Navy Day.

In short, there are many regulations to govern the flying of flags on government buildings and council offices. The problem is that they derive their authority from different sources and if there is one overall picture for Northern Ireland it is that of divided loyalties.

### c) **Flags on lamp posts**

The widespread flying of flags on lamp posts (and other public spaces) could give the impression there are no laws that can be brought to bear on the situation. In one sense this is correct. There is no one single piece of legislation that permits, forbids or governs the display of flags and emblems in public places – or, for that matter in private property. Instead, there is a plethora of laws and by-laws which relate to the display of flags in particular circumstances. A more detailed exploration of the legislation and its limitations follows in section 6.2, but a brief overview of the powers of the various agencies can be seen in the following table:

Agency	Legislation
Police Service of Northern Ireland	<p>There is no such thing in law as either a 'legal' or an 'illegal' flag. Any criminal offence is defined by context, and the powers at police disposal are contained in the following legislation:</p> <p>Terrorism Act, 2000, Section 13 empowers the police to act where a person 'wears, carries or displays an item' in a way which arouses suspicion that he is a 'member or supporter of a proscribed organisation'.</p> <p>Public Order (NI) 1987. Section 9 specifies an offence whereby a person behaves in such a way that 'he intends thereby to stir up hatred or arouse fear'. Section 19 specifies an offence whereby a person engages in provocative behaviour or 'displays anything' with intent to provoke a breach of the peace.</p> <p>Protection from Harassment Order (1987) allows for situations where someone engages in conduct which another person might reasonably believe is intended to act as harassment or create fear of violence.</p>

<sup>29</sup> Rebecca Black, 'Ten councils flying Union flag every day', *Belfast Telegraph*, 21/1/15

Agency	Legislation
Department for Regional Development (TransportNI)	<p>Flags are not specifically mentioned in the regulations applied by TransportNI, instead the term ‘advertising signs’ acts as a generic to cover all objects placed on DRD property.<sup>30</sup></p> <ul style="list-style-type: none"> <li>• The Roads (NI Order) Section 87 gives the Roads Service authority to remove any signs erected without lawful authority and to recover any expenses reasonably incurred in doing so.</li> <li>• Section 73 allows for the prosecution of anyone placing objects or signs on the property of the Roads Service.</li> </ul>
Department of the Environment	<p>Planning (Control of Advertisements) Regulations 1992</p> <p>Again a flag is classified as an ‘advertisement’. Under Section 4 of this act, permission must be sought for any display of a flag or emblem. This does not apply to the ‘national flag of any country’. Under Schedule 2, Class 1 a national flag has to be displayed ‘on a single flagstaff’.</p>
Northern Ireland Housing Executive	<p>The NIHE does not have any specific legislative power to deal with flags but its core objectives include the provision of social housing in an inclusive way and it has a commitment to using community development methods to promote good relations. To this end it has developed its own protocol to deal with flag displays on its property, ‘A Good Practice Guide for Flags and Sectional Symbols’.<sup>31</sup></p>
District councils	<p>There is no discrete statutory power that enables district councils to act against flags on their property. Article 18 of the Local Government (Miscellaneous Provisions (NI) Order 1985 allows them to remove graffiti. There is a further general duty on them as owners and managers of public property to maintain that property is in good condition and under Section 75 to foster good relations, but generally speaking councils prefer to address that duty by the methods of community development and mediation rather than by the direct removal of flags.</p> <p>District councils did not sign up to the 2005 Flags Protocol.</p>

There are overlapping responsibilities here and the purpose of the 2005 Flags Protocol, or the ‘Joint Protocol in Relation To The Display Of Flags In Public Areas’, to give its formal title, was agreed as a policy framework to coordinate the efforts of the following bodies:

- Police Service of Northern Ireland
- Department of the Environment
- Department for Regional Development
- Department for Social Development
- Office of the First Minister and Deputy First Minister, and
- Northern Ireland Housing Executive.

District councils had been represented in the discussions but did not sign up to it, and therefore felt free from its obligations. The Protocol document addresses this in the following way: ‘In time it is hoped that all local councils will examine this protocol and adopt it as a way forward’. That hope was never realised.

Following the lead of *A Shared Future* the Protocol set a bold agenda:

- The removal of all flags and emblems from arterial routes and town centres;
- The removal of all paramilitary flags and displays;
- The control of displays of flags and emblems in particular areas e.g. mixed and interface areas and near buildings such as schools, hospitals, places of worship and community halls;
- Flag flying should be limited to particular times and particular dates and: - where flags are displayed for a festive or other occasion that the display is reasonably time bounded. - Flags, including plastic ties, tape and poles, should be removed by the community after the agreed period.
- To encourage communities to accept that flags displayed which are tattered, torn or discoloured do not enhance the environment and should be removed.

<sup>30</sup> Legal advice obtained by the DRD failed to deliver a definitive judgement on whether flags are included in the legislation

<sup>31</sup> This is available at: [http://www.nihe.gov.uk/good\\_practice\\_guide\\_to\\_flags\\_emblems\\_sectional\\_symbols.pdf](http://www.nihe.gov.uk/good_practice_guide_to_flags_emblems_sectional_symbols.pdf)

The strength of the initiative was that it brought all the key agencies together; the weakness was that in a situation of collective responsibility no-one took responsibility. In actual on-the-ground situations responsibility for what are often societal issues tended to be passed back to the police who were often placed in impossible situations where the legislative framework did not provide sufficient clarity to allow them to act.

Evaluating the practical effects of the Flags Protocol in the period from 2006 to 2009 the Institute of Irish Studies felt that there had been very little discernible effect:

Evidence from a number of areas of Northern Ireland clearly shows that the widespread flying of flags, over significant periods of time, remains an issue for many people, a policy problem for government agencies and district councils, and often has a detrimental economic impact on many places. Above all it continues to be a significant irritant to good community relations.

That verdict was published in 2010. Since then, while not formally abandoned, the Flags Protocol has become moribund. In spite of statements made by the then First Minister, Peter Robinson, in the Assembly on 21 September 2009 and by the Deputy First Minister, Martin McGuinness in the Assembly 9 November 2009 there was not any progress on policy changes. In the absence of any successor document it is still referred to as the policy framework but it has ceased to inform practice. It now only has a phantom existence, no longer even displayed on the websites of most of the key agencies, and can no longer be seen as an effective policy instrument.

## 2.5 A year in flags: 2015

There were no major controversies in 2015 over flags, at least not by Northern Ireland standards. While 2012 and 2013 were marked by the protests over the decision by Belfast City Council to limit the number of days the Union flag could fly, the past year has not seen any signal event of this kind. While there has been no one dramatic event to define the year, there has been a steady rhythm of minor controversies, sufficient in number to keep flags as a constant irritant on the body politic. A chronicle of these small scale events might perhaps serve to illustrate how quarrels over flags continue to colour day to day experience in Northern Ireland.

The first row erupted in January when the Environment Minister, Mark H Durkan, announced that Northern Ireland would not be following the new policy in England, Scotland and Wales of incorporating the Union flag into driving licences. The policy had been announced in December 2014 by UK Transport Minister Claire Perry, who said: "People in this country rightly take pride in our national flag which is why I am delighted it will now be displayed on British driving licences." This was an idea had first been put forward in 2012. At that time the Driver Vehicle Licensing Agency said Northern Ireland

was omitted, as the matter was a devolved issue and it was for local authorities to decide. The decision was in fact made by Mark Durkan's predecessor as Environment Minister, his SDLP colleague Alex Attwood. No public consultation was launched because, as Attwood reasoned, he was not proposing any change of policy. As a result, when the licence design changed in January 2015 in England, Scotland, Wales there was no corresponding change in Northern Ireland. Unionists were irked, and Jeffrey Donaldson said the decision was "sectarian and anti-British"<sup>32</sup>. A number of unionist MLAs proposed that there should be an opt-in possibility for those who wished to have the Union flag on their driving licences, but this was rejected by Mark Durkan. Addressing the proposal on 9 March in the Assembly he said that because of costs it had been decided that the "opt-in" option was not an option. If it becomes an option, it is an option that I will consider"<sup>33</sup>.

More familiar arguments emerged as the marching season approached and tensions mounted at the usual flashpoint areas. At the start of July Union flags and Ulster Banner flags appeared along the Ormeau Road in South Belfast. This arterial route runs through a mixed area, but one where demographic change has resulted in a Protestant majority giving way to a Catholic majority. Local residents had objected to the flags in 2014: according to a written response by the Chief Constable to the NI Policing Board approximately 30 complaints had been made to the police<sup>34</sup>. Some confusion had arisen when, in response to these objections, a PSNI statement said that the erection of any further flags would be treated as a breach of the peace. This had appeared to mark a departure in policy, but when pressed the PSNI issued a statement making clear that the Ormeau Road was not being treated as a special case, nor was there any change in overall policy. The year 2015 therefore was not very different from the previous year. Flags were placed on lamp posts from the Ormeau Bridge to Rosetta roundabout, and according to the PUP this was in accordance with an agreement reached with the PSNI. The Irish News reported a PUP spokesperson as saying. "The police assured him that erecting the flags was not a breach of peace as long as they were non-paramilitary." It was also stated that the agreement included an understanding that the flags would come down by early September (though this in fact failed to happen).

The practice of mounting the Union Flag and the Ulster Banner jointly on a double flag post was one that was widely adhered to across Northern Ireland in 2015. It demonstrated that the Union flag has resumed its centrality in unionist iconography following the Belfast City Council decision to limit its use. Previously, the sense of hurt caused by the Anglo-Irish

<sup>32</sup> Belfast Telegraph, 5th January 2015, <http://www.belfasttelegraph.co.uk/news/northern-ireland/sdip-flag-snub-sectarian-jeffrey-donaldson-hits-out-over-ministers-ban-on-driving-licence-emblem-30881589.html>

<sup>33</sup> <http://www.theyworkforyou.com/ni/?id=2015-03-09.4.56>

<sup>34</sup> Written responses by the Chief Constable to the 3/9/15 meeting of the NI Policing Board, [http://www.nipolicingboard.org.uk/written\\_response\\_to\\_questions\\_for\\_3\\_september\\_2015\\_meeting\\_3.pdf](http://www.nipolicingboard.org.uk/written_response_to_questions_for_3_september_2015_meeting_3.pdf)

Agreement in 1985 had been responsible for a shift to the more ethnic identity represented by the Ulster Banner, but the equal pairing given to the two showed a new investment in the Union flag as an expression of loyalist identity. Alongside that there appear to have been fewer paramilitary flags, though that assessment can only be put forward with a good deal of caution (see section 4.1)

There are various suggestions for why there might have been a slight reduction in the number of paramilitary flags on display. The first factor is that widespread display of these flags peaked in the period of the flag protest, and that following that spike a fall-off in numbers could be expected. A second reason appears to be that paramilitaries have themselves become sensitive to criticisms from within their own communities of tattered flags hanging off lamp posts, and a more disciplined approach has been adopted. For instance, the various local protocols have been adopted allow for just one flag, representing either the UDA or the UVF, to be mounted on a single flagpole at the entrance to each housing estate. This is thought to bestow more dignity on the flag and to obviate the need for any further flags displays inside the estate. A third factor concerns the relationship between flags and the surrounding cultural environment. East Belfast can serve as an example. Both the UDA and the UVF have invested in large scale mural painting in 2015, and the murals, usually of paramilitary figures, serve both to establish the claims of loyalism generally and at the same time to demarcate which group has dominance in which territory. The symbolic environment is thus so clearly marked out by paramilitary branding on walls that the display of paramilitary flags can be considered redundant.

A more diverse range of 'proxy' flags were in evidence throughout the year in loyalist areas. The Israeli flag has been almost naturalised as a marker of loyalist territory<sup>35</sup> and, as has become customary, was flown alongside the Union flag, the Ulster Banner and various paramilitary flags during the summer. More novel developments included the use of the Confederate flag and, in a couple of isolated incidents, Nazi swastikas. The Confederate flag, often used by rebel sub-cultures such as biker gangs as a symbol of non-conformity, had acquired fresh notoriety in June when a young white supremacist shot and killed nine black people in a church in Charleston, South Carolina. The racist message could not be ignored when, shortly after this incident and the ensuing debate over the removal of the flag from American public buildings, it appeared on a lamp post outside the home of a black family in east Belfast. The son in the family was a member of the local football team, and the coach of the team personally took the flag down. Posting on Facebook

the club said, "As a club we were disgusted to see this flag put up right at the door of one of our black players, so as a club we took it down. We will continue to work hard behind the scenes to build relations with every area of the community."

Confederate flags also appeared in Carrickfergus in July along with loyalist paramilitary flags. On this occasion however more attention was paid to the Nazi flags which hung alongside on the lamp posts near a loyalist bonfire site at Marshallstown Road. Nazi flags were also on display in nearby Oakfield Street. The PSNI was prepared to remove the flags but this proved unnecessary as they were taken down by local residents with the active support of the PUP. Considerable outrage was expressed about the fact that they had been put up at all, with many unionist spokespersons pointing out the irony of pro-British loyalists flying the flag of the country's enemy in WW2. Clearly the appearance of Nazi flags lacked any real community support, but the media tended to present the images of the flags rather than the local reaction. The incident received considerable national as well as local coverage, with a feature on Channel 4 News as well as coverage in the Guardian, the Independent and other British newspapers.

The Confederate and Nazi flags were not the only flags to be erected provocatively. Along the north coast the flags of the Parachute regiment were displayed alongside loyalist flags, and the closer they came to Derry the more clear it was that the reference was to the events of Bloody Sunday. The local SDLP councillor said that the erection of the Parachute Regiment flag "should be regarded as hate crimes".<sup>36</sup> It was not the first time this particular flag had been displayed by loyalists. Writing in the Derry Journal in February 2013 the journalist Eamon McCann observed: "On the road out of Derry to Belfast or Dublin you can't escape the profusion of Parachute Regiment flags flying from poles and lampposts. These are expressions not of a culture under siege but of gratuitous sectarian hostility."

Gratuitous sectarian hostility was not the sole preserve of loyalism in 2015. On the evening of 14<sup>th</sup> July when tensions were still high at the Twadell Peace Camp because of serious disturbances earlier in the week a car drove past the 150 loyalist protestors gathered at the site. A 37-year old man hung out the passenger window and waved a Tricolour at the crowd. As the car sped off he shouted 'Up the 'Ra' in what the police later described in court as 'a clear and loud manner'. Although government and police spokespersons have often been chary about saying what constitutes 'provocation' in the flying of a flag, this was not a case that left any room for ambiguity.

Provocation is not always about putting up a flag, it can also describe the action of taking down a flag put up by others. At the end of June a total of 23 GAA flags were removed from lamp posts in the centre of Dungiven. In addition, police

<sup>35</sup> This phenomenon is viewed with some bemusement within Israel. A 2014 report in the newspaper Haaretz said: 'In the complex web of alliances that underpins the British province's flag-obsessed politics, the Star of David has been adopted by pro-British Loyalists, mainly Protestants, many of whom sympathise with Israel.' (<http://www.haaretz.com/world-news/1.614110>)

<sup>36</sup> Derry Journal, 22 July, <http://www.derryjournal.com/news/dallat-calls-for-removal-of-insensitive-flags-along-causeway-coastal-route-1-6864078>

reported that a vehicle had been driven over the pitch at the Kevin Lynch GAA grounds at Curragh Road, Dungiven, and more flags stolen. It was assumed locally that they were trophies for the 12<sup>th</sup> July bonfires. This was followed two weeks later by the theft of a Union flag from the Ardinariff Orange hall in Dungiven. Once again, the theft had occurred in the middle of the night and in addition to the loss of the flag, the flagpole itself had been broken. It was the fifth attack on an Orange hall in a month. The PSNI announced that both of these Dungiven incidents would be treated as hate crime. There is no doubt that such provocations fuel community tensions, but again they are not necessarily reflective of the sentiments of the wider community. On occasion they can be simply be acts of bravado by young men, and the more daring they are the more likely they are to spark a retaliatory response. At other times, moderating voices can have an influence. In Dundrum, for instance, the main street was bedecked with flags for the Twelfth of July, but after local negotiations it was agreed that the flag which had been placed in front of the Sacred Heart church was insensitive and those who had put it up agreed to bring it down. And in North Antrim the DUP councillor John Finlay called for the removal of the Union flag which had been hoisted outside the Our Lady and St John the Evangelist Catholic church.<sup>37</sup>

While local controversies of this kind continued as a constant background noise throughout the marching season, more attention was paid to problems surrounding bonfires. Not for the first time effigies of Sinn Féin leaders were burnt alongside Irish tricolours on bonfires across Northern Ireland, but what distinguished 2015 was the sharp escalation in their number and in the way they were personalised. In Moygashel an effigy of the local Sinn Féin MLA Michele Gildernew was accompanied by a sign which said, 'Sinn Féin Scum, hands off our culture. Public hanging 10.30pm'. Elsewhere Gerry Adams, Martin McGuinness, Gerry Kelly and Bobby Sands were presented as effigies, sometimes in coffins, as on the bonfire at the Ballycraig estate in Antrim. Election posters of Sinn Féin leaders and the Alliance MLA Naomi Long were a common sight on the bonfires as they were constructed and, of course, flags featured very strongly. One of the largest bonfires this year was in the New Mossley Housing Estate in Newtonabbey in east Antrim, a huge 100 foot tower which stood high above the neighbouring houses. The Irish tricolour was placed on top of the pyre, but not just the Tricolour: those who made the bonfire had gone to considerable trouble to source every form of flag that represents Irish or republican identity, including the Starry Plough, the sunrise flag of the Fianna, and the older flag of Irish nationalism, the deep green flag with the gold harp.

There were fewer instances of the Polish flag being burned in 2015 than in previous years. The first time that there was widespread burning of the Polish flag was in 2012, and at

that time representatives of the Polish community expressed their shock that such racist hostility could be allowed public expression. The First Minister, Peter Robinson, was quick to express disapproval, saying "I think we need to have respect and understanding and tolerance for other traditions in our country."<sup>38</sup> His comments were echoed by other unionist leaders, but concern about the burning of the flags of other traditions did not extend to concern about the burning of the Irish flag. In a radio interview in June 2013 the DUP MLA Paul Girvan explained that he had "no problem in the burning of a Tricolour on top of a bonfire"<sup>39</sup> adding that for loyalist burning Tricolours is "part of their culture". Mr Girvan subsequently withdrew his remarks, but said that the burning of the Tricolour and the increase in the size of the bonfires throughout Northern Ireland had to be seen as a consequence of the decision by Belfast City Council to limit the flying of the Union flag.

The residual anger about the Belfast City Council decision may have also contributed to an extraordinary spat in the Church of Ireland about the flying of British Legion flags in St Patrick's and St Mary's Church in Newry. There the local rector, Rev Kingsley Sutton, had removed the flags of the British Legion - a decision that he explained had been motivated by a desire to make the places of worship "accessible to all people" and free from "vestiges from the past". The decision angered not only his local congregation but a broad swath of opinion across Northern Ireland, and his actions were condemned in very strong language in the *Belfast Telegraph* and the *Belfast News Letter*. On 22 October he resigned, offering an abject apology for his "inappropriate and unacceptable" decision to take down the flags. Unfortunately, while his letter of apology could not have been more penitent, it also revealed that the damage could not be undone because he had actually burned the flags. He may not have placed them on a bonfire, but the storm of criticism which followed could not have been any fiercer if he had.

The year finished with a couple of examples that illustrate how effective flags can be in thwarting attempts at cross-community reconciliation. As part of the OFMDFM 'Together- Building a United Community' policy the NI Housing Executive runs a Shared Housing initiative. As the name suggests this is an attempt to create shared living spaces. Felden estate in Newtonabbey just north of Belfast was developed as a new build estate to create a "mixed community where people choose to live with others regardless of their race, religion or background in a neighbourhood that is safe and welcoming to all". In July Irish tricolours were erected on lamp posts surrounding the site where the houses were being built, and virulently anti-Protestant graffiti appeared on the hoardings warning Protestant residents would be "bombed out, burnt

<sup>37</sup> In 2008 *The Irish News* carried a photo of Irish tricolours in the window of the Union Jack Souvenir Shop on the Newtonards Road with a sign attached saying 'Fenian flags for burning, £5'.

<sup>38</sup> *Belfast Telegraph*, 20/7/12 <http://www.belfasttelegraph.co.uk/news/northern-ireland/peter-robinson-slams-burning-of-polish-flags-on-loyalist-bonfires-28773207.html>

<sup>39</sup> <http://www.bbc.co.uk/news/uk-northern-ireland-23089437>

out and shot". All political parties condemned the appearance of the flags, including Sinn Féin whose members helped to remove them. In November, just as the first tenants were moving in further graffiti appeared again warning Protestants to keep out. It did not require much effort to put up the flags or to paint the graffiti but stories of this kind, widely reported in the media, create a ripple effect. On the other side of the city, in Carryduff, just south of Belfast, UVF flags were posted on every lamp post in the Killynure Green estate where 40 new houses had been built. The news that a house had been allocated to a Catholic woman in what is a predominantly Protestant area resulted first in a UVF flag going up outside that house, and then outside every house. Once again flags proved a highly effective means of marking out territory.

### National and international controversies

Northern Ireland is not unique in experiencing such controversies and in 2015 there were several instances where political and cultural divisions found expression over the display of flags. Perhaps the most heated debate was that in the United States over the status of the confederate flag following the Charleston shootings referred to above. The fact that the young white man who carried out the killings, Dylann Roof, had posted images of himself with the confederate flag led to immediate demands that it be taken down from state buildings in South Carolina. Led by South Carolina Governor, Nikki Haley, the legislature voted to remove the battle flag from the grounds of the State House, and place it in to a museum. Even before the Charleston shootings, the state of California had voted in 2014 to outlaw the flying of the confederate flag or the sale of any merchandise with the flag in it. The legislation passed with only one vote against it, reflecting the settled view in that state that the flag is unacceptable because of its link with slavery. That view does not hold sway across all of the southern states, where some see it as a valid expression of the heritage of the old South. In Mississippi the Charleston shootings re-kindled a long-running debate. In 2001 attempts to rid state buildings of the confederate flag were defeated by a referendum which decided by two votes to one to retain it. Following the Charleston shootings several Mississippi cities and counties have stopped flying the state flag, citing it as a racially divisive symbol in a state where nearly 38% of 2.9 million residents are African American. It has not as yet however been removed from the state capital buildings, and the debate which caught fire in 2015 is likely to continue for some time.

The Union flag was also a source of controversy in places far away from Northern Ireland. In February Fiji decided that the Union flag would be removed from the design of the Fijian flag, 45 years after independence. Like many Commonwealth countries, Fiji had retained a symbolic link with the UK by incorporating the Union flag into its national flag, but Fiji's decision means that only three countries now continue this tradition. The three are Australia, Tuvalu and New Zealand.

That list is likely to shorten still further as New Zealand intends to hold a referendum in 2016 on whether to swap the Union Jack for the country's national symbol, the silver fern.

There were also controversies within the UK about the use of the flag. In February the design was revealed for the British athletics team's vests for the World Athletics Championships in Beijing, and to the dismay of many it didn't feature the Union flag. Olympic long jump champion Greg Rutherford has complained that "it isn't a British kit any more" because it hadn't got the union flag, but the decision was applauded elsewhere. The Guardian's art critic Jonathon Jones said he was pleased the designers had not included "that jagged, explosive, aggressive flag". The problem with the Union flag, he said, is that "it is really quite ugly"<sup>40</sup>.

Debates in England about the Union flag still tend to divide into right and left camps, despite the efforts of Blair and Brown to re-capture it for one-nation, centrist politics. At an anti-austerity rally in London in June, attended by 250,000 people, the biggest cheer was for the Welsh singer Charlotte Church when she said, "I'm proud to be British because of our National Health Service, the welfare system, and David Bowie, not cos of the Union Jack!"<sup>41</sup>

Later in the year, the Conservative Party held a triumphant party conference in Manchester, and chose to celebrate the political dominance it had gained at the general election by presenting itself as the party of the nation. To this end the stage backdrop was a full screen image of a fluttering Union flag, and the same image graced the cover of the conference programme and was ubiquitous in the merchandise on sale.

Ireland has also had to face the challenge of ensuring that its national flag be seen as the flag of the whole country, and not the possession of republicans. It is anticipated that the ownership of the Tricolour will become even more hotly contested on the 100<sup>th</sup> anniversary of the Easter Rising at Easter 2016, and so on 14 September the Irish government launched the 'Flags for Schools' initiative. As part of the Ireland 2016 Centenary Programme, the Irish Defence Forces, Óglaigh na hÉireann, will present the National Flag and a copy of the proclamation to every primary school in the country. The presentations are accompanied by a short ceremony in which uniformed members of the Defence Forces explain the ideals contained in the Easter Proclamation. This ceremony and the handing over of the flag will take place in more than 3,300 national schools across the country, including special schools, and will ensure the centrality of the flag in the sense of national identity for another generation of Irish people.

<sup>40</sup> The Guardian, 14/8/15 (<http://www.theguardian.com/commentisfree/2015/aug/14/union-jack-british-flag-uk-athletics>).

<sup>41</sup> The Independent, 21/6/15 (<http://www.independent.co.uk/news/uk/anti-austerity-protest-charlotte-church-tells-250000-that-government-will-sell-off-schools-and-10333774.html>)

### 3. TAKING OPINION ON FLAGS

#### 3.1 Who cares about flags?

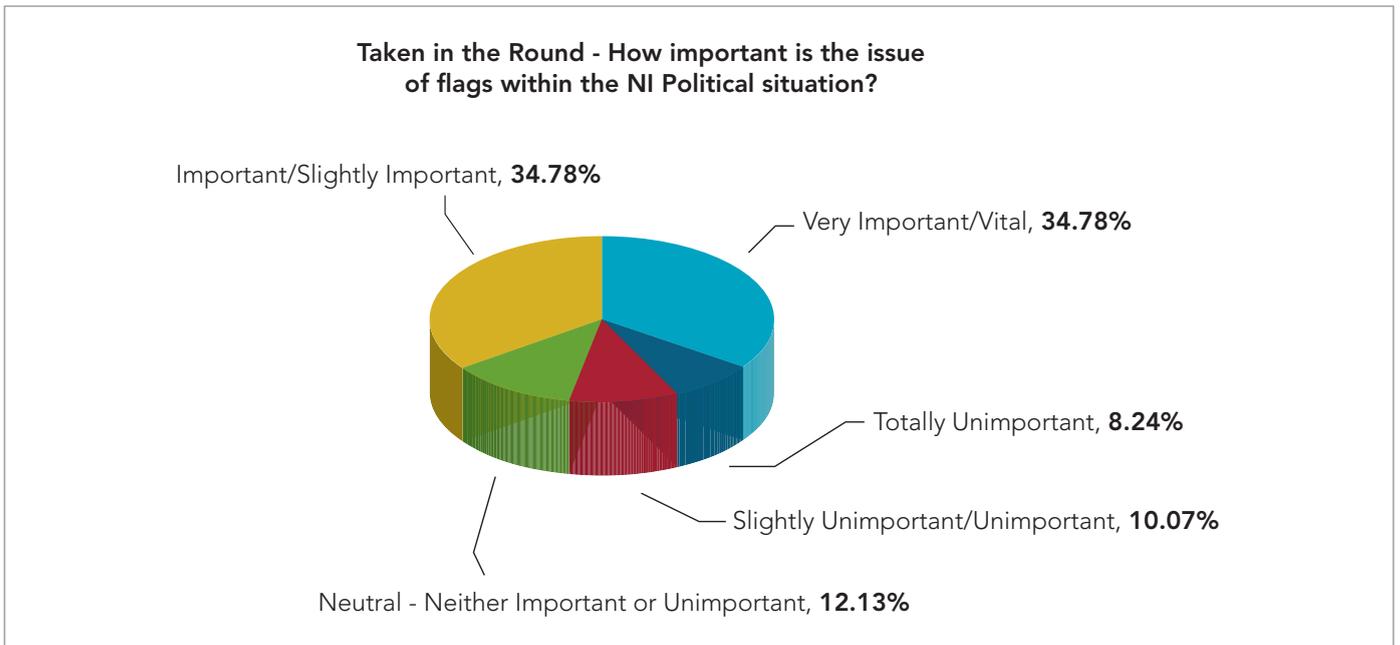
The first question in the survey conducted for us by Lucid Talk was intended to discover firstly, how much the issue of flags matters to the people of Northern Ireland and then, secondly, to allow an analysis of how attitudes vary between different social groups. The question that was asked was ‘Taken in the round, how important is the issue of flags in the NI political situation?’ The responses show that almost 7 people in 10 (68.6%) regard the issue of flags as being either Important or Very Important. At the other end of the spectrum, 2 in 10 people (19.9%) see flags as either Unimportant or Totally Unimportant (see Chart 1).

When these responses are further broken down three patterns emerge:

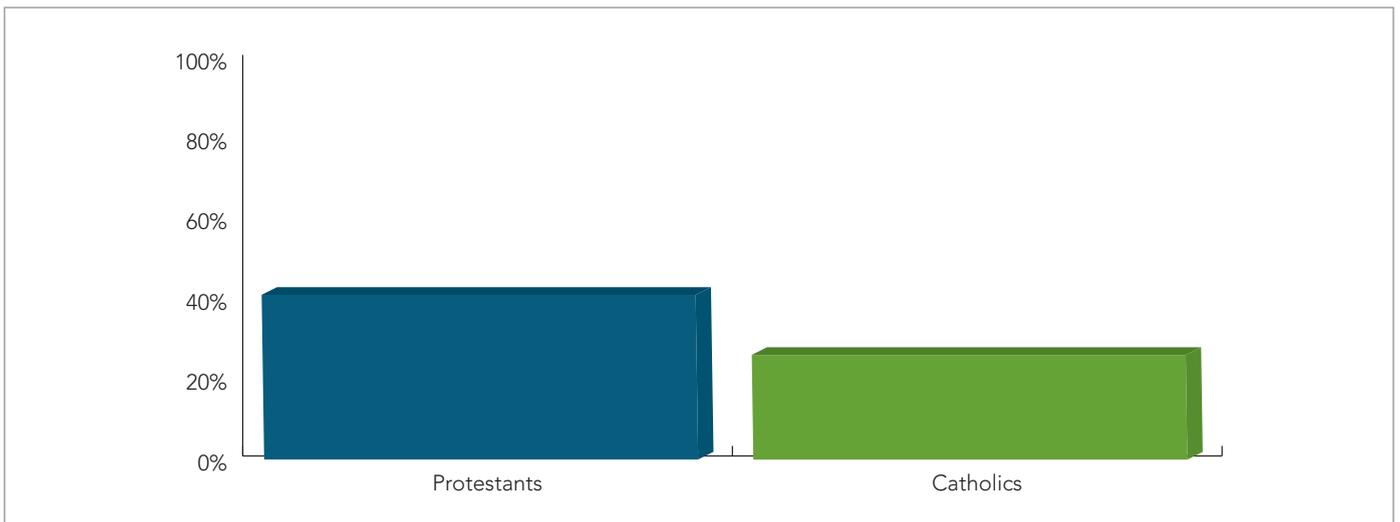
Firstly, there is clear distinction between Protestants and Catholics on the importance given to flags. Among Protestants 41.2% see the issue as Very Important while among Catholics only 26.2% award it this degree of importance (see Chart 2).

Secondly, there is a class difference within Protestant responses. In the ABC1 socio-economic group (broadly middle-class) 36.4% see flags as being very important, while in the C2DE group (broadly working-class) this figure rises by six percentage points to 41.4%. However if we combine the Very

**Chart 1: How important is the issue of flags within the NI political situation?**



**Chart 2: How important is the issue of flags: Protestant and Catholic responses**

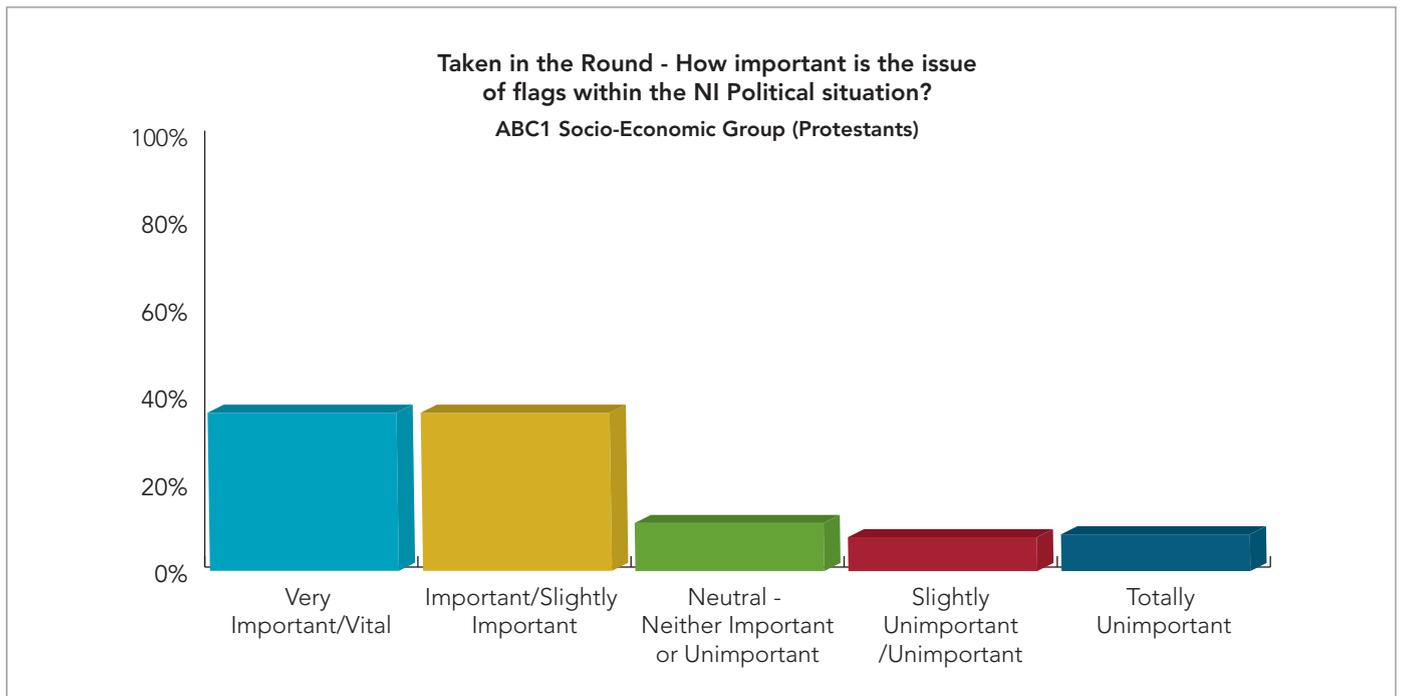


Important and Important figures, the gap narrows: 72.7% of ABC1 Protestants think the issue is either Important or Very Important, compared to 75.7% of C2DE Protestants (see Chart 5). The class gap is real, but not as pronounced as is suggested in some commentaries on flag protests.

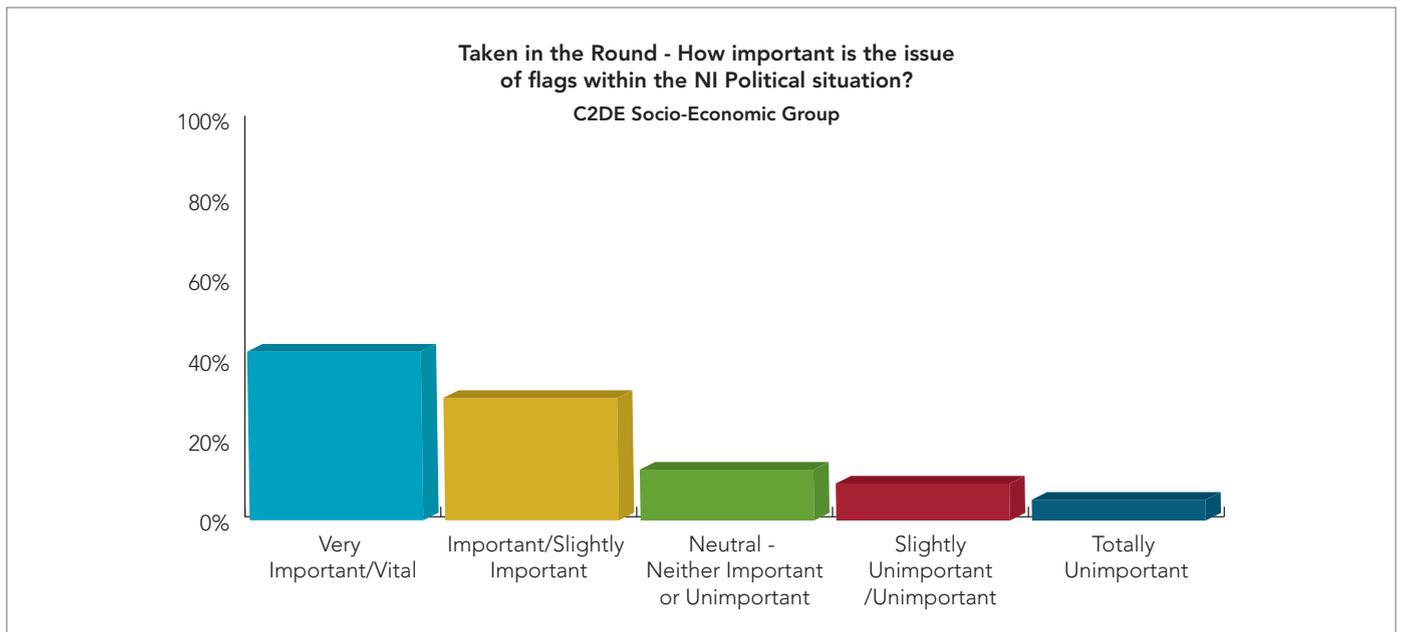
Thirdly, the biggest differences are geographical, as can be seen in the differing responses from the 11 council areas (Chart 5). While it is the case that the largest number of those

who see the issue as Very Important live in the Belfast City Council area, this is because the largest number of responses on any question is likely to be found in the Belfast area, simply because it is the largest population centre in Northern Ireland (and the Lucid Talk poll was weighted to reflect this fact). Thus, more than 1 in 5 of the total population who think the flags issue is 'Very Important/Important' live in the Belfast Council area, i.e. 20.8%. If however we want to look at where the issue

**Chart 3a: How important is the issue of flags? Protestants in the ABC1 socio-economic group**



**Chart 3b: How important is the issue of flags? Protestants in the C2DE socio-economic group**



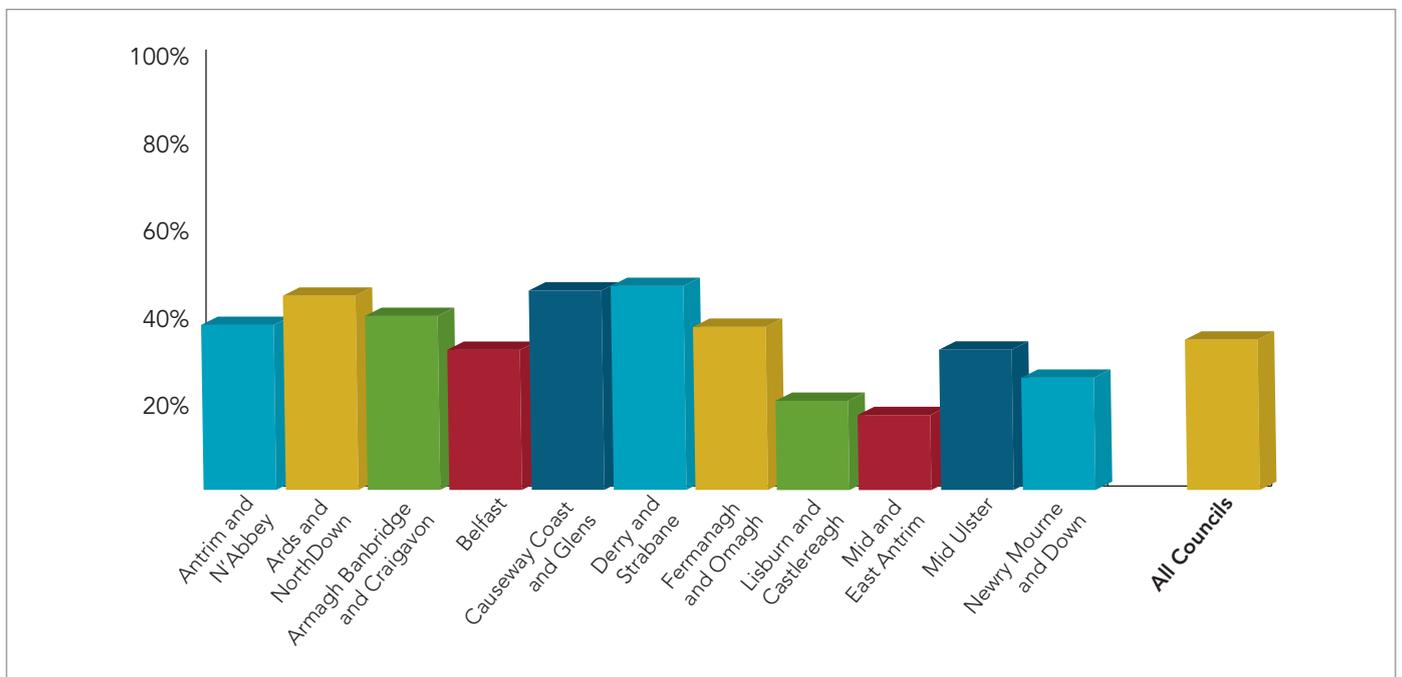
seems to be generating most heat, then we can consider the percentage in each council area who consider the issue to be Very Important. As **Chart 5** shows, the picture is one of sharp contrasts, but with a distinct pattern. In places where the issue is considered to be settled then people tend not to think of it as being in the Very Important category. In Newry Mourne and Down for example, where no flag is flown, only 25.8% consider the issue to be Very Important. In mid and East Antrim where the flag flies 365 days a year, even fewer respondents (17.2%) consider it to be Very Important. However in Causeway Coast and Glen where the issue was being vigorously debated in 2015 the percentage was nearly three times that number, 45.8%. Interestingly, and against this pattern, respondents in Derry and Strabane gave the highest score of all.

Interviews with people from political parties reinforce the fact that there are marked differences between one area and another. For example, Ross Hussey the Ulster Unionist MLA for Omagh told us that flags are not seen as a big issue in his constituency, where welfare issues are of far greater importance. Similarly, Pat Sheehan, Sinn Féin MLA for West Belfast, while conceding that flags always had the potential for creating trouble said that the issue would not feature in the top five of the problems in his constituency. By contrast, Claire Hanna, the SDLP MLA for South Belfast told us that flags are always the number one issue facing her, both as an issue on the doorstep and in the communications to her constituency office.

Finally, it is worth observing that the evidence from focus group discussions and interviews with individual loyalists show that the category Very Important barely does justice to the intensity that some bring to discussion of the issue.

One respondent in the poll survey indicated that he would like to see the Union Flag fly “365 days a year, and 366 on leap years.” Many of those we spoke to in focus group and individual interviews experience the issue in a deeply personal way, and relate their feelings to a much broader set of concerns about a perceived set of threats to their identity as Ulster Protestants. This is about more than an historical legacy. The Union flag symbolises a commitment to the armed forces of today. As one woman in a focus group in east Belfast said: “Our boys are out there in Afghanistan, and they are risking their lives for that flag”. The presence of young Protestants in the wars of the British Army provides a familial link between what is seen as an existential threat to loyalist culture and the dangers faced by young soldiers in battle.

**Chart 4: Percentage who see flags as Very Important across the 11 council areas**



## 4. FLAGS AT DISTRICT COUNCIL OFFICES

### 4.1 Background

On April 2015 11 new district councils replaced the previous 26 council arrangement. This reform of local government had a tortuous history. In June 2002 the NI Executive announced a Review of Public Administration but following the suspension of the Assembly, it became a matter for direct rule ministers. In 2005 Peter Hain, the Secretary of State for Northern Ireland, announced proposals to reduce the number of councils to seven ‘super councils’. In June 2007, following the restoration of a power-sharing Executive, it became clear that the seven council plan was to be reviewed, if not abandoned, and in March 2008 the Executive agreed on proposals brought forward by Environment Minister Arlene Foster to create 11 new councils instead of the original 7. The first elections were due to take place in May 2011. Disagreement between the parties prevented these going ahead as planned, and in June 2010 the proposed reforms were abandoned. However, on 12 March 2012, the Northern Ireland Executive published its programme for government, which included a commitment to proceed with the plan for 11 councils. Elections took place on Thursday 22 May 2014, and 462 seats councillors were elected to serve on the councils which formally came into existence the following year.

The political sensitivities which gave the local government reform process such a halting start remain very much alive as the councils begin their work. None is more sensitive than the question of the flying of the Union flag. Each new council has to fulfil the same obligation that the previous 26 councils had to face, of deciding how to interpret the Section 75 imperative to ‘promote good relations’, and how this relates to the flying of the Union flag. Given that each of the seven is a merger of pre-existing councils there is the additional difficulty of integrating the policies of the predecessor bodies. In some cases this does not pose such a challenge. Both Derry Council and Strabane Council had worked to a ‘no flags’ policy and there has been no difficulty in continuing this as the policy of the new Derry and Strabane Council. Likewise, when Antrim and Newtonabbey merged it was the coming together of two councils which had shared the same policy of flying the Union flag 365 days a year.

The problems start when the merger brings together constituencies where the political coloration is not so clearly orange or green. Causeway Coast and Glens is a notable case in point. The new council boundaries bring together into one structure the former councils of Coleraine (65% Protestant), Ballymoney (63% Protestant), Moyle (60% Catholic) and Limavady (57% Catholic).<sup>42</sup> There was almost immediately friction between the two political cultures. The old Coleraine council had a tradition of starting its meetings with a Christian prayer. Nationalists did not want the new Causeway Coast and Glens (CCG) council to adopt this practice, but a DUP

motion to continue the tradition was carried by 19 votes to 11. Tensions were also raised when unionists proposed naming a room in an arts centre in Limavady after a UDR captain murdered by republicans. These skirmishes set the mood music for the most contentious vote of all, on the flying of the Union flag.

In August 2015 a row that had been rumbling for months came to a head. Portrush UUP Alderman Norman Hillis proposed a motion which would not only see the flag fly on the council headquarters building, but on all the former council offices including Limavady and Ballycastle, the two councils with nationalist majorities. Neither of these had ever flown any flag, and there was an immediate reaction from nationalists. Independent Republican Padraig McShane launched a petition against the decision, saying “In Unionism’s moral contentment, they enjoy an ease of conscience and the oafishness of a thug which together allows them to jack boot decisions to hurt others. To fly a flag in Ballycastle, a seat of governance that chose to fly no flags while it held a Nationalist/Republican majority for 42 years, will cause considerable hurt and pain to those who continued to put community relations first in the former District of Moyle.” He pledged furthermore that any flag erected would be taken down, and was condemned by unionists for inflammatory speech. The decision had been won on a majority vote, and unionists did not miss the irony that the CCG decision was in a way the application of the same principle that had seen the Union flag taken down at Belfast City Hall in 2012. The proposer of the motion, Norman Hillis, told the Ballycastle Chronicle, “It would be a curious type of democracy which demanded unionist minorities accept democratic council decisions but somehow absolved nationalist minorities from the same requirement.”<sup>43</sup>

At the time of writing the final outcome of the Causeway Coast and Glens debate on flags is still not known: before the decision to fly the Union flag is put into action the Council has to consider an EQIA review. A clear dynamic has begun however and it is one which will be enacted in all council areas: in the absence of any superordinate body to set policy across Northern Ireland majoritarian decision-making will prevail. This will bring with it two consequences: one will be unreconciled and disgruntled minorities, and the other will be a jumbled set of arrangements across Northern Ireland.

### 4.2 Options for the flying of flags on council buildings

If the politicians cannot find consensus, is it possible that there is more flexibility and willingness to accommodate within the general population? As part of this study we commissioned polls through the Lucid Talk polling agency to seek answers to the following questions:

- Which option enjoys most support across Northern Ireland?

<sup>42</sup> Religious breakdown for these former council areas is taken from the NISRA census data.

<sup>43</sup> *Ballycastle Chronicle*, ‘McShane’s Flag Remarks Slammed’ 13 August 2015

- Do you feel that Belfast City Council's 18 designated days policy should be rolled out across Northern Ireland?
- Who should make decisions regarding flags on district council offices?
- Might a new compromise gain acceptance?
- Do you agree that nationalist councils should agree to fly the Union flag one day each year to recognise the constitutional status of Northern Ireland?
- Are there circumstances in which you would accept the flying of the Irish tricolour on district council buildings?

**How many days should the Union flag fly?**

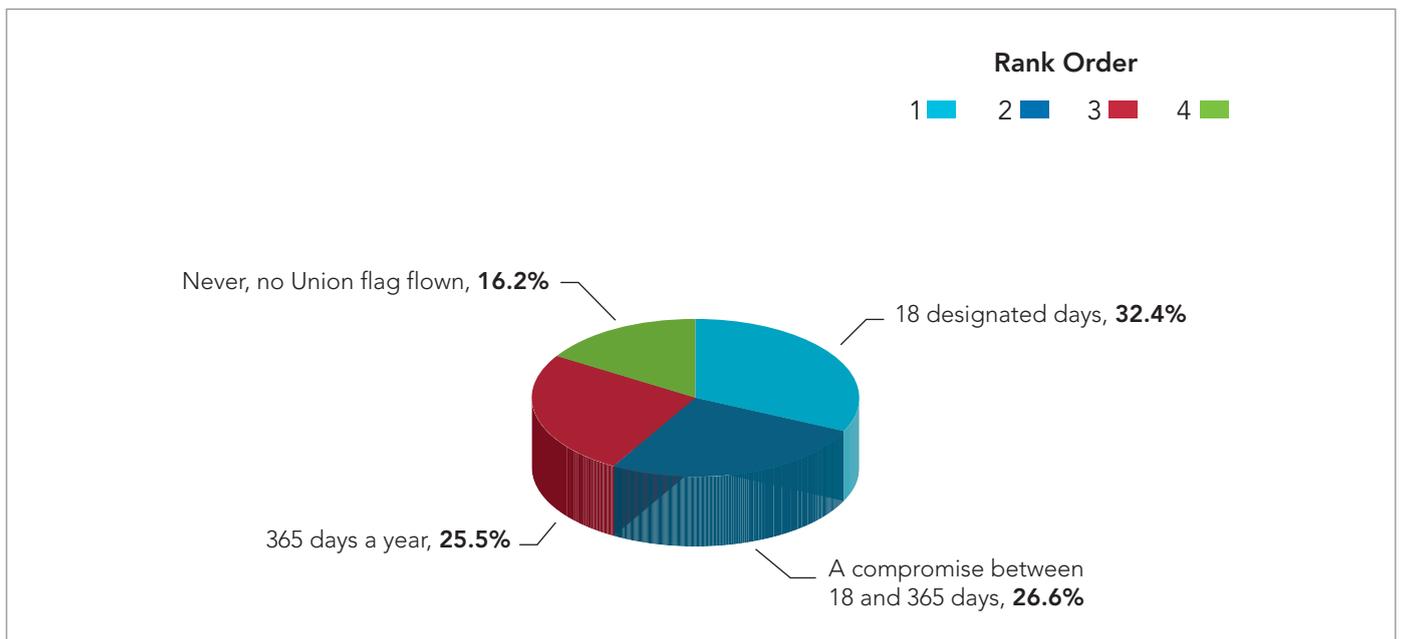
In order to probe attitudes to the flying of the Union flag we asked the question in a number of different ways, trying to establish not just what outcome is preferred but also the degree of legitimacy given to the different processes for arriving at that outcome. Our first question offered the three options that have dominated the debate so far – 18 designated days, 365 days, and No Flags – and added a new possibility, a compromise between 18 and 365 days a year. As previous studies have shown, the 18 designated days enjoyed the highest number of first preferences:

The number of respondents favouring a compromise resolution, either 18 designated days or somewhere between 18 and 365 days, amounts to 59% in total, as against the 41% who opt for strong unionist or nationalist options. A qualification may have to be entered however about the meaning of the word 'compromise'. In the long run-up to the December 2012 vote in Belfast City Council there was a zero sum contest between the 365 day option favoured by unionists

and the nationalist preference for either two flags, the Union flag and the Irish tricolour flown together or, alternatively, no flags at all. In a classic 'split the difference' form of conflict resolution the Alliance Party proposed 18 designated days. This was less than entirely neutral: it was still the UK Union flag and the 18 designated days was chosen in line with the general practice in local government in Great Britain. Moreover, at the time 18 designated days was the policy of some unionist-dominated councils like Lisburn and was the stated policy of the Progressive Unionist Party. It might therefore have been characterised as a unionist or possibly unionist-lite policy, but when Sinn Féin in a tactical move in the lead-up to the City Council vote opted to change its position and support the Alliance proposal the whole dynamic changed, and with it the significance of the 18 day arrangement. Once Belfast City Council voted to reduce the flying of the flag from 365 days to 18 days, then the latter option came to be equated with an anti-unionist position.

Conscious of the fact that 18 days would no longer be seen by everyone as being a compromise, we decided to include another option and deliberately included the word 'compromise' to describe it. The option 'A compromise between 18 and 365 days a year' secured 26.6% of first preferences. The wording leaves the actual number of days unresolved in order to test the general willingness to consider a compromise formula. Those who indicated such an openness were then asked further questions about which number between 18 and 365 they might find acceptable. Three options were offered: one additional day per week, one additional day per month and as a third possibility, seven additional (unspecified) days throughout the year. The results were as follows:

**Chart 5: Preferences for the number of days for flying the Union flag**



**Chart 6: Compromise preferences for an option between 18 and 365 days**

Number of additional days	% of preferences
18 days plus seven ( 25 days in total)	39.8%
18 days plus one additional day per week ( 70 days in total)	39.1%
18 days plus one additional day per month (30 days in total)	21.1%

The variance in the preferences does not necessarily mean any strong disagreement - these were after all respondents who had expressed a willingness to compromise. However, when these options were tested with the respondents in focus groups convened by the Lucid Talk polling agency, support for the compromise option eroded quite quickly when group members queried which particular days would be chosen and why. For example, after discussing whether St Patrick’s Day should be included or not (along with various other practical problems) the initial support of 46% dropped to 33% in a focus group of 22 people in the Waterside in Derry/Londonderry.

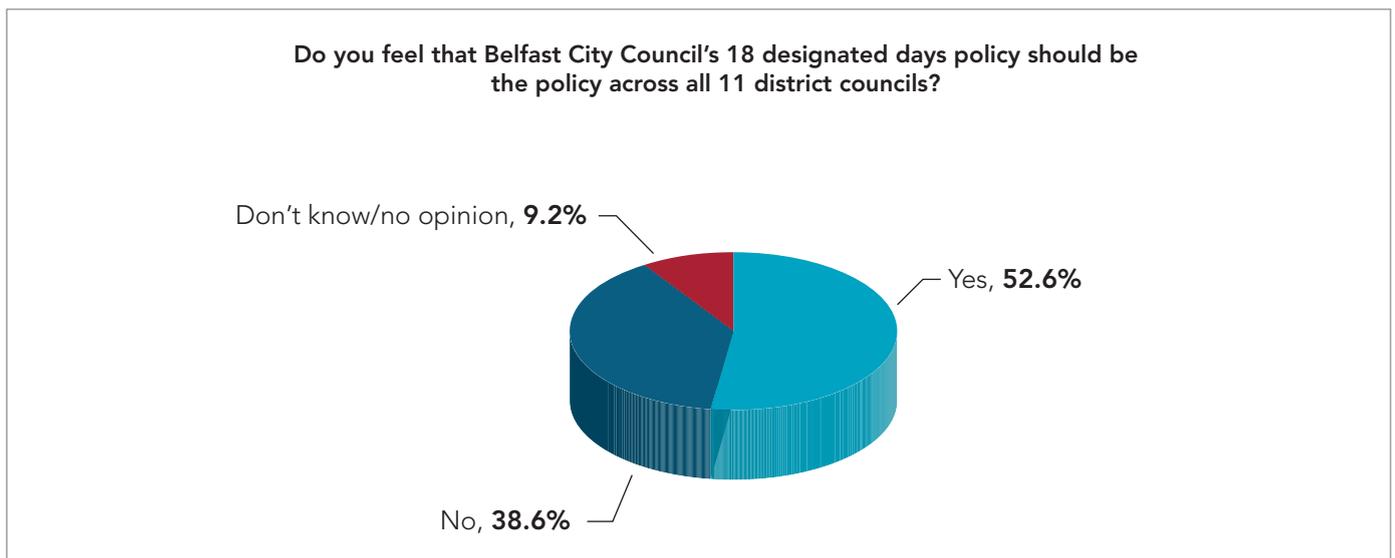
Representatives from the unionist political parties were even more sceptical. It was pointed out that in days before the vote in Belfast City Council papers setting out compromises of this kind had been exchanged without a deal being struck, but for unionists the more important consideration was the new landscape which had emerged following the Belfast City Council vote. It was felt that no such compromise could be brokered given the hardening of attitudes that followed. And, while nationalist politicians like Claire Hanna from the SDLP and Pat Sheehan from Sinn Féin told us they would, in theory, be willing to negotiate some new dispensation of this sort they did not view it as a likely, or even a possible scenario in the current period. In short, the compromise between 18 and 365 days may generate some brief interest but it appears unlikely to gain any real traction.

There is however a desire to move from a patchwork of solutions, and the continual recurrence of the quarrel, to a settled policy that would apply across Northern Ireland. We tested the idea of the Belfast City Council policy of 18 designated days being rolled out across all 11 councils and discovered a majority (52.6%) of people in favour of it.

The breakdown of Protestant votes across council areas throws an interesting light on responses to this question. Among those who support the designated days option there is a difference between those Protestants who live in nationalist majority councils and those who live in areas where there is a unionist majority. Support is higher (60%) in the former areas where the flying of the Union flag 18 days a year would be seen as a step forward and lower in the latter areas where it would be seen to be a step backwards.

Overall, the preference for 18 designated days in this poll is consistent with all other surveys. The NI Life and Times Survey for 2014, published in December 2015, found that 51% of respondents opted for 18 designated days across all councils. This was also the case with the 2013 Life and Times Survey when 18 designated days was the most popular choice with 53% of first preferences. It is also consistent with an Ipsos/MORI poll commissioned by the BBC in January 2013 when the flag protest was at its height. That poll showed a slightly lower percentage (44%) but it was still ahead of all other choices.

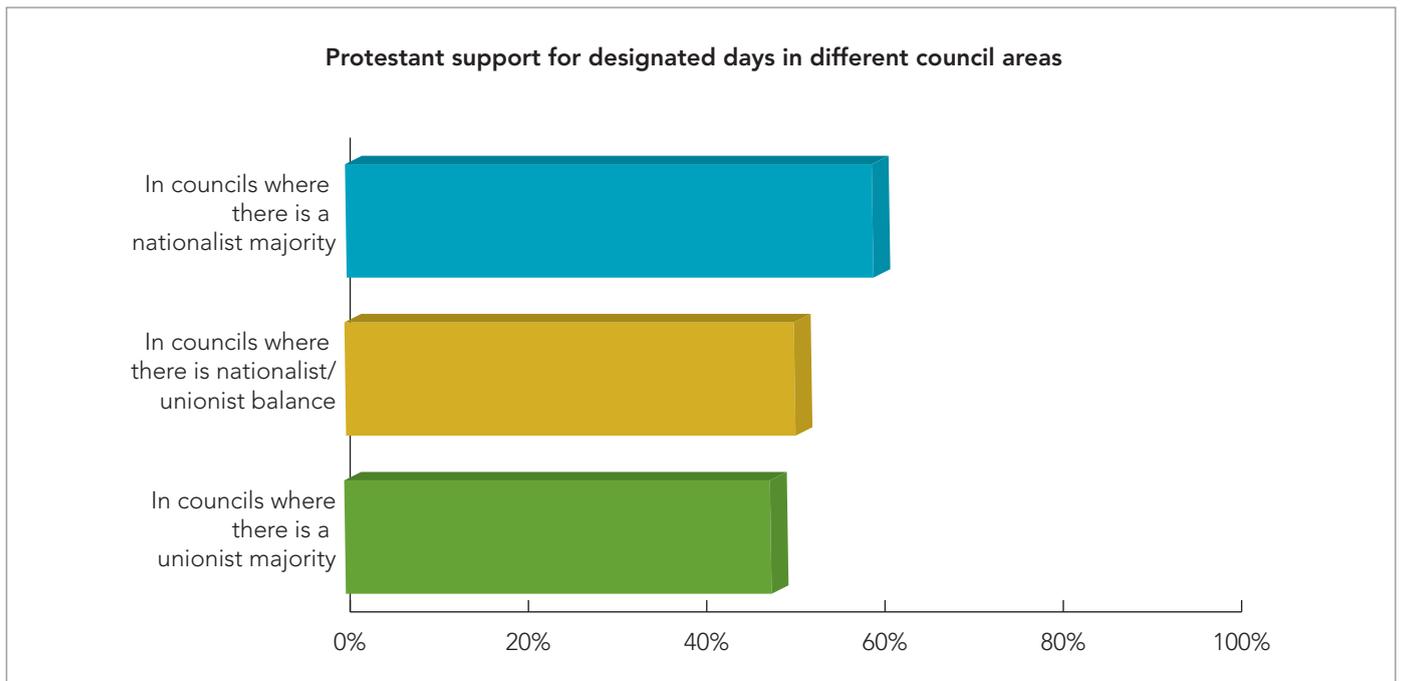
**Chart 7a: Support for 18 designated days across all councils**



If this is the policy that commands the greatest degree of support how might it be adopted as the governing policy for all councils? And if it were to become a policy for councils across the whole of Northern Ireland what problems might it bring in its wake? The poll asked respondents how they would feel if Westminster introduced legislation to make the designated days option compulsory for all councils. The

question was posed in a particular wording: "The Flags Order 2000 laid down that the Union flag be flown at the headquarter offices of all government departments on a certain number of designated days each year. Would you agree that the Westminster Parliament should extend that legislation to cover the headquarter offices of district councils?" Answers were as follows:

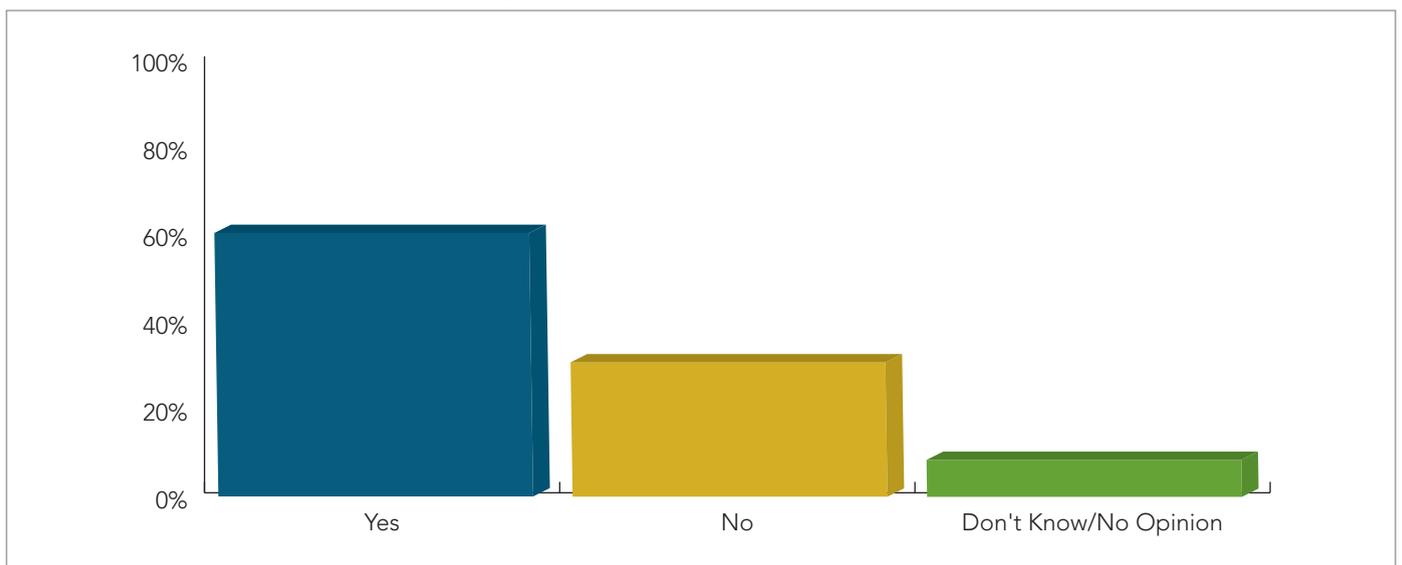
**Chart 7b: Protestant support for designated days in different council areas**



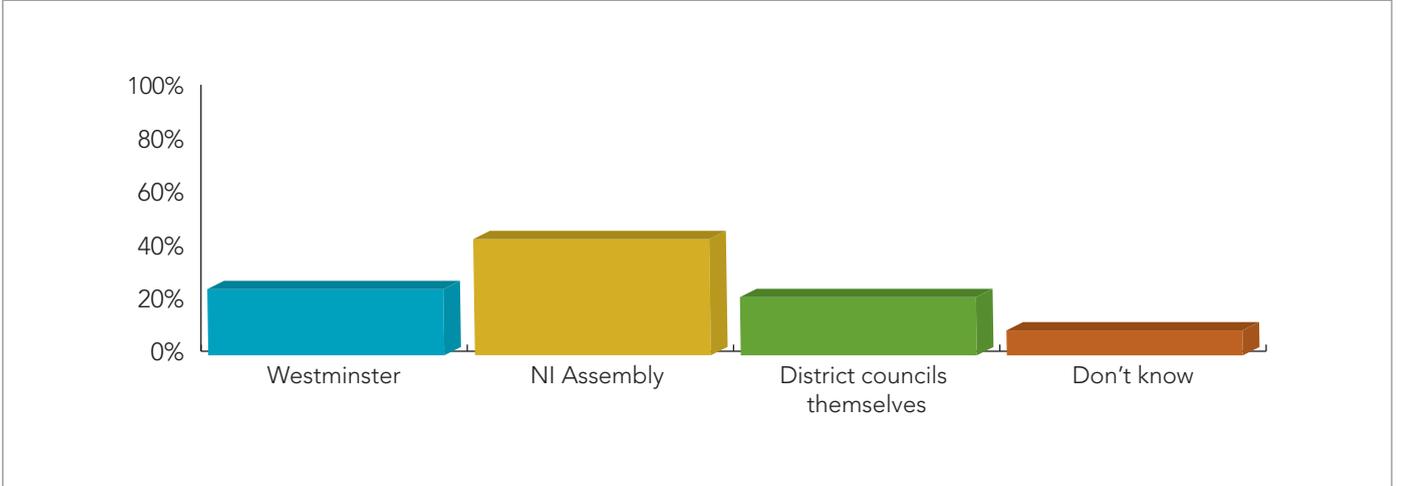
Given that such an intervention by Westminster would contravene the devolved governance arrangements (the Flags Order of 2000 was introduced during a period of direct rule) we thought it fair to also ask respondents whether they thought

the NI assembly should be the prime mover, or whether it should be the councils themselves. The responses were as follows:

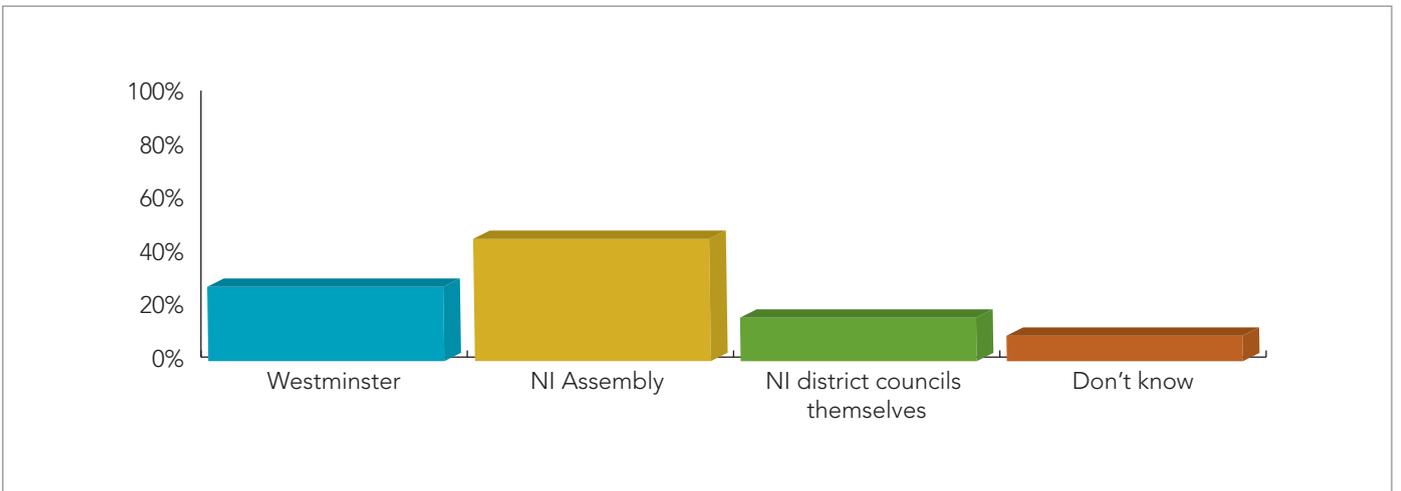
**Chart 8: Should Westminster extend the Flags Order to cover NI district councils?**



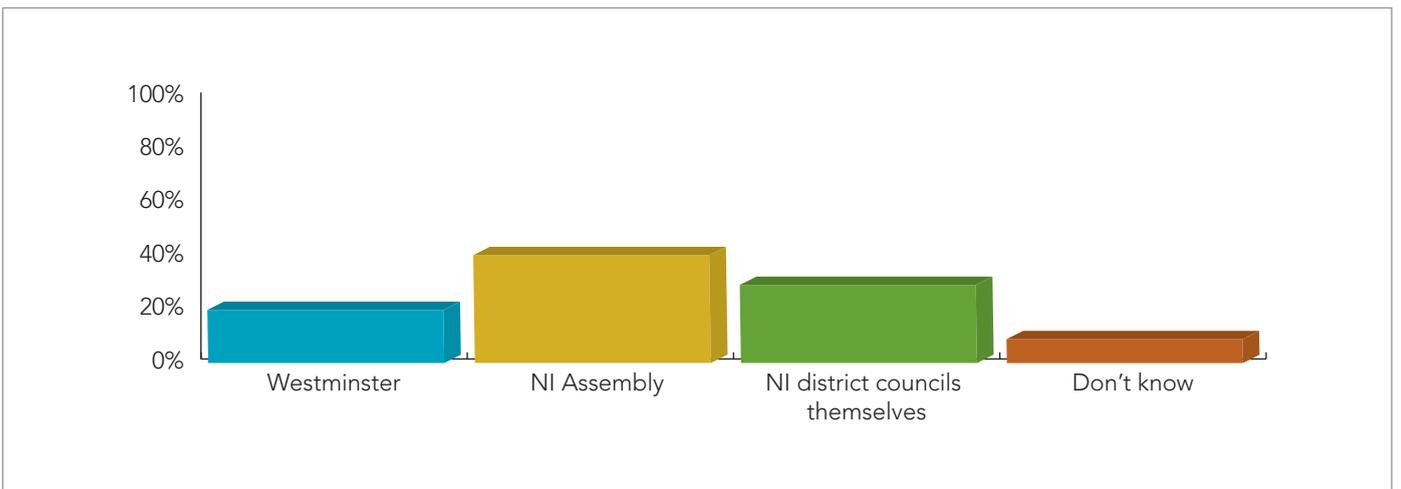
**Chart 9a: Who should decide flags policy across NI? (All)**



**Chart 9b: Who should decide flags policy across NI ?( Protestant responses)**



**Chart 9c: Who should decide flags policy across NI? (Catholic responses)**



The responses show a distinct difference in attitudes between Protestants and Catholics. Protestants are more likely to accept a Westminster-imposed solution (28% v 20%) while Catholics are almost twice as likely as Protestants to leave the decision to district councils (29.4% v 16.4%).

In focus group discussions participants who leaned towards a Westminster solution explained that one motivating factor was disillusionment with the Assembly politicians. It was felt that local politicians are incapable of delivering an agreement on flags, and that if Westminster could deliver the smack of firm government that this would be very welcome. When in further discussion it was explained that the devolution settlement does not allow for this participants were not necessarily deterred. In a focus group in Derry-Londonderry 52.4% of the 22 people present voted for this option before the discussion. After the discussion the vote actually went up to 57.1%. The opinions that were expressed in support of this were very much focused on the lack of faith in Northern Ireland politicians securing agreement without direct intervention from Westminster.

The untested hypothesis concerns whether the political leadership of nationalism and unionism would be prepared to countenance a deal to sell the designated days for all councils across Northern Ireland. We convened a seminar with the chief executives of the district councils and two separate seminars, one east of the Bann, one west of the Bann with the Good Relations Officers of the councils. There was widespread scepticism about the possibility of councils providing the

leadership for such an initiative. It was felt that if such a deal could be struck (and again there was little confidence in this as a possibility) then it would have to be an arrangement forged between the leaders of the main parties at Assembly level.

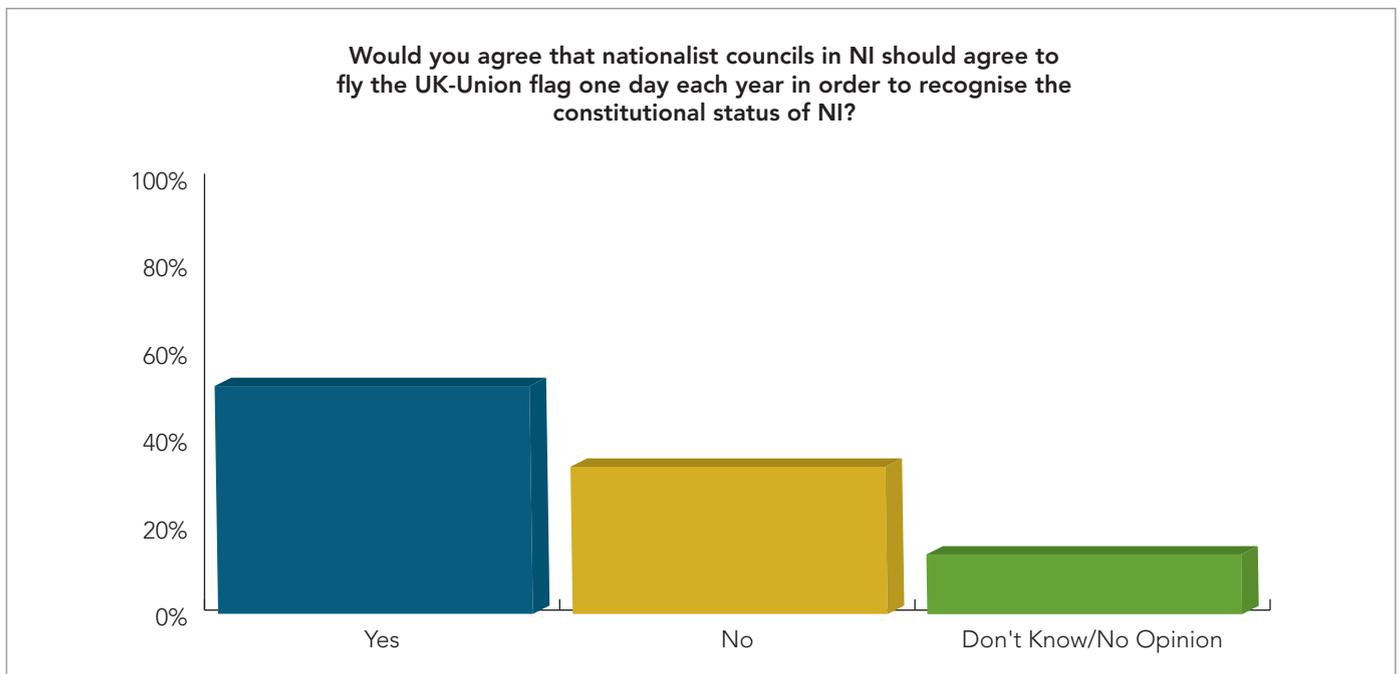
The history of the peace process is one where progress is most often made through package deals, as with the St Andrew's Agreement, the Stormont House Agreement or, more recently, the A Fresh Start Agreement. It may well be the case that a resolution to the flags issue can only be found when other counters are placed on the board – say an Irish Language Act, or a particular investment package. It would be altogether too speculative of us to attempt to imagine ways in which the flags issue could be folded into other, as yet unknown, negotiations, but we did think it worth exploring if other possibilities for additional flag-flying might be helpful.

#### **Put out more flags?**

We tested reactions against two proposals, one which provides a challenge to nationalist sensitivities, and one which provides a similar challenge to unionist sensitivities. The option which nationalism might find difficult is the flying of the Union flag one day each year in recognition of the constitutional status of Northern Ireland.

Unsurprisingly, Catholics were less likely than Protestants to agree to this suggestion. More than four out of ten (41.7%) did not agree to it, as against less than three in ten (28%) of

**Chart 10 a: All Responses**



Protestants. The suggestion did provoke some thoughtful responses, for example:

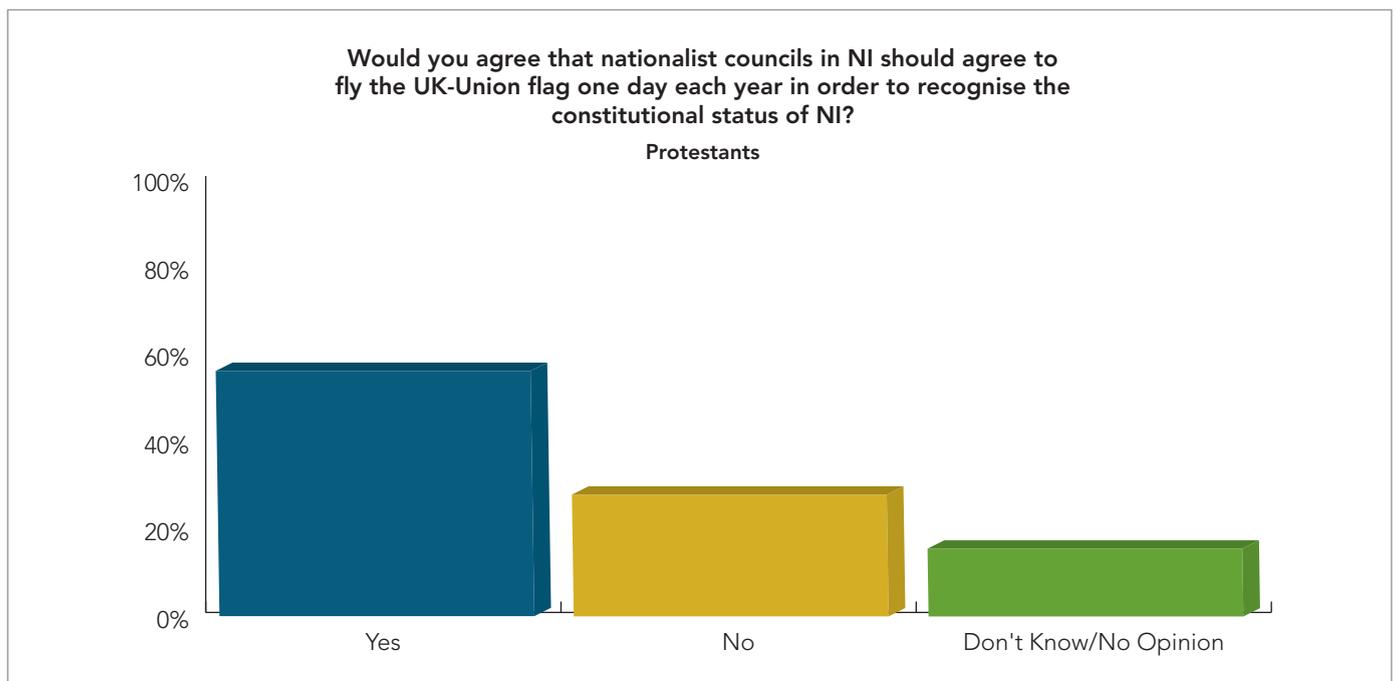
*"This is theatre politics, not actually helping the peace process or helping to improve the lives of the electorate. "*

*"It would certainly be important for councils to raise the Union Jack on specific days or occasions, such*

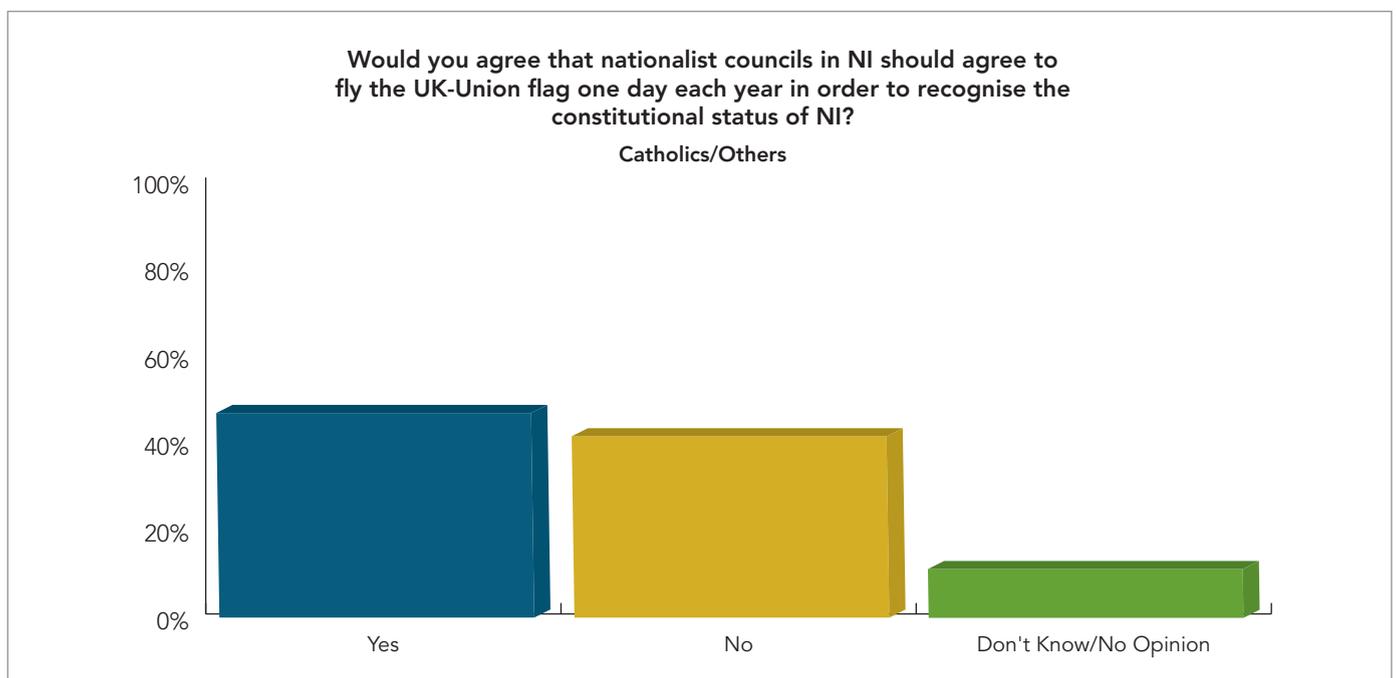
*as a state visit or important anniversaries like VE Day. However, to suggest that the flag should be raised purely as a symbolic gesture of recognition would in my mind be counter-productive."*

*"The flag should be flown but not for this reason. This reason would only be to rub nationalists' noses in it. "*

**Chart 10 b: Protestant Responses**



**Chart 10c: Catholics/Others responses**



*“This looks like an enforced token. Better to go for limited number of sensibly agreed days.”*

The second speculative area we tested was to do with the flying of the Irish tricolour on district council offices. The flying of other countries’ flags on government buildings is not an unusual occurrence when there is an official business, and the Flags Institute has a protocol to govern its use on such occasions. It is very precise on how the flag of another country is to be positioned in relation to the Union flag:

When British national flags are flown with the flags of other nations each flag should be the same size (or have the same width – the measurement from top to bottom) and should fly from a separate flagpole of the same height. The UK’s flag shape of 3:5 works well with nearly all other nations’ flags and it is recommended to use these proportions if a standard size is required for all the flags in a display.<sup>44</sup>

In Northern Ireland of course sensitivities are more heightened. For example, in June 2015 when the Orange Order opened its new museum of Orange culture at its headquarter offices, Schoemberg House in east Belfast, there was a row of flagpoles on which were displayed the flags of other countries where there are Orange lodges. Included in the international display were the flags of Canada, Ghana and Togo. There are also Orange lodges in the Republic of Ireland but there was no Irish flag on display. Tommy Sandford, a DUP councillor and a member of the Orange Order, dismissed queries about the absence of the Irish flag saying that the order had consulted with southern members and “they were happy enough to have the Union Jack flying” to represent them.” A more technical explanation was offered, which suggested that since there was no Grand Lodge in the Republic the flag did not have to be included. Whatever the rights or wrongs of this fine point of

protocol, what the row revealed was an extreme sensitivity to the flying of the Irish flag.

We tested a range of scenarios to see if there are any circumstances in which the flying of the Irish tricolour would be acceptable. Responses to the various hypothetical scenarios are set out in **Chart 11** below:

This matrix would appear to distribute scores quite evenly on some questions, for example in response to the ‘never’ option 25.7% thought that was a very good option (i.e. that the Tricolour should never be flown), 28.4% were neutral and 23.3% saw that as a very bad position to adopt. However, when we break the results down by religion we see that far from an even distribution, responses differ markedly between the two communities. For example, 34.4% of Protestants were strongly in favour of the ‘never’ option, against 11.2% of Catholics. And while 52% of Protestants thought it was a very bad idea to have the Tricolour fly alongside the Union flag, only 11.2% of Catholics felt the same way.

One interesting result was that 58% of Protestants thought the flying of the Irish Tricolour ‘on occasions of a visit by an Irish government minister or president’ was a very good or fairly good idea. This might be interpreted as a show of liberal tolerance, but to be consistent with the other poll results and the response given to interviewers, the more likely explanation is that the Irish tricolour is acceptable in situations where it is displayed as the flag of a foreign country, rather than a recognition of Irish identity within Northern Ireland.

Again, the answers to this question tended to be more reflective because the options were less familiar. Respondents thought through the various scenarios, and among the comments were the following:

**Chart 11: Responses to questions on the acceptability of the Irish tricolour on council building**

Are there circumstances in which you would support, accept or agree to the flying of the Irish tricolour on district council offices?					
	Very good option	Fairly good option	Neutral	Fairly bad option	Very bad option
Alongside the Union flag	12.7%	19.9%	24.9%	7.7%	34.7%
Not alongside the Union flag but elsewhere on council property	5.8%	15.4%	27.9%	11.9%	39.0%
Never on council property	25.7%	12.7%	28.4%	9.8%	23.3%
Where the Union flag is given more prominence	5.0%	21.2%	24.4%	11.7%	37.7%
On occasions of a state visit by an Irish President or govt. minister	35.8%	26.5%	18.8%	3.7%	15.1%

<sup>44</sup> The Flag Institute, *British Flag Protocol* <http://www.flaginstitute.org/wp/british-flags/flying-flags-in-the-united-kingdom/british-flag-protocol/>

*“I would only agree to it on state visits by the Prime Minister and the President, but not ministers”.*

*“I accept there is a substantial number of people who feel they are not Irish and aspire to a united Ireland. However, we cannot ignore the fact that Northern Ireland is part of the UK and will remain so until the majority of the people decide otherwise. ”*

*“I feel I should predicate this reply by saying that I am a Protestant Irish nationalist – but the Tricolour is the official state flag of the Republic of Ireland, not to be confused with the revolutionary tricolour. Its use by republicans is, in my opinion, incorrect and damaging to the image of Ireland. ”*

## 5. FLAGS ON LAMP POSTS

### 5.1 Prevalence of the problem

Flags on lamp posts would not be so controversial if they were not so prevalent. We know their use is widespread across the whole of Northern Ireland, in both unionist and nationalist areas; we know they fly in both rural and urban areas; and we know that they are to be found both in housing developments and on arterial roads. We do not however know how many flags were put up in 2015, nor can we say with any certainty what impact the vote at Belfast City Hall in 2012 had on their display. And while we were frequently told that there have been fewer paramilitary flags in recent years there is no way to test this claim empirically – or any other claim for that matter. The simple reason is that no-one has done a systematic count of the flags since 2010.

The widespread use of flags was mapped from 2006-2010 by a project team at the Institute of Irish Studies, Queen's University Belfast<sup>45</sup>. Among other findings it was able to show that around one third of the flags being put up on main roads in Northern Ireland during the summer months remained flying in October, and many flew as tatters right through the winter. The vast majority of flags flying on the main roads in Northern Ireland were Unionist. The ratio of unionist flags to nationalist flags throughout this period was approximately 13:1.

#### Number of Unionist Flags on Display on Main Roads in July and September, 2006 – 2010

	July	September	% Change
2006	3684	1562	-57.6%
2007	3907	1287	-67%
2008	4116	1651	-59.9%
2009	3761	1144	-69.6%
2010	3328	1098	-67%

#### Number of Nationalist Flags on Display on Main Roads in July and September 2010

	July	September	% Change
2006	266	606	+127.8%
2007	202	213	+5.4%
2008	332	1022	+207.8%
2009	176	175	+0.6%
2010	286	757	+164.7%

<sup>45</sup> Bryan, Stevenson, Gillespie and Bell (2010) *Public Displays of Flags and Emblems in Northern Ireland, 2006-2009*, Institute of Irish Studies, Queen's University Belfast. Please note that after this report was published a further study was conducted in 2010, as referred to above.

The research concluded that during that period, despite attempts to reduce the period of time flags were flying, there had been no change. The report also noted that paramilitary flags were not common in that period, and that measured in the month of July each year there was a steady decline from 161 in 2006 to 73 in 2009.

While conducting this research we were frequently told that the Belfast City Hall vote led to a spike in the number of unionist flags, and we have no doubt that their numbers did increase. We have also been told that there are fewer paramilitary flags and we have seen evidence of that in particular areas like east Belfast. However there are some reasons to be cautious about any generalisations. While there is no reason to doubt the assertions made by individuals about their own neighbourhoods, neither they nor anyone else can say if that local trend is typical of developments across Northern Ireland. Secondly, while the City Hall vote clearly produced a reaction in terms of flags display, it is sometimes forgotten that there was a significant spike in 2012 before that vote was taken in December. That year marked the centenary of the signing of the Ulster Covenant and the early formation of the Ulster Volunteer Force. Flags carrying the letters UVF were widespread on lamp posts in Protestant areas, and while they were said to commemorate the historic 36<sup>th</sup> Ulster Division they manage to elide the distinction between the historic organisation and the present day UVF. When comparing one period with another therefore it is important to be clear which year is being used as a point of comparison. The only thing we can say with certainty is that there is no evidence base to verify any comparisons between one year and another.

### 5.2 Attitudes to the unofficial use of flags

As might be expected, our survey showed that strong feelings exist on the unofficial display of flags – or, as the problem is more often described, flags on lamp posts. In total, 62.8%, said they find this to be either Annoying or Very Annoying, with 35.4%, or more than one in three, opting for the strongest expression of annoyance. At the other end of the spectrum, 18.7% say they are either Supportive or Very Supportive of the custom, with 9.7%, or one in ten, indicating the strongest level of support. Predictably, there are sharp differences between Protestants and Catholics, but there is also a class divide. The key findings are:

- The very strongest support comes from Protestants in the C2DE socio-economic bracket. Only 10% regard the unofficial flying of flags as Very Annoying and 24.6%, or one in four, declare themselves to be Fully Supportive.
- The weakest support comes from Catholics/ Others where support is virtually non-existent: only 1% are Fully Supportive and only 3.2% are Slightly Supportive. In fact, almost eight in ten (79.7%) find flags on lamp posts to be either Annoying or Very Annoying, with the largest

single share of preferences , 49.2%, or almost half of all respondents, opting for Very Annoying.

- As **Charts 12c** and **12d** shows there is also a significant gap between ABC1 (broadly middle-class) and C2DE (broadly working-class) Protestants. It is a much wider gap than is shown in **Charts 3a** and **3b**, where the question was on the general importance of flags.

Clearly there are many middle-class Protestants who wish to express their general support for the Union flag, but who find flags on lamp posts distasteful – in fact, more than half (55.6%) find the practice either Annoying or Very Annoying. Only 34.7% in the C2DE category express the same attitude and only 10.1% find the custom Very Annoying.

### What is your attitude to flags on lamp posts?

Chart 12a : All responses

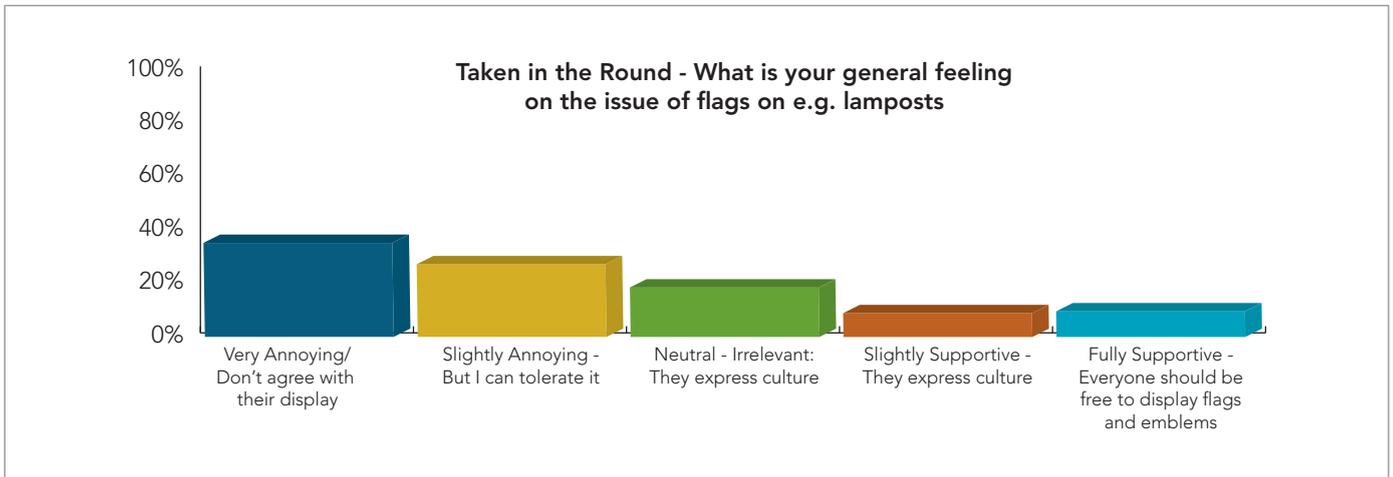


Chart 12 b: Catholic/Others responses

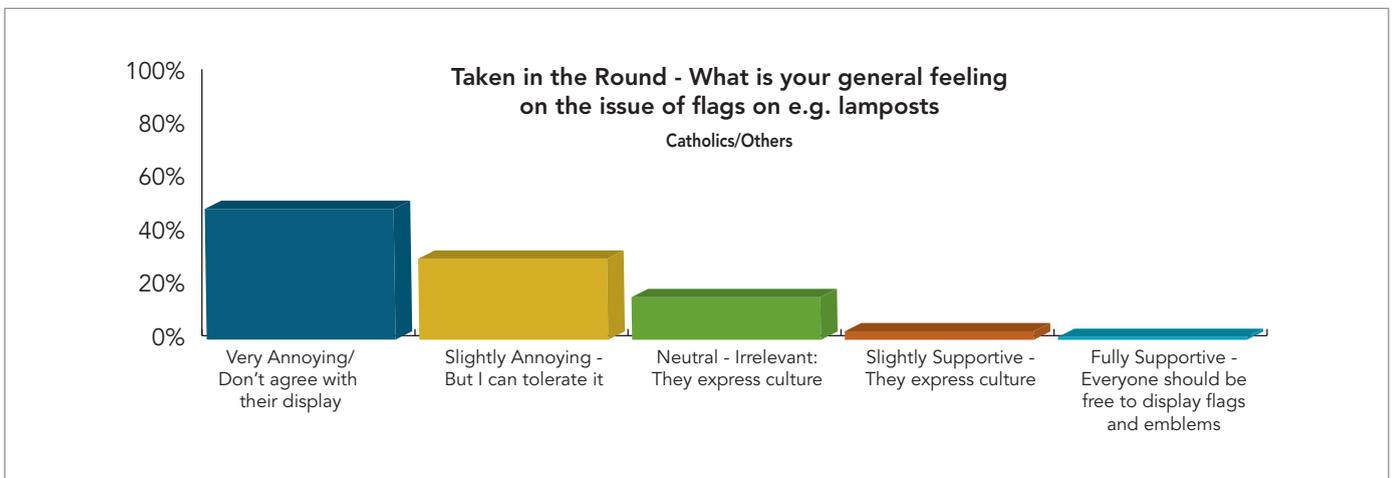


Chart 12 c: Protestant responses (socio-economic group ABC1)

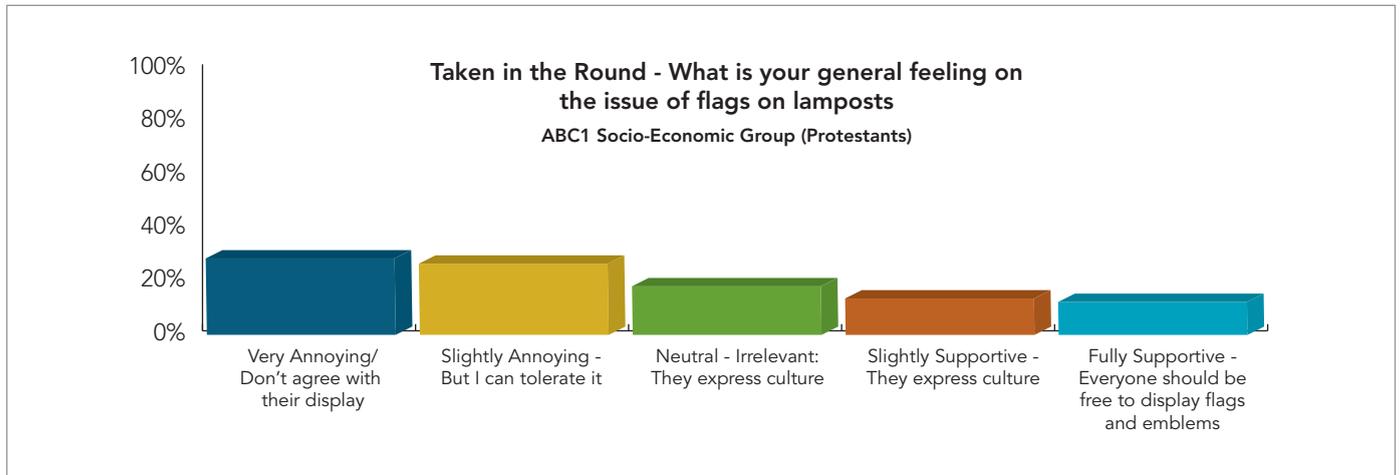
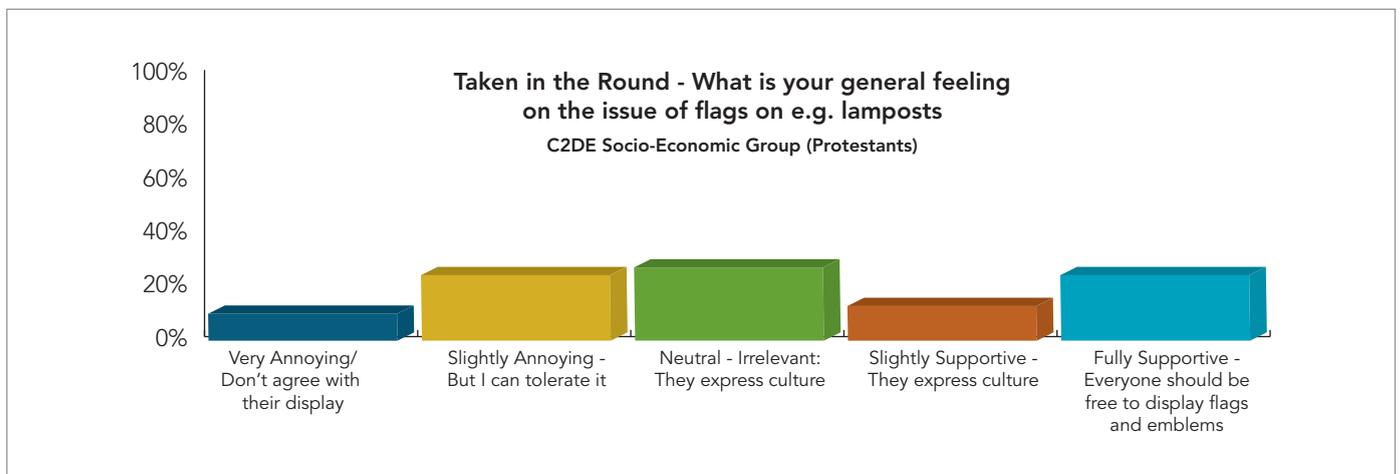


Chart 12 d: Protestant responses (socio-economic group C2DE)



### Additional options

Other questions might have been asked, and it may be helpful to explain why we didn't include particular questions that came up in poll responses and also in focus groups and individual interviews. One is the option for the Irish tricolour to be the sole flag flown on council buildings. We didn't include that on the menu of options as the purpose of this study is to find pragmatic ways forward given the range of policies preferred by the political parties. At present neither the SDLP nor Sinn Féin is promoting that option, nor have any councils with nationalist majorities adopted it as policy – even though there would be no legal impediment to prevent them. Given the limit to the number of questions that can usefully be asked in a poll of this kind it did not seem worth pursuing an idea that does not command a measure of support.

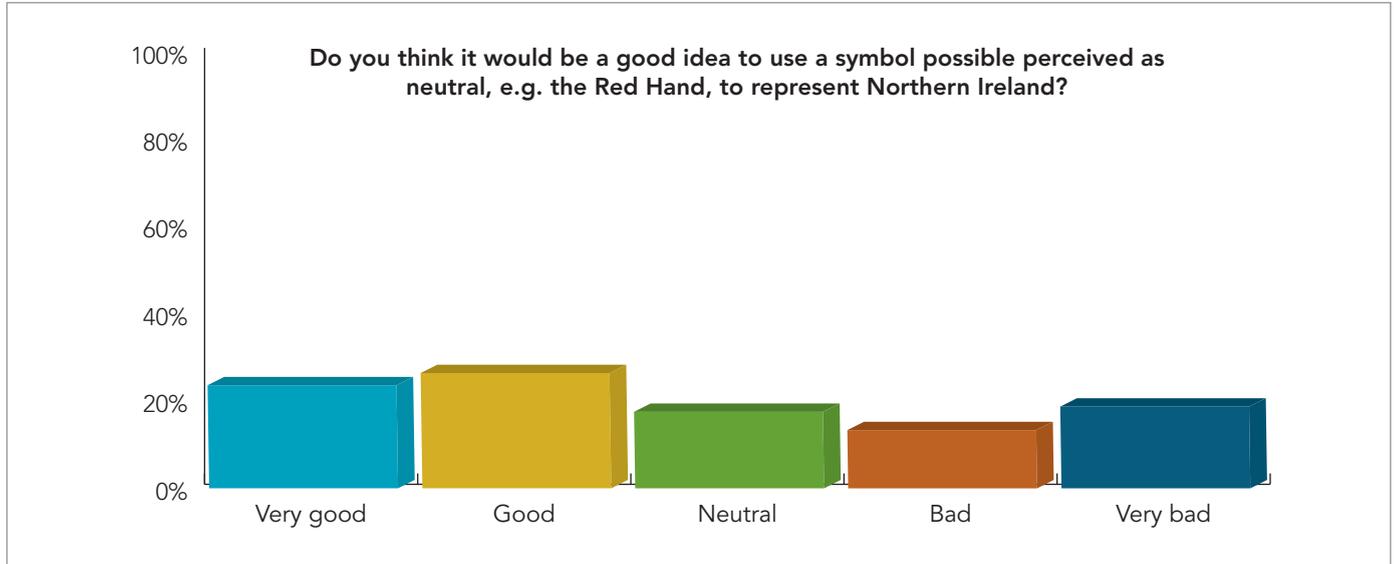
A similar pragmatism led us initially to exclude the possibility of a new, neutral Northern Ireland flag. This idea had been put to the political parties by Dr Richard Haass in an open letter on 3 December 2013. In it he asked, "What might a process to design and validate a new Northern Ireland flag look like?

What role might such a flag play in civic life?" The reaction was almost completely negative. As the *Belfast News Letter* reported on 4 December 2013, 'Unionists have unanimously rejected proposals by former US diplomat Richard Haass about creating a new flag for Northern Ireland.' This should not have been entirely surprising as any new flag design would not meet the unionist requirement for any official flag to reflect the sovereignty of the UK. Given that fundamental opposition it did not seem to us that it was worth testing an idea so unlikely to win agreement.

However, once we began the survey the possibility was raised so frequently by respondents that we asked the polling agency, Lucid Talk, to include a question on it in a later omnibus survey it was scheduled to conduct. This survey involved 2,614 respondents and included the question 'Do you think it would be a good idea to use a symbol possibly perceived as neutral, eg the Red Hand of Ulster, to represent Northern Ireland?' The responses show that just over half (50.2%) of those surveyed considered this to be either a Good (26.5%) or Very Good (23.7%).

**Do you think it would be a good idea to use a symbol possible perceived as neutral, e.g. the RedHand, to represent Northern Ireland?**

**Chart 13 : Reponses to the idea of a neutral flag**



Various other suggestions were put forward as to what might better constitute a neutral flag:

“Encourage the flying of neutral, council or local flag at council offices as an alternative – for example, St Patrick’s Cross, this worked well in Down District Council for many years”.

“Only council flags should be flown from council buildings”.

“No Union flag or Irish tricolour. Something new and unique is required.”

It seems likely that a completely new symbol would have more acceptability than an existing symbol. This has proved to be a successful strategy for the choice of a symbol for the Assembly, where some creative thinking led to the motif of the flax plant being adopted as the logo of the new body, with six flowers to represent the different counties. An even more controversial decision faced the NI Policing Board in 2001 over the design of the police badge. The design that was eventually chosen made use of six symbols, selected to reflect both nationalist and unionist identities. It features a crown, a harp and a shamrock and, in addition, the scales of justice, a torch and an olive branch. The cross of St Patrick forms the centrepiece of the design. That might seem like symbolic overload, but it is now accepted without protest. These two cases provide evidence that creative thinking can on occasion provide a way through disputes over symbols.

**5.3 Why do flags create problems?**

Most flags that are flown do not create problems, just as the majority of parades do not create problems. When people

fly flags it is most often to celebrate their culture and is not intended to intimidate others or to harm community relations. However on occasions flags, like parades, can cause serious problems. The problems are not all of one kind, and they do not all arise for the same reason. A brief typology (by no means exhaustive) would include the following reasons:

**1. Because flying flags on lamp posts is illegal.**

If a person attaches a flag to a lamp post he or she is in breach of the Road Service (Northern Ireland) Order, Section 87. Similarly, if flags are placed on the property of the NI Housing Executive, or British Telecom or any other agency or provider then laws or by-laws are likewise being broken. In a situation where the law can be flouted with impunity - which is how the situation in Northern Ireland can be described - then general respect for the law is lowered. This concern applies to the posting of a flag of any kind, but the problem has another layer in that the flags of illegal organisations are displayed on lamp posts and other public buildings (see 5 below). This represents a double threat to the rule of law.

**2. Because they can be intimidatory**

As well as testing general attitudes, the NI Life and Times (NILT) Survey also asks if people have felt annoyed or intimidated by flags, murals or kerb paintings. Responses to the latest survey, conducted in 2014, showed the following:

**Republican murals, kerb paintings or flags:** 27% of people said they had been annoyed by them and 11% said they had been intimidated by them.

**Loyalist murals, kerb paintings or flags:** 31% of people said they had been annoyed, and 19% said they had been intimidated by them.

It is not the case that only Catholics are intimidated by loyalist murals, kerb paintings or flags, and only Protestants by republican ones. The NILT survey shows that 24% of Catholics and 15% of Protestants have felt intimidated by loyalist murals. And, while 31% of Protestants report they have been intimidated by republican murals, kerb paintings or flags so too have 24% of Catholics.

The Clondeboye estate in Bangor had experience in 2015 of how the appearance of flags can provide an early signal of the incoming presence of a paramilitary group. The problem began on the 27<sup>th</sup> March with the erection of 6 UDA flags on the estate by a faction of the UDA in North Down. The first flags were positioned at the new children's play park, to the annoyance of many residents and the Clondeboye Village Community Association (CVCA) which had lobbied hard to secure this facility. The erection of the flags was followed by the dumping of tyres at the site of the community bonfire, a sign that this particular UDA faction intended to step up its presence in the area. Alarmed by developments the CVCA convened a meeting in the local Old Ebenezer Hall, and electronic voting devices were used to record the community's response to the flags. While the meeting expressed support for either the Union flag or the Ulster flag there was strong resistance to paramilitary flags. A clear majority (89%) said that the flags which had gone up made them feel either: worried (31%), fearful (29%) or intimidated (29%). The PSNI, political and council representatives were in attendance at the meeting.

Following the erection of the flags, the CVCA made approaches to political representatives, to officials from North Down and Ards Council, and to the PSNI to have the flags removed. Just as the erection of the flags could be seen as a display of paramilitary muscle, the removal of the flags could also send out a message – that the paramilitary presence would be resisted. But that didn't happen. No agency would take responsibility for the removal of the flags. Instead the Clondeboye residents were encouraged to participate in negotiating an arrangement with the UDA faction or its representatives. They refused, feeling that the legitimate authorities should act on their behalf to secure the removal of the flags, and the sense of threat they had brought into the area. Soon the members of the community association, residents and young people began to experience low-level intimidation, which increased dramatically on the 22<sup>nd</sup> November when the chair of the CVCA, Aaron McMahon, was attacked in his home by two masked men, one wielding a hammer. Mr McMahon was stuck repeatedly on the head by the assailants, in front of his wife and young children, and was only saved further injury when his wife intervened and called the PSNI.

The following night, 250 people attended a rally outside Mr McMahon's house to show their support. In a statement to the BBC Mr McMahon said that he felt that while he appreciated the support of local residents he didn't feel the community had the support it needed from the authorities. The flags had

been an early warning of this UDA faction staking out territory, and the official tolerance of the flags seemed to give the green light to further expressions of their growing control of the area. However, arrests have since followed and the PSNI has stepped up its presence in the area and its engagement with the CVCA. The flags are now down and the community is hoping that the threat has been successfully rebuffed.

This process of planting a flag to claim territory in this way is not an unusual one. It is how paramilitaries generally move to expand their empires. And when flags go up, there is no authority that will take them down. What makes the Clondeboye story unusual is that the voluntary members of the local community association stood up to the threat. For that, Chairperson Mr McMahon and his family paid a price.

### **3. Because they are resented by traders**

Restaurants and shops generally do not welcome the marking of territory that comes with flags. The loyalist flag protests in 2012/2013 created a backlash from traders in Belfast city centre, with the Confederation of British Industry estimating that the loss to retailers and the hospitality industry was in the region of £15 million. That was of course an exceptional circumstance, when there was a constant threat of violence and with a large police presence, and it was the activities of the protestors rather than the flags themselves that harmed trade.

Nonetheless, flags on the high street are not welcomed by traders as the threat of violence always lurks. When a shopping area is demarcated as the territory of one community there is a chill factor for the other community. Holywood Co Down in 2015 provides a case in point. In June flags appeared in the centre of town, and traders made representation to the Council. A small group of local councillors led the way in making contact with the paramilitary group which had erected the flags. This group then encouraged all local councillors in the area to support an independent conflict resolution organisation to facilitate negotiations (which included paramilitary groups and individuals, councillors, traders, and other groups in the town), and these finally resulted in the flags coming down and more discrete bannerettes, with a design agreed by the Council and stakeholders, being affixed to the lamp posts. This was a case where any large scale trouble was averted, but is typical of the below-the-radar unease that comes with the appearance of flags in commercial locations, and the considerable efforts that have to be made to resolve such situations.

### **4. Because they can lower house prices**

The display of union flags on private houses is much less common than it used to be, and this may be connected to changing patterns of home ownership. In the Life and Times data there is a tendency for attitudes to flag display to be related to type of accommodation. For example, among Protestants support for flag display on lamp posts in the neighbourhood is stronger among those who rent property than among those who either own outright or are buying

via a mortgage. The 2013 data suggest that 37 percent of Protestants who rent support flag flying compared to only 18 percent of owners and 14 percent of those buying on a mortgage. This is consistent with the idea that people are sensitive to the probable downward impact on property prices flowing from lamp post flag display.

**5. Because they promote paramilitarism**

In 1994 all of the main paramilitaries announced their ceasefires. Twenty-two years later the continued existence of paramilitary organisations is advertised on flags and murals throughout Northern Ireland. The new political accord, A Fresh Start, announced in November 2015 re-iterated commitments made in the past to end paramilitarism for good. In fact the opening section of the document is headed ‘Ending Paramilitarism and Tackling Organised Crime’. The two are yoked together deliberately to underline their connection, but it is impossible to imagine organised criminal gangs putting up flags to advertise their strength in particular areas. This dispensation however is allowed to paramilitary groups, and the visibility of their flags and insignia represents a challenge to the authorities. The failure of the authorities to deal with this challenge makes it all the harder to deal with the underlying problem.

**6. Because they are problematic in areas of demographic change**

Flags demarcate territory and sometimes the demarcation is no longer in line with the community character of the area. Demographic changes have resulted in areas that previously had a Protestant majority becoming areas where the Protestant population is now a minority. That can feed a sense of besiegement or loss, and those areas are the very ones most likely to see a display of flags – the message being that Protestant traditions will be maintained.

Belfast’s Ormeau Road is a case in point. An area that always had a Protestant majority has become home to a new generation of the Catholic middle-class<sup>46</sup>, and the mixed character of the area does not sit well with the strong assertions of unionist identity that come with flag displays. The arrival in the area each year of large groups of young loyalist males, sometimes with cherry pickers to ensure that the flags are secured beyond reach, is experienced as a form of intimidation. In the period from April 2014 to August 2015 the PSNI counted a total of 187 flags on the Ormeau Road. They also recorded 30 complaints made directly to them, and acknowledge that other representations were made through community groups, Police Community Safety Partnership groups, and political parties.

As a result of this lobbying the PSNI issued a statement saying that: “Police have directed that any future erection of flags on

this part of the Ormeau Road will be treated as a breach of the peace. Community representatives have been spoken to and advised of this.”<sup>47</sup> Immediately questions were asked if this represented a new policy to be applied across Northern Ireland, or was simply a policy shift confined to the Ormeau Road. The answer was that it was neither of those things. A further statement from the PSNI clarified that there was no shift of policy, and that the PSNI would only intervene in situations where there was a real threat of breach of the peace.

Flags went up again in June 2015, to the dismay of local residents, some of whom continued to believe that the erection of flags on the Ormeau Road would not be tolerated. The PSNI had attempted to calm the situation through local negotiation. The PUP informed the Irish News that it had struck a deal with the PSNI which would allow non-paramilitary flags to be displayed along the Ormeau Road from June to September<sup>48</sup>. The PSNI continued to monitor the situation, and a report to the Policing Board noted that there had been fewer flags than the previous year. Local representatives pointed out however that the flags were much larger, covered a longer stretch of the road and for the first time included flags outside a Catholic primary school in the adjoining Sunnyside Street area. Moreover, the commitment to remove them by September was not fulfilled. Flags remained on the Ormeau Road and surrounding area until December.

Those who put the flags up on the Ormeau Road see no reason why the changing character of the area should lead them to break with tradition. A PUP spokesperson told the Irish News, “Erecting flags in July and August has been part of the Unionist culture and tradition for the last 100 years, otherwise acceptance of others means nothing.” Those who oppose the flags do not seek a total ban; indeed Sinn Féin, Alliance and the SDLP stress that some form of accommodation should be possible through negotiation, but they resist what they see as the uncompromising display of force by loyalists and the police protection it seems to enjoy. Duncan Morrow, Alliance Party member and former Director of the Community Relations Council puts it this way: “Part of the issue I suppose for us is, if people are safe putting them up are people as safe taking them down or is there some kind of threat which makes this look like the rule of law isn’t actually operational around these issues?”

**7. Because they deter tourists**

Northern Ireland’s tourist industry still struggles with the weight of the Troubles legacy, and with the perceptions of the place as a sectarian minefield. The profusion of flags that greet the visitor driving off the ferry or any of the roads leading away from the two airports is not reassuring. In some cases the display of flags, murals and bunting can make it impossible for a town to realise its tourist potential. Bushmills on the

<sup>46</sup> The 2011 census figure show the area to be 57% Catholic and 27% Protestant.

<sup>47</sup> Statement to The View, 14<sup>th</sup> June 2014

<sup>48</sup> Irish News, 2 July 2015, ‘Loyalists claim PSNI consulted before flags went up’.

north coast is a case in point. This small town is situated close to three of Northern Ireland's greatest tourist attractions: the Giant's Causeway, the Bushmills Distillery, and the Carrick-a-Rede rope bridge. However the town greets visitors with loyalist imagery, insignia and, of course, flags. The best-selling travel writer Rick Steves paid a visit, and while he was lavish in his praise for some aspects of Northern Ireland, he wrote the following about Bushmills:

Bushmills — a small town on the north coast much visited for its famous whiskey distillery tours — has a sinister feel. Still reeling from an overdose of support-the-war flag-waving in my own hometown, I found Bushmills a patriotic nightmare: curbs were painted red, white and blue, and the Union Jack was lashed to each telephone pole, giving the town the air of a weary and obligatory patriotism.<sup>49</sup>

#### 8. Because even sports flags can be seen as antagonistic

It is a standard practice in every country in the world for national flags to be flown during international competitions. As we noted earlier, David Cameron chose to fly the Union flag outside 10 Downing Street when England competed in the World Cup. Northern Ireland cannot enjoy such innocent pleasures. There is never a time when the whole population unites under one flag or to sing one anthem. Instead the Union flag and the Irish tricolour command communal loyalties, and in certain contexts their display can be seen as an expression of hostility towards the other community.

This is not limited to national flags – political meaning also attaches to particular sports and particular teams. In nationalist areas GAA flags are much more common than Tricolours. For example in 2010 the Monitoring Flags project run by the Institute of Irish Studies revealed that 3,876 flags were put up along main roads in July that year. In September 1,098 unionist flags remained flying on lampposts while 757 were nationalist – the vast majority of which were GAA flags. The practice of putting GAA flags up is very common throughout Ireland where county rivalries are very strong, and in the Republic the practice is not seen to have any political content whatsoever. In the north the intentions behind the flying of the flags may be just as innocent, but they can sometimes be seen by loyalists as territorial markings. In early July this year 23 GAA flags were stolen from lampposts in Dungiven and the PSNI decided to treat the incident as a hate crime.

#### 9. Because flags mark out territory for rival paramilitary groups.

The first 'flags explosion' began in 2000 in east Antrim. The UFF issued a statement to the Newtonabbey Times that they it was going to put up 1,500 flags between Greymount and Ballymena. The ostensible reason, as given in the statement,

was 'because of daily events and the need to promote Protestant culture in general', but it was widely believed that it was more to do with a power struggle then underway between the UVF, the LVF and the UFF. John Whyte from the UDA explained it to the BBC as being: "an attempt by each organisation to show that they have influence in those areas. They want to show they have a power base. "In the same year rivalrous relations between loyalist paramilitaries on Belfast's Shankill Road led to a sharp demarcation of territory, and flags on lamp posts were used to mark out the boundary line between the UVF-dominated Middle and Upper Shankill and the UDA-dominated Lower Shankill. Relations between the loyalist groups are no longer so violent, but flags continue to mark their respective boundaries – albeit now more in a 'good fences make good neighbours' way.

#### 10. Because tattered flags are unsightly

When they feature in publicity shots flags are always fluttering proudly in the breeze; on the streets of Northern Ireland they are more often bedraggled and tattered. This is a problem that unionists and nationalist flags have in common, and the problem has been made worse by three factors. One is the move towards the double flag size, where the sheer weight of the material leaves it drooping helplessly against the lamp post. A second is the arrival of flags manufactured abroad which are so cheap to purchase they are considered almost disposable. The other is the extension of the unionist flags season which now stretches beyond the traditional end point on Black Saturday at the end of August to take in Ulster Day in October and Remembrance Day in November. In 2015 flags that were put up in June were still up in December. In all our conversations with loyalist groups it is a problem that people want to see tackled as, ironically, the condition of the flags seems to show a lack of respect for the very symbol that they prize so highly. Typical of the mood is this comment in the online magazine 'The Loyalist' on 23 November 2015 concerning the situation in Lisburn:

We made an appeal last month regarding tattered flags still being flown in Lisburn. Battered and torn flags still remain on Union Bridge, what way is this to show respect for our National Flag?? Those who went to the effort to erect them should get off their backsides and either get them replaced or simply remove them.

In Belfast, Action for Community Transformation, a conflict transformation organisation for UVF ex-combatants has adopted the slogan 'It's a flag not a rag' and has systematically removed tattered flags on Belfast's York Road and other locations. Similar tidy up operations have been attempted across the city and across Northern Ireland, but the scale of the problem defeats local initiatives of this kind.

<sup>49</sup> See Rick Steves's *Europe* <https://www.ricksteves.com/watch-read-listen/read/articles/northern-ireland-thoughts-smiles-or-sinister>

**11. Because they are used to provoke**

On 3 June 2015 two flags were spotted flying on the roof of the Stormont Parliament building. One was the Irish tricolour, the other was the Irish Proclamation flag. Thirteen minutes after they were spotted the flags were removed. The republican 1916 Committees subsequently claimed responsibility, and while nationalist politicians reacted with some amusement to what they saw as a prank, the mischievous flying of the flag was successful in provoking the very real ire of unionists. There was anger also three weeks later when it transpired that the Irish tricolour had been draped over the top table, along with the Palestinian flag, at a meeting in the Coleraine council offices of Causeway Coast and Glens Council. The independent republican councillor Padraig MacShane had organised the event, which took place just days after a heated debate in the council on flags. As might have been expected, unionist felt provoked by the gesture. An even more provocative use of the Tricolour is the one described earlier where a car drove past the loyalist protestors at the Twadell camp on the 14<sup>th</sup> July and a 37-year old man leaned out the passenger window waving the flag and shouting 'Up the 'RA'. These three incidents are all examples of the Irish tricolour being used for provocative purposes, but the traffic in provocation goes both ways, as is amply demonstrated each year by the erection of unionist flags outside Catholic schools and churches.

## 6. MOVING FORWARD: HOW TO MAKE PROGRESS ON UNOFFICIAL STREET FLAGS

### 6.1 Scoping the options

The Haass/O’Sullivan document admitted that the multi-party talks of 2013 had failed to make any progress on flags, either in finding a common agreement on flags in district councils or on the unofficial flying of flags on the streets. Addressing the latter problem the document has this to say:

To address this issue, the Panel weighed two approaches: informal mechanisms agreed through community dialogue and formal regulation via legislation.

That is how government policy choices are usually framed: either the state can legislate, or it can choose to trust in the market or civil society to resolve problems. In recent years a third approach has been adopted by government. It originated in the behavioural sciences, and is usually referred to colloquially as the ‘nudge’ approach. It can be described briefly in this way. When a government wants to change behaviours it has clear policy objectives in mind, but legislation may not be the best way to achieve them. For example, all governments want to improve public health but it hard to pass laws to make people take exercise. Instead, governments can give people a ‘nudge’ to move them in particular directions. As the original authors of ‘nudge theory, Richard Thaler and Cass Sunstein,<sup>50</sup> put it, “Putting fruit at eye level counts as a nudge. Banning junk food does not.” Advocates of this approach have lots of examples where policy tweaks seem to have had the desired effect. For example, a scheme in Denmark to help deal with litter had a series of green footprints leading to rubbish bins. These signs reduced littering by 46% during a controlled experiment in which wrapped sweets were handed out. In another experiment run by the HMRC in Britain, a letter sent to non-payers of vehicle taxes was changed to use plainer English, along the line of “pay your tax or lose your car”. In some cases the letter was further personalised by including a photo of the car in question. The rewritten letter alone doubled the number of people paying the tax; the rewrite with the photo tripled it.

The idea has caught on in government. In the UK David Cameron has established the Behaviour Insights Team (BIT), otherwise known as the Nudge Unit, while in America President Obama signed an executive order in September 2015 directing federal agencies to collaborate with the White House’s new Social and Behavioral Sciences Team to use insights from behavioral science research to frame policy options. There is political opposition in both countries: in Britain the left tends to see this approach as part of the shrinking of the state, while in America the right sees it the opposite way, as the state trying to engineer people’s behaviour.

Its relevance here is that when we try to think of how to change behaviours in relation to flags, we can either take the binary

approach of the Haass/O’Sullivan document, or we can try to expand the policy options by bringing sticks and carrots together in one package. If we stretch the span of possible approaches we can see that there are five main options, summarised below with the strengths and weaknesses of each. As will be seen, there is no one approach that on its own is likely to bring success. Some way must be found therefore to combine the carrots and the sticks in a package that gets the balance right.

### 6.2 Legislative approaches

There is no single piece of legislation that governs the unofficial display of flags. As the Northern Ireland Human Rights Commission (NIHRC) puts it in its guidance document *The Display of Flags, Symbols and Emblems in Northern Ireland*:<sup>51</sup>

There is no single legislative act that permits, or otherwise regulates, the display of flags, symbols or emblems by individuals or groups on public property in Northern Ireland.

That does not mean that there is no legislation that is relevant. The NIHRC sets out first of all the context in terms of international human rights law. It lays out a full explanation of the rights engaged through a range of International legal instruments, which between them establish the boundaries between the protected exercise of rights and legitimate restrictions as well as the obligations of public authorities.

Article 10 of the European Convention on Human Rights states:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The European Court has made it clear that ‘the display of a symbol associated with a political movement or entity, like that of a flag, is capable of expressing identification with ideas or representing them and falls within the ambit of expression protected by Article 10 of the Convention.’

<sup>50</sup> See Richard Thaler and Carl Sunstein (2008) *Nudge: Improving Decisions About Health, Wealth, and Happiness* Yale University Press.

<sup>51</sup> NIHRC, *The Display of Flags, Symbols and Emblems in Northern Ireland*, September 2013.

POLICY	STRENGTHS	WEAKNESSES
Do nothing	Requires no policy change, no new resource, no unanticipated risk.	Doesn't do anything to ease the problem, which will not cure itself.
<b>Legislative approaches</b>		
(1) Use existing legislation	Legislation already in place	<p>Legislation is not applied in any way that makes any practical difference.</p> <p>Widespread flouting of existing rules, which lowers respect for rule of law.</p>
(2) Introduce new legislation	<p>In line with what most people want, would enjoy popular support.</p> <p>Would bring clarity to area where current legislation is foggy.</p> <p>Would remove illegality from practices that are currently very common.</p> <p>Would allow for action against paramilitary flags</p> <p>Would allow for action against flags outside of agreed time periods</p>	<p>Very difficult to draft in ways that would be sure to secure the objectives.</p> <p>Would be seen as attack on freedom of expression.</p> <p>Would be seen as further attack on unionist culture.</p> <p>Almost certain to result in more flags being put up in the short term.</p> <p>Likely prospect of street protest and public disorder.</p> <p>Difficult to police consistently as offences are likely to be determined by context.</p> <p>Very difficult to secure cross-community support in the Assembly for such legislation.</p>
<b>Voluntary approaches</b>		
Existing protocols	<p>They provide some discipline in particular areas.</p> <p>They take the burden of policing away from the PSNI.</p>	<p>Provide legitimacy for the paramilitaries that underwrite them.</p> <p>Are patchy and inconsistent across NI.</p> <p>Undercuts the rule of law and the authority of the police and public bodies.</p>
Introduce new NI-wide protocol	<p>Polls show large scale support for a NI-wide solution people</p> <p>If there is buy-in from unionist leadership it will have political legitimacy and buy-in from local groups should follow.</p> <p>Resource light</p> <p>Removes burden from police and public authorities.</p>	<p>Does not clear up the problem of legal ambiguities and is therefore not underpinned by any strong legal framework.</p> <p>Without penalties it may still be ignored.</p> <p>The fragmentary nature of loyalism makes it difficult for any deal to stick.</p>

The International Convention on Economic Social and Cultural Rights specifically recognises the right of everyone to take part in cultural life (Article 15 (1) (a). 'Freedom of expression forms the "foundation stone for every free and democratic society" (UN Human Rights Committee, General Comment 34: Freedom of Expression (2011) UN Doc. CCPR/C/GC/34, para 1) by protecting the holding and development of opinion and exchange of information.

The ICCPR, Article 19 states that:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

There are some significant limitations. As is pointed out in the second part of Article 10 the right to freedom of expression may be restricted by the state under certain conditions.

This same balancing out of rights and responsibilities was embedded in the 1998 Belfast Agreement in this wording:

All participants acknowledge the sensitivity of the use of symbols and emblems for public purposes and the need in particular in creating new institutions to ensure that such symbols and emblems are used in a manner which promotes mutual respect rather than division.

The same linkage between rights and responsibilities has been carried through to subsequent policy documents from *A Shared Future* (2005) to *A Fresh Start* (2015) but the statements they contain are aspirational rather than statutes of law. The only legal direction of relevance is that contained in Section 75(2) of the Northern Ireland Act 1998, which places a responsibility on all public bodies to "have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group."

This wills the end, but not the means, and so in decisions relating to the erection or removal of flags, symbols or emblems, reference has to be made to the domestic legal framework. It is this framework which governs the restrictions which may be lawfully placed upon the enjoyment of qualified rights, and it should be stressed that all the relevant legislation pre-dates the 1998 Agreement and any policy statement which followed. The police and other agencies may wish to apply the principles contained in these policy documents, but in their day to day practice they have to work to legislation which was drafted in an earlier period and designed for other purposes.

How well then does the legislation apply to the actual problems as they have been described in this report? We have spoken with the PSNI, the NI Housing Executive, the district councils and TransportNI, and the strong sense we have gained from all of them is that the existing legislation does not allow

them to deal properly with the day- to- day problems created by the display of unofficial flags. Each agency is acutely conscious of a 'something must be done' feeling among the general public, but each agency emphasised to us the particular problems they experience in trying to apply the existing legislation. To take them in turn:

**Department of the Environment** As explained in the NIHRC document, the Department of the Environment, under planning legislation, regulates materials which it considers to be an advertisement. Under the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992 (as amended), consent is required for such an advertisement. However, there exists an exemption for national flags of any country, provided that the flag is displayed on a single flagstaff and that it does not display any advertisement or subject matter additional to the design of the flag.

**District Councils** The relevant legislation for district councils is the Local Government (Miscellaneous Provisions) Northern Ireland Order, 1985. Under article 18(1) a district council may remove or obliterate:

- (a) any graffiti which, in the opinion of the council, is detrimental to the amenity of any land in its district;
- (b) any placard or poster which is displayed in its district and which, in the opinion of the council, is so displayed in contravention of regulations under Article 67 of the Planning (Northern Ireland) Order 1991.

No mention is made of flags. They are not included and they are not excluded in the legislation. Councils have interpreted this to date to mean that they have no specific responsibility or freedom in legislation to remove flags. In addition, as has been pointed out, the district councils were not signatories to the 2005 Flags Protocol and so do not feel they have any responsibility to fulfil its objectives.

**TransportNI** The relevant legislation is the Roads (NI) Order 1993, and in particular Section 87 which empowers the parent body of the Roads Service, the Department of Regional Development, to act in accordance with the following:

- (1) Any person who, without lawful authority—
  - (a) paints or otherwise inscribes or affixes any picture, letter, sign or mark; or
  - (b) displays any advertisement,
 upon the surface of a road or upon any tree, structure or other works in or on a road, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (2) Where any person contravenes paragraph (1), the Department may (whether or not any proceedings are instituted for an offence

under that paragraph)—

- (a) *remove anything painted, inscribed, affixed or displayed in contravention of paragraph (1) and make good any damage done to the road or to the tree, structure or other works in question; and*
- (b) *recover from that person any expenses thereby reasonably incurred.*

Once again, flags are not specifically mentioned, and it is a matter for debate whether or not they can reasonably be included in a legal clause that is headed, 'Advertisements, pictures, signs etc'. The 'etc' would seem to suggest they can, and in fact the DRD does employ this piece of legislation from time to time in order to remove flags. We were supplied with a list, and it would appear that flags are removed two or three times a year on average – but only where they are creating a traffic hazard by obscuring road signs. Political or sectarian flags have also been removed on occasion, but DRD is not proactive on the issue. It was explained to us that, in order not to create public disorder (see below), they do not remove flags where the removal might meet objection, and that their experience of negotiation with local communities has not given them confidence. In one situation in Belfast where TransportNI supplied cherry pickers and staff resources to remove flags they did so after being reassured that the local paramilitary group had sanctioned this action and the DRD workers would be unharmed. On that occasion a rival paramilitary group arrived and the workers were threatened. DRD representatives explained to us that they are lighting engineers, not community workers, and that they do not have the ground level knowledge to assess the complexities of local situations. Their interventions are therefore extremely limited.

**The PSNI** The most common opinion we came across is that the police 'ought to do something' about flags. It is an assumption that police find extremely frustrating. Senior officers explained to us that they are acutely aware of a widespread feeling that they are not addressing the problem in a sufficiently robust way, and that it worries them that this perception can undermine confidence in policing. The two main pieces of legislation that allow police to intervene on flags are:

**The Public Order (Northern Ireland) Order, 1987** This prohibits provocative conduct in a public place or at a public meeting or procession, and includes the display of anything with the "intent to provoke a breach of the peace or by which a breach of the peace or public order is likely to be occasioned". It also prohibits "the display of written material which is threatening, abusive or insulting is also prohibited if intended to stir up hatred or arouse fear; or is likely to do". The intention of this legislation is clear, but it can be difficult to interpret in practical situations. For example, the incident described earlier where a Tricolour was waved from a passing

car at loyalists at the Twadell camp is a clear example of a provocative act. A Tricolour flown on St Patrick's Day in the middle of a nationalist estate could not be judged to be provocative. In between the two are many shades of grey. As framed, the legislation can constitute a perverse incentive to create public disorder. If local residents protest peacefully about flags going up in their neighbourhood, the police will not see any reason to intervene. If however residents threaten violence then police may step in to prevent the flags going up – that is if it were judged likely that a breach of the peace would follow.

**The Terrorism Act, 2000** This makes it a criminal offence to "wear an item of clothing, or display an article, in a public place, which arouses suspicion that an individual is a member of or a supporter of a proscribed organisation." What does this mean in practice? Does it apply to the flying of paramilitary flags? It is generally assumed that paramilitary flags are illegal, but in fact there is no such thing as a 'legal' or an 'illegal' flag. Rather, the offence as stated in the Terrorism Act is to 'arouse suspicion that the individual is a member of or a supporter of a proscribed organisation'.<sup>52</sup> It is interesting in this regard that the section of the final Haass/O'Sullivan document said the following (emphasis added):

After much consideration, the Panel could not agree on any approach to unofficial flags, other than reaffirming that paramilitary flags and other paramilitary displays *must be banned*.

Many people had of course assumed that paramilitary flags are already banned. Indeed, four young men were jailed in March 2004 for displaying loyalist paramilitary flags in Holywood, Co Down. They were found guilty of displaying LVF flags in the Loughview housing estate the previous summer. Three were jailed for four months and one for five months. They were the first prosecutions for this offence under the Terrorism Act. The Alliance spokesperson Stephen Farry said at the time: "These sentences set an important precedent and send out a powerful message. If people are going to display paramilitary flags, they are now clearly exposing themselves to the risk of a criminal prosecution, with the potential for a custodial sentence."<sup>53</sup>

This proved to be entirely incorrect. Far from setting a precedent these were the last convictions for the display of paramilitary flags. Nor is it likely that there will be any prosecutions in the future. A statement of PSNI policy was made available to the NI Policing Board on 3 September

<sup>52</sup> The following are listed as proscribed organisations: Continuity Army Council, Cumann na mBan, Fianna na hEireann, Irish National Liberation Army, Irish People's Liberation Organisation, Irish Republican Army, Loyalist Volunteer Force, Orange Volunteers, Red Hand Commando,, Red Hand Defenders Saor Eire, Ulster Defence Association, Ulster Freedom Fighters, Ulster Volunteer Force.

<sup>53</sup> BBC website, 31 March 2004, 'Men jailed over paramilitary flags'

2015<sup>54</sup>, and it makes it clear that the police do not feel there is sufficient legal clarity to allow them to intervene when paramilitary flags are displayed:

Section 12 of the Terrorism Act 2000 prohibits a range of conduct in relation to proscribed organisations, including inviting support. To prove this offence, however, we are required to show beyond reasonable doubt that a person's actions in displaying a flag involved inviting support for a proscribed organisation. This would pose significant difficulties and the fact that a flag is displayed in a particular area is only a starting point in investigative terms. Even in the event that an identifiable person is linked to a specific flag or emblem of a proscribed organisation this does not of itself prove that they were inviting support for that organisation.

The document continues:

In addition, establishing that a flag is paramilitary in nature is problematic; the fact that a flag may be generally believed or assumed by the public to be paramilitary does not mean that the law deems it to be.

The court did not seem to experience any real conceptual difficulty in seeing the Holywood case as an offence under the Terrorism Act, but it is clear that the PSNI does not wish the flags problem to be seen as one to be resolved through the criminal justice system. The policy guidelines document concludes by saying:

Previous experience shows that the only sustainable way to ensure that paramilitary flags are removed is for communities and police to work together.

In short, while there is legislation in place that relates to the unofficial display of flags, the police and other agencies do not feel it provides sufficient clarity to allow for successful interventions. It is possible that some test cases could help establish the efficacy of the existing legislation, and at least identify the particular problems that need mending, but we did not gain the impression from any of the agencies we spoke to that they do not consider that even reforms of the present pieces of legislation, whether taken separately or together, would make them fit for purpose.

### New legislation

Our poll showed that 7 out of 10 people in Northern Ireland want to see more regulation of flags: 55.3% considered it a Very Good idea and 15.4% considered it a Fairly Good idea. While we were conducting our research we discovered that

the idea of legislation was under serious consideration by the SDLP, the Alliance Party and NI21. It is clear that this idea has some form of traction, but what kind of legislation would work?

There are main issues that have to be addressed:

*Who administers the licences?* If flags are to be flown under licence, then there must be a licensing agency. This could be an entirely new body, or the responsibilities could be placed with an existing agency (or agencies). The first option would see a body which regulates the display of flags on lamp posts in the same way that the Electoral Commission regulates the display of election posters. While that might seem a relatively innocuous proposition to some, unionists we spoke to express a shared and instinctive aversion to the idea. The body set up to regulate parades, the Parades Commission, is a *bête noir* for unionism, and anything that sounded like a parallel body to deal with flags will meet with determined opposition. The alternative is to charge an existing agency with the responsibility, and district councils are the most obvious vehicles. There are however two problems: one is that it does not guarantee a uniform policy (in fact, it almost guarantees the opposite), and the second is that the council officials we spoke to were adamant that it is not a responsibility they would want.

*Who requests the licences?* Flags are put up by all sorts of bodies, formal and informal, and sometimes they are just erected by individuals. If a new legislative regime were introduced, then some organisation must accept responsibility for the display of flags and their removal, and for any other conditions set by the licensing authority. Currently any organisation organising a parade must submit what is known as an 11/1 form to the Parades Commission via the PSNI. Notification must be given not less than 28 days before the date on which the parade is to be held, and as well as there being a named organisation, a named individual has to sign the notification and provide details of their home address. In theory the same, or similar, procedures could be applied to the display of flags, but again we met with widespread scepticism about the practicability of such a scheme.

*What penalties can be applied?* If there is to be legislation, then there must be penalties for breaches of the legislation. These would have to be carefully calibrated: an overly punitive approach will prompt a backlash, and so minor fines (akin perhaps to those for littering or for a parking offence) would be safest. Even then, the bar is likely to be too high for some. Many people go to jail each year for non-payment of TV fines, or other minor fines imposed by the courts<sup>55</sup>, but there is no sense of political martyrdom in these cases. That would not be the case if those in breach of flags legislation are to be given custodial sentences.

<sup>54</sup> Written response provided to the Policing Board on 3 September 2015 in response to a question by Policing Board member Pat Sheehan on the PSNI policy on the erection of loyalist flags on the Ormeau Road. [http://www.nipolicingboard.org.uk/written\\_response\\_to\\_questions\\_for\\_3\\_september\\_2015\\_meeting\\_3.pdf](http://www.nipolicingboard.org.uk/written_response_to_questions_for_3_september_2015_meeting_3.pdf)

<sup>55</sup> According to figures released by the Department of Justice in 2013 custodial sentences were given in 377 cases the previous year where the amount owed was £50 and under. In 240 instances the fine was £30 and under. (Belfast Telegraph, 26/04/13).

In short, an assessment of the pros and cons would have to conclude that while the idea of legislation might find considerable support, the practical difficulties that attach to it would be very difficult to overcome. The strongest and most consistent response we received to the idea of legislation – and it was expressed with some vehemence by loyalist groups that we spoke to – is that ‘it just won’t work’. This phrase was used over and over again in the interviews and focus groups we conducted, and it was also frequently said that for each flag taken down ten will go up. And if the ten new flags were taken down then a hundred would go up. Allowing for an element of over-claiming, it is still clear that if new legislation resulted in the removal of any flags then there are many who would relish the challenge of increasing the number of flags in any area where their numbers had been reduced. It should be emphasised that this opinion was not confined to flags supporters: it represents the common wisdom of those who have observed the political scene over the years. As the DUP MP Jeffrey Donaldson put it when the idea was first mooted by the Alliance Party, “Have people learned nothing about the way these things operate in Northern Ireland? If you deny someone the right to do something - very often the reaction is precisely the opposite of what you desired.”<sup>56</sup>

One response to this is to point out that attitudinal change often has to wait upon legislative change: seatbelts being the most frequently quoted example. The tightening of drink driving laws has led to a change in what is considered socially acceptable in the consumption of alcohol. In Northern Ireland fair employment legislation has led to a widespread acceptance of non-discriminatory practices. By extension, a more regulated approach to the display of flags might presage a societal shift in attitudes. Even the most optimistic perspective on this however would have to concede that there would be a period of several years where the problem would be inflamed, and possibly a re-run of the sort of public disorder seen in the period of the flag protest.

That does not rule out a legislative approach. It simply means that a series of ‘thou shalt not’ proscriptions are unlikely on their own to have the desired effect. Any attempt to change behaviours has to balance sticks and carrots – or, to use the more modish language, use an element of ‘nudge’. District councils in Northern Ireland have already experimented with this approach in trying to deal with bonfires. There was no heavy legislative clampdown, but rather grants were given to incentivise a move away from sectarian practices, and to assist the move towards a more family-friendly form of celebration. It is not within the scope of this study to attempt an assessment of that initiative, but we introduce it here in order to see if some parallel process could be devised to help balance out the sticks of the legislative approach with the carrots of a support programme.

In such an integrated scheme, the legislative approach would be set framed in the way we have set out above, but it would run alongside a support package which could include:

- Changes in the Roads (Northern Ireland) Order so that it would no longer be an offence for participating organisations to put flags on lamp posts;
- The licensing authority making available grants for those who sign up to participate in its schemes, and practical support in the form of the use of lorries, ladders and cherry pickers for the erection and removal of flags;
- Training and workshops for young people to make them more aware of the significance of flags and the need to avoid provocative behaviour.

In time, perhaps the parallel lines of the flags scheme and the bonfires scheme could be made to converge, and the district councils could provide licensing, support and control for an integrated programme of activity.

#### **A more comprehensive review of the law**

A final, and more radical, proposal should also be considered in any survey of legislative approaches. This would be for a complete re-working of Northern Ireland’s hate crime legislation, so that the problems under discussion could be addressed by a new set of bespoke laws. The current complaint from the police and other agencies is that the existing legislation does not allow them to properly tackle the problems. There are clear examples where this is demonstrably the case. For example, great offence has created in recent years by the burning of effigies of living persons on bonfires. The effigies are often accompanied by abusive language and there is no doubt that this behaviour is hurtful and provocative. But it is not a crime. There is no legislation on the statute book in the UK or Ireland, or any other European country for that matter, to deal with this problem. It simply doesn’t happen like this anywhere else. Burning effigies of living individuals on towering pallet bonfires is a particularly Northern Ireland practice, and entirely different from folkloric customs like Guy Fawkes Night in Britain.<sup>57</sup>

An even more widespread practice is the burning of election posters with images of politicians from the other community. The only legal instrument available to police is prosecution for theft of cardboard – a largely futile pursuit. If a serious attempt was mounted to make the legislation relevant to the problems of symbolic contestation then all these matters would have to be taken into consideration, and flags would be just one part

<sup>56</sup> BBC website, 23/7/15 ‘Should rules be introduced over flags on lamp posts?’

<sup>57</sup> It is of course the case that effigies are burnt in other parts of the UK on particular occasions. The burning of Guy Fawkes was not only allowed but encouraged by the 1606 Observation of 5<sup>th</sup> November, but has now lost all political significance. In the East Sussex town of Lewes there is tradition of burning contemporary figures, and in recent years these have included Alex Salmond, Angela Merkel and Piers Morgan. Alex Salmond objected to his effigy being burnt in 2014, but the tradition is generally indulged as a harmless custom.

of a package of legislation that would allow these practices to be policed.

It is not within the scope of this study to attempt such a wholesale re-working of hate crime legislation, but it is relevant to observe that dealing with flags in isolation could prove to be self-defeating. We have noted above the problems in trying to make legislation effective, but it is necessary to consider the problems that would result if the legislation *did* prove to be effective. The effect might simply be like moving the bump in the carpet. If a new legislative regime inhibits the erection of flags, then more kerbstones might be painted. If there is a crackdown on the painting of kerbstones, then more murals might be painted – and so on. In the end, the criminalisation of cultural expression is all too likely to fall victim to the law of unintended consequence. Legislation will only be effective if it can command not only the support of a numerical majority of the Northern Ireland population, but also the majority of people in the working-class communities most affected.

### 6.3 Voluntary controls

More effort is expended by both nationalist and loyalist communities than is generally understood. John Barry, Green Party councillor in North Down, has observed: “I can only speak from my perspective on this and say that all local councillors in my experience, from whatever party, do a tremendous amount behind the scenes to try and resolve the issue in terms of reducing, or removing, flags that people do not want.”<sup>58</sup> Sinn Féin has routinely moved in to remove Tricolours: for example, from a Belfast City Council depot in west Belfast, from a shared housing development in Newtonabbey, and from the interface of the Belfast Metropolitan College site in north-west Belfast. While dissident republicanism uses the Tricolour to mark its territory, mainstream republicans tend not to use the flag in ways that might be seen to demean it.

It is perhaps even less understood that within loyalist areas there have been organised and determined attempts to regulate the use of flags, but that the vote at Belfast City Hall changed the whole landscape – and in a very literal way. Once the decision was made to move to 18 designated days a proliferation of flags appeared, and once they were put up they tended to stay up. Prior to the vote there was a patchwork of local protocols, which had grown up organically as bottom-up understandings. Their legitimacy resulted in part from the strong community input, and in part from the fact that they were invariably underwritten by either the UDA or the UVF. These were informal understandings (we have not managed to secure a written version of any) which set a framework for the regulation of flags in local areas. Dates were agreed for when flags would go up and when they would come down, and the paramilitaries provided an unofficial trouble-shooting service aimed to provide some sense of order. “All of that

was blown out of the water by the City Hall vote”, one loyalist told us. Over the past couple of years however there have been renewed attempts to respond to criticisms from within working-class Protestant areas, and some discipline has been brought to bear on the situation. There are fewer paramilitary flags, an increasingly standard use of the Union flag and the Ulster banner on a double stanchion, and organised efforts in particular areas to remove tattered flags.

Perhaps the most significant development however has been the development of a new Flags Protocol by the Regenerate group in Portadown. Regenerate is a community-development organisation which began tackling the flags issue in a low-key way by first of all removing tattered flags in the early part of 2015. Approximately 150 were taken down in total. In April that year the group convened an open meeting involving bonfire and flag groups from a wide range of surrounding areas: Killicomaine, Edgarstown, Rectory, Brownstown, Corcrair and Redmanville. There was also political representation through the UUP, DUP, and PUP and links to paramilitary and ex-combatant groups through the Ulster Political Research Group (close to the UDA), and Action for Conflict Transformation, which links to UVF ex-combatants. The analysis presented to the meeting was that approximately 1,000 flags of various descriptions were erected each year at the start of the summer, and most remained into the winter. As a result arterial roads and housing estates were host to disrespectful displays of unionist flags.

The proposal put to the meeting was that a new Flags Protocol be agreed by all parties ‘to reflect the pride, respect and value of the flags’. When the Protocol was eventually written up part of the rationale given was ‘Demonstrating that some compromises are not to be feared, but on the contrary reflect leadership and wisdom’. The Protocol set guidelines for arterial roads, housing estates and ‘areas of contention’ where the guideline was to ‘promote the values of the PUL community while respecting and valuing people from other communities’. Flags were not to be put up before 1 June and were to be removed by the end of the first week in September. The Protocol incentivised good behaviour by presenting a ‘pride in place’ community award, and the flags season ended with a family fun day which acknowledged the contribution of volunteers. Paramilitary flags were not included in the Protocol. One clause in the document explains: ‘There is a separate and long-standing practice regarding paramilitary flags in certain limited areas, these flags and practice are not part of this Protocol’.

As part of this study we met with the Regenerate group after the flags season. The feeling was one of pride in the success of the project and the considerable media attention it had generated. A group in Banbridge was inspired to emulate the Portadown example with a Banbridge Flags Protocol (which reproduces many of the main clauses of the Portadown document). Moreover the ACT group has urged its member

<sup>58</sup> John Barry ‘Middle-class moralising won’t solve bonfires and flags problem’ *Belfast Telegraph*, 7/07/15

organisations across Northern Ireland to learn from the experience. This model now has some momentum behind it, sufficient to suggest that voluntary arrangements may produce the best results in terms of a more disciplined and respectful display of flags.

In considering that possibility two points are worth drawing out for further analysis. The first concerns the efficacy of this approach, when contrasted with legislative controls. Those present at the meeting with Regenerate were adamant that the restriction on the flags could not have been achieved by decree from any external agency; they felt that on the contrary any such attempt would lead to a multiplication of flags. This point, repeated with consistency elsewhere, allows one important generalisation to be made: for loyalist groups *input legitimacy* is more important than *output legitimacy*. In the political science literature<sup>59</sup> the choice between the two is often presented as a dilemma of democracy. Input legitimacy refers to the sense of inclusiveness in decision-making, while output legitimacy refers to the satisfaction citizens can experience through the efficient delivery of goods or services. The former can lower the performance of the latter, and so sometimes a choice has to be made. It may be, for example, that there is an optimum number of flag for a particular stretch of road, and that a licensing agency and local residents would arrive at the same figure through separate processes. The loyalists we have spoken to were clear however that they would reject any figure imposed upon them by an external agency. The only decision-making they would recognise as legitimate would be one that they either controlled or which consulted closely with them. In other words, the question of who makes the decision is as important as the decision itself.

This can be presented as a contest - or perhaps a negotiation - between the community and the authorities. In Northern Ireland, however, there is never just one 'community'. Flags demarcate lines between Protestant and Catholic communities. They also mark out the territory of rival groups within single identity communities. The second issue for analysis then concerns the rule of law. Put simply, decisions about flags in Northern Ireland cannot be wholly surrendered to local groups with no electoral mandate. Nor can it be the case that one set of arrangements is deemed acceptable in one area, but not in another. There must be some way in which a standard set of principles can be agreed across the whole society, and which can then be adapted to fit with local circumstances.

We have drafted a guidelines document which might fit that brief. The Liberty and Principles document which follows offers a template based around a set of core principles, but also a degree of elasticity that will allow it to be adapted to local circumstance. We hope it can be useful for any group of people trying to agree a code of practice for the display of flags in their community. If so, it should be shared with as many

voluntary organisations, church groups, local traders and civic leaders as possible. The discussions and eventual decision-making should be as transparent as possible. When there is likely to be contention with another community, or when PSNI are involved, we hope the document will provide a basis for what is fair and reasonable in any particular circumstance. Finally, since circumstances themselves change, this set of guidelines should itself be subject to change and adaptation.

<sup>59</sup> See in particular Scharpf, F. (1999). *Governing in Europe: Effective and democratic?* New York: Oxford University Press

## **LIBERTY AND RESPECT: GUIDELINES FOR THE UNOFFICIAL DISPLAY OF FLAGS IN OUTDOOR SETTINGS**

The right to cultural expression is a hallmark of democracy. It is enshrined in Article 10 (1) of the European Convention on Human Rights which states:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

The flying of flags falls within this right of cultural expression. The European Court has made it clear that 'the display of a symbol associated with a political movement or entity, like that of a flag, is capable of expressing identification with ideas or representing them and falls within the ambit of expression protected by Article 10 of the Convention.'

This right is a precious one, but it is also subject to certain conditions, as set out in Article 10(2) of the European Convention on Human rights which states:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

There is no Flag Act in UK law and the Union Flag is the national flag by long established custom and practice, rather than by statute. This means there is no law governing the detail of how official flags are flown, but the set of laws that relate to the flying of unofficial flags in Northern Ireland must be adhered to. In addition, the principles set out by the Flags Institute should be adhered to as far as possible. A key part of the guidance offered by the Flags Institute concerns the principle of respect, and in particular the respect that must be shown to the Union flag and the flags of other nations. This means among other things that:

- National flags should never be flown in a worn or damaged condition, or when soiled. To do so is to show disrespect for the nations, organisations or cultural bodies they represent.
- The principle of respect also means that the national flag, or any other flag, should never be used for the purposes of provocation, to threaten people or to mark territory.
- The flags of other nations should also be granted respect and no national flag should ever be defiled or burnt.

The principle of respect also applies in the following ways:

**TIME** For displays of flags to remain representative of significant commemorations and celebrations it is important that displays are kept close to the dates of those events. Unless there are exceptional circumstances (such as a month- long rugby or football tournament) it is recommended that flags are displayed for no longer than two weeks around the key dates. This will ensure that the flags are kept in good condition and their display can be seen to relate clearly to particular events. It is also important that tags and ties that are used to attach the flags are removed along with the flags when displays are removed.

**PLACE** In general there is an expectation in democratic societies that commemorations and celebrations should take place on recognised days in significant civic spaces such as town squares and the centre of cities. Whilst displays should be conducted with sensitivity and time bound, our public spaces should be suitable places for commemorative and celebratory practice, but these should be conducted with respect and sensitivity. In the placement of displays and flags the following should be considered:

All residential areas will have people with different and differing views on the flying of flags. It is absolutely vital that the views of all the people in a particular area are given consideration, including those who are in a minority. There should be openness and transparency in all discussions about the display of flags.

Flags should not be placed outside homes in any way that could be considered intimidatory or threatening.

Places which deliver public services are not suitable places for the display of flags for celebratory or commemorative purposes. Flags should therefore not be displayed outside hospitals, health centres, schools, community centres.

Freedom of religious expression is important and no flags should be placed in the vicinity of churches, or places of religious worship.

The recent history of Northern Ireland has led to what are known as interface areas. Flags should not be placed in these areas.

**COMMUNICATION** In order to prevent or mitigate conflict the utmost courtesy must be shown to those who might feel uncomfortable with the flag display. Residents of areas where flags are displayed can reasonably expect to know who is putting the flags up and how long they will be displayed. It is good practice to find a way of communicating to people when the flags are being put up and for how long. The local PSNI station should hold this information, and it should also be communicated to community leaders and advertised in the local press. In addition, there should be a person or group that can be contacted over the display of flags.

## 7. CONCLUSIONS

The flags problem in Northern Ireland is complex. And, as the American newsman H L Mencken once pointed out, for every complex problem there exists a solution that is clear, simple, and wrong. We have therefore avoided the clear and simple solutions – not difficult, because as we conducted the study we did not find many on offer. But then we were not in search of a magic bullet solution. Rather, we were trying to assess whether it is possible to make some progress, however limited, on the issue of flags.

We think we have found some ways forward, both on the problem of flags on district council buildings, and on the related problem of unofficial flags displayed on the streets. The relationship between the two needs to be underscored. Many loyalists explained to us that unionist flags have to stay up because, now that the street protests have died away, the only way of protesting the Belfast City Hall decision is to fly flags on lamp posts. If a resolution were to be found for the problem of official flags at district councils then it could at the same time help to reduce the scale of the problem of unofficial flags on the streets.

What then would help solve the problem of flags on district councils? Our survey provides evidence that shows the largest share of preferences would be for a package that comes in three parts. Firstly, it would be for the Union flag to be flown on 18 designated days. Secondly, it would be rolled out across all of Northern Ireland. Thirdly, the package would not come top down from Westminster, nor is there any expectation that it could be negotiated bottom-up by each council: rather, it would be led by an agreement amongst the main political parties at Stormont. The first part of this, the endorsement of the 18 designated days policy may seem like an attempt to reverse the law of political gravity in Northern Ireland. That formula was, and remains, anathema to a section of unionism when applied to Belfast. If we take that to be a fact, then we have to balance it with another fact: flying the Union flag at all in nationalist councils was, and remains, anathema to a section of nationalism. There is symmetry in the degree of hostility on both sides that – however paradoxical it might appear – makes the problem amenable to this form of conflict resolution.

To make it work requires political leadership. That takes courage, but perhaps less than might be imagined once the evidence base of this study is considered. It is not just that the majority of people choose it as their preferred outcome, it is also that a consensus among the parties would of itself transform the force field. One central theme that runs through our findings is that input legitimacy is seen as important as output legitimacy. In other words how a decision gets made, and who is included in the decision-making process, is hugely important in determining attitudes towards any new policy. The decision at Belfast City Hall was preceded by acrimony, and the zero sum construction of the debate meant that any decision that won majority support would leave the minority, in this case unionists, feeling crushed by superior numbers.

Such a problem will not attend an agreed package. And the deal is there to be made. Our polls show that 53% of people support the 18 days option, and the most recent Northern Ireland Life and Times puts the figure at 51% - in both cases far ahead of any other policy option. If that carried the endorsement of the main political parties, then something else would happen. An additional measure of support would come from that section of the population who would accept any outcome simply to see an end to a conflict that they find tedious and unnecessary. We will not attempt to speculate what percentage of the whole population would support an agreed package, but it would certainly be upwards on 51%, and in terms of modern liberal democracies that would certainly be a sufficiently strong majority to settle any policy issue.

But this is Northern Ireland, and that means we have to accept that there is an additional problem. It is the problem of intense minorities. The responses to many the questions in our polls showed the majority of people distributed in the middle band: identifying with solutions on a spectrum from Good through Neutral to Bad. The difficulty arises from the fact there are people who routinely go out to the ends of the spectrum to tick either Very Good or Very Bad, and who in our interviews made it clear that their passions run deep on this issue – like the man who said his preference was for the Union flag to fly 365 days each year and 366 on leap years. No matter how much support there is for a broadly acceptable package, there will be an intense minority who will oppose it. That knowledge may be sufficient for politicians to prefer not to engage, but it has been the ‘do nothing’ option that has delivered Northern Ireland to this pass. The flags problem will continue to disrupt the normal workings of democracy in Northern Ireland if the nettle is not grasped. There is sufficient evidence here to suggest that is time to grasp it.

The related problem with the flying of unofficial flags on lamp posts is more complex. At the heart of the problem lies the quandary that now confronts many western states: how much tolerance should be shown to cultural practices that many find offensive? Our poll shows that 7 out of 10 people want to see more regulation of flags in public spaces. The existing legislation appears inadequate to deal with the problems as they manifest themselves, and so we have looked at how new legislation might be framed, and outlined the key provisions. At some point in the future that may be necessary, but it is not something we are recommending at this point.

There are two main reasons for this. Firstly, because it is hard to see how it can work in practice if so many people are willing to defy it. It is always difficult to predict the actual outworking of new legislation, but in this case it is not hard to predict the widespread public disorder that would ensue. Secondly, the introduction of bespoke legislation to address flags as a discrete problem does not recognise the links to bonfires, murals, kerb-painting and other forms of cultural expression and territorial marking. Our analysis of the legal options

concludes that trying to deal with any one of these on their own is like moving the bump in the carpet. There may be problem making the legislation workable; but there may be even more if it *does* prove effective. Shutting down one form of protest will only result in the problem re-surfacing in other ways. In the end, the criminalisation of cultural expression is always subject to the law of unintended consequences.

The other approach is to encourage voluntary protocols. We have seen evidence of local initiatives that actually address some of the problems described in this report. They should be encouraged, but they need to go beyond the local arrangements that have been trialled to date. The approach needs to be standard across Northern Ireland, and must ultimately work to broad societal norms. If the police and other agencies find it difficult to manage and control flags on lamp posts, the answer is not to surrender the situation to a jumble of local arrangements. A set of guidelines needs to be produced which can act the template for communities across Northern Ireland, and which can form the reference point for discussion between those who wish to put up flags, the local community where the flags are to be erected, representatives of neighbouring communities, the PSNI and other interested parties – this should be a totally open and transparent process. It could be that local Policing and Community Safety Partnerships are the most appropriate vehicle for delivering these local agreements.

We have drafted a sample illustrative document, 'Liberty and Respect: Guidelines for the Display of Flags in Outdoor Settings'. We hope this can make a contribution to the evolution of a new consensual approach to the flags problem. That cannot be any more than a hope. There are no guarantees with this type of process. Our final recommendation, though, and the one with which we will conclude this report is that this type of voluntary arrangement should be tried over the next three years, and if in that time it has not shown a sufficient degree of success then it may be necessary to look again at legislative approaches. A rigorous monitoring process would help when that assessment has to be made.

## GLOSSARY

ACT	Action for Community Transformation
BCC	Belfast City Council
CRC	Community Relations Council
DUP	Democratic Unionist Party
DRD	Department of Regional Development
ECHR	European Convention on Human Rights
ECNI	Equality Commission (NI)
EQIA	Equality Impact Assessment
GAA	Gaelic Athletic Association
IIS	Institute of Irish Studies
IRA	Irish Republican Army
LVF	Loyalist Volunteer Force
MLA	Member of the Legislative Assembly
NIHE	Northern Ireland Housing Executive
NIHRC	Northern Ireland Human Rights Commission
PCSP	Policing and Community Safety Partnership
PUP	Progressive Unionist Party
PSNI	Police Service for Northern Ireland
SDLP	Social Democratic Labour Party
SHA	Stormont House Agreement
UDA	Ulster Defence Association
UFF	Ulster Freedom Fighters
UKIP	UK Independence Party
UPRG	Ulster Political Research Group
UUP	Ulster Unionist Party
UVF	Ulster Volunteer Force

## **APPENDIX 1: DESIGNATED DAYS**

### **(a) Government buildings**

The arrangements for the flying of the Union flag from government buildings in Northern Ireland are set out by the Flags Regulations (NI) 2000, as amended by the Flags Regulation (NI) (Amendment) 2002. The specified days for 2015 as published in the Belfast Gazette were as follows:

20th January Birthday of The Countess of Wessex  
 6th February Her Majesty's Accession  
 19th February Birthday of The Duke of York  
 9th March Commonwealth Day  
 10th March Birthday of The Earl of Wessex  
 17th March St Patrick's Day  
 21st April Birthday of Her Majesty The Queen  
 9th May Europe Day  
 2nd June Coronation Day  
 10th June Birthday of The Duke of Edinburgh  
 13th June Her Majesty's Birthday  
 15th August Birthday of The Princess Royal  
 8th November Remembrance Day  
 14th November Birthday of The Prince of Wales  
 20th November Her Majesty's Wedding Day

The Belfast Gazette states that on these occasions flags should be flown right up all day and not at half mast.

It should be noted that the original list, published in 2000, included the birthdays of the Queen Mother and Princess Margaret. Those dates were removed after their deaths.

### **(b) Northern Ireland Assembly Building**

On the 17<sup>th</sup> June 2015 the Assembly Commission agreed to accept the recommendation of an EQIA and to fly the Union flag from Parliament Buildings on designated days as defined by the Department for Culture, Media and Sport (currently 18 days per annum). This represents an increase of three days on the policy laid down by the Flags Regulation (NI) (Amendment) 2002. The days set in the new determination are:

9 January - Birthday of the Duchess of Cambridge  
 20 January - Birthday of the Countess of Wessex  
 6 February - Her Majesty's Accession  
 19 February - Birthday of the Duke of York  
 9 March - Commonwealth Day  
 10 March - Birthday of the Earl of Wessex  
 17 March - St. Patrick's Day  
 21 April - Birthday of Her Majesty the Queen  
 9 May - Europe Day  
 2 June - Coronation Day  
 10 June - Birthday of the Duke of Edinburgh  
 13 June - Official celebration of Her Majesty's birthday  
 21 June - Birthday of the Duke of Cambridge  
 17 July - Birthday of the Duchess of Cornwall  
 15 August - Birthday of the Princess Royal  
 8 November - Remembrance Day  
 14 November - Birthday of the Prince of Wales  
 20 November - Her Majesty's Wedding Day

## APPENDIX 2: QUALITATIVE RESEARCH SOURCES

There were many who assisted us in compiling views and opinions for this report. Not all of them wished to be named, but among those who gave up their time voluntarily were the following:

Organisation	Interviewee
<b>Political parties</b>	PUP <i>John Kyle</i> Sinn Féin <i>Pat Sheehan</i> SDLP <i>Carmel Hanna</i> UUP <i>Ross Hussey</i> Green Party <i>John Barry</i> Alliance <i>Emmet McDonough Brown</i> NI 21 <i>Basil McCrea</i>
<b>Cultural organisations</b>	Orange Order <i>Drew Nelson</i> GAA <i>Ryan Feeney</i>
<b>Govt. Departments/ Agencies</b>	NI Housing Executive <i>Jennifer Hawthorne</i> DRD <i>Two officials</i> NI Human Rights Commission <i>David Russell</i> Equality Commission <i>Michael Wardlow, Eileen Lavery</i>
<b>District Councils</b>	<i>Liam Hannaway</i> , Newry and Mourne Council Seminar for Chief Executives of District Councils <i>Pamela Matthews</i> , Good Relations, Armagh, Banbridge, Craigavon Council Seminar for Good Relations Officers ( West of the Bann) Seminar for Good Relations Officers ( East of the Bann)
<b>Academic experts</b>	Professor Brice Dickson, QUB Professor John Garry, QUB Dr Duncan Morrow, UU
<b>Loyalist communities</b>	<i>William Mitchell</i> Action for Conflict Transformation Armagh Bands Forum Ballymoney Apprentice Boys Unheard Voices, East Belfast Regenerate group, Portadown <i>Sophie Long</i> , PhD student on loyalism Clandeboyne Village Community Association <i>Dee Stitt</i> Charter
<b>Community Relations Bodies</b>	Community Relations Council <i>Peter Osborne ( Chair)</i> Belfast Community Relations Consortium <i>Chris Maccabe (Chair)</i> Belfast Community Relations Consortium Group session React, Armagh <i>Marion Richardson</i> Interfaces NI <i>Roisin McGlone</i> Intercomm <i>Gordy Walker</i> Intercomm Group session
<b>PSNI</b>	Assistant Chief Constable <i>Stephen Martin</i> Legal Advisor <i>Ralph Roche</i>
<b>Lucid Talk polling groups</b>	Waterside, Derry/Londonderry Skainos Centre, Belfast

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