

## **WEST DUNBARTONSHIRE COUNCIL**

### **Report by the Head of Legal, Democratic and Regulatory Services**

#### **Licensing Committee – 7 February 2012**

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**Subject: Proposed revisions to the Code of Conduct for Public Processions**

#### **1. Purpose**

- 1.1** Having carried out a consultation exercise Members are asked to consider the proposed revisions to the existing Code of Conduct for Public Processions.
- 1.2** The Code of Conduct sets out the conditions which it expects all organisers and participants to adhere to when they receive approval to conduct a Public Procession within the West Dunbartonshire area. If an organisation wishes to deviate from the code, the Notice of Proposal to hold a Public Procession will have to be approved by elected members.

#### **2. Background**

- 2.1** Strathclyde Police carried out a Parade Review in August 2010 which was then noted by the Strathclyde Police Authority in October 2010. The primary aim of the review was to analyse the burden Loyalist and Republican Parades have on Strathclyde Police's ability to effectively police certain communities as a result of police abstractions to facilitate parades.
- 2.2** Following a stakeholder consultation exercise, Glasgow City Council Executive Committee considered a report in December 2010 proposing revisions to their own Code of Conduct. The report complemented some of the recommendations contained within the Parade Review.
- 2.3** In January 2011, representatives of Strathclyde Police met with David McMillan, Elaine Melrose and Andrew Fraser to discuss both documents. Subsequently officers have examined West Dunbartonshire Council's Code of Conduct taking into consideration the Strathclyde Police Parade Review and Glasgow City Council's revised Code of Conduct.
- 2.4** The Council carried out an 8 week consultation with key stakeholders between October and December 2011. The purpose of the consultation was to gain the views of both the key stakeholders and the public concerning proposed revisions to the current code of conduct applicable to organisations conducting public processions in West Dunbartonshire.
- 2.5** West Dunbartonshire Council recognises the fundamental rights contained in the European Convention on Human Rights in relation to freedom of assembly and of association. The Council takes these rights into consideration along with the provision within Article 11 of the Convention which requires that these rights are exercised in accordance with the 'protection of the rights and freedoms of others'.

- 2.6** The Council's aim is to strike a balance between protecting the rights of individuals and organisations to hold public processions and the need to minimise disruption to the wider community by protecting the rights of the citizens of West Dunbartonshire to go about their business without unnecessary disturbance and interference.

### **3. Main Issues**

- 3.1** Consideration was given to the Parade Review carried out by Strathclyde Police and the revisions made to Glasgow City Council's amended code of conduct. These were compared to West Dunbartonshire Council's existing code of conduct. Recommendations contained within the decision by Sheriff Dunlop in the case of the Provincial Grand Black Chapter v West Dunbartonshire Council in 2009 were also considered.
- 3.2** A meeting was held on 25 July 2011 with a representative from Strathclyde Police 'L' Division Operational Planning to discuss the implications of the Parade Review at a local level.
- 3.3** Stakeholders were asked to consider 5 main changes to the existing code of conduct:-
- a.** Our current code of conduct specifies that organisers should provide sufficient stewards. Strathclyde Police 'L' Division Operational Planning suggested a ratio of 1 steward to every 10 participants for every procession in West Dunbartonshire.
  - b.** Our current code of conduct specifies that no band shall play or music shall be played before 9.00 am or after 9.00 pm. The Strathclyde Police Review suggests that the time be amended to between 9.00 am and 6.00 pm.
  - c.** The Strathclyde Police Review suggests that an additional condition be added stating that 'The organiser shall ensure that, in the event that persons attached to or following the procession commence sectarian singing, the organiser/band major should immediately instruct a band to cease playing.'
  - d.** Our current code of conduct specifies that 'The organiser shall take responsibility for the behaviour of all participants including followers.' We propose to remove the term followers from this condition.
  - e.** Our current code of conduct specifies that 'The organiser shall ensure that the behaviour of participants is not such as can be reasonably perceived to be aggressive, threatening, abusive, homophobic, sectarian or racist.' It is suggested that the sentence 'The organiser shall exercise reasonable diligence to ensure that any follower of the procession also refrains from such behaviour' be added to this condition.

- 3.4** The consultation exercise produced 22 responses. 4 of these responses were in favour of the proposed changes to the code of conduct. 3 of the 4 responses were from stakeholders who were directly contacted as part of the consultation in the form of Community Councils and the other response was from a member of the public. All 4 responses were brief statements agreeing with the proposals which did not describe in any detail the impact of processions on their communities.
- 3.5** The 18 remaining responses were not in favour of the changes to the code of conduct either in full or in part. Many of the 18 responses were from individuals who identified themselves as being associated with the local Dumbarton Orange & Purple District No 27.

The 18 responses can be summarised as follows:

Whilst there are some concerns that a 1:10 stewarding ratio is too high, the Dumbarton Orange & Purple District No. 27 themselves are satisfied with it and routinely comply but they complain that it is not enforced against other marching organisations.

The Dumbarton Orange & Purple District No. 27 procession ends by 7pm. They are concerned that a 6pm limit on music would infringe their rights to peaceful assembly and to celebrate their religious heritage and that bringing their procession forward could lead to traffic problems. Some respondents asked how the 6pm time limit would impact on other processions.

Concern was raised about a lack of clarity about what is sectarian singing so it would be unreasonable to expect the band leader to stop playing music if followers start singing.

Concern was raised about what 'reasonable diligence' means regarding organisations controlling followers who are not participating in the procession. The Dumbarton Orange & Purple District No. 27 say it is the police's responsibility to control followers.

- 3.6** At the request of Mr. William Giffen, Secretary of the Dumbarton Orange & Purple District No. 27, a meeting was arranged to explain the background to the proposed changes to the code of conduct and to listen to representations from the organisation. Having listened to and recorded their concerns they were advised to submit their written submission by 9 December 2011 which they did.
- 3.7** One of the main aims of the Police Review was to engage all of the authorities in the Greater Glasgow area with the purpose of having consistency throughout their respective codes of conduct. At this stage only Glasgow City Council have adopted any of the recommendations from the Police review. South Lanarkshire Council have rejected the proposals.

- 3.8** In light of this a meeting was arranged to discuss further the views of the local Police which was attended by David McCulloch, Robert Mackie, Inspector Ian Wallace and Sergeant Andrew McGarvey both from 'L' Division.
- 3.9** Each of the proposed changes were discussed and the views of the respondents from the consultation and those of the Police were considered.
- 3.10** Although the public consultation was widely reported in the local media, it revealed little in the way of hard evidence that processions have a substantial negative impact on communities in West Dunbartonshire. Most responses were received from people who support the one Dumbarton Orange & Purple District No. 27 procession which takes place in July. It is generally accepted that the impact of processions in West Dunbartonshire is very different to their impact in Glasgow for example.
- 3.11** In relation to each of the five areas of review, and having considered the responses received as a result of the consultation, the conclusions of the Equality Impact Assessment and the views of the Chief Superintendent at 'L' Division, the following is recommended:-

#### **Condition No. 7 - Stewarding**

Officers recommend that no change is necessary to the existing wording in the code of conduct in relation to stewarding. The current code states:-

*The organiser shall ensure that there are sufficient stewards or marshals present at the procession and the organiser shall ensure that all stewards and marshals*

*are briefed by the organisers and given guidance and instructions on their role prior to the procession including written directions/instructions in respect of legislation;*

*carry proof of their status;*

*co-operate with the police as required;*

*are highly visible and easily identifiable by means of high visibility wear which cannot be confused with police attire;*

*conduct themselves in a proper manner;*

*ensure that participants comply with directions regarding their own public safety and that of all other members of the public.*

Strathclyde Police responded to the consultation by stating that a ratio of 1 steward to every 10 participants was appropriate for all processions. Having held further discussions with Strathclyde Police following the consultation exercise, their recommendation in relation to stewarding arrangements for

processions changed. Officers recommend therefore that, in the event that Strathclyde Police wish to recommend specific ratios for individual processions, officers will liaise with the organisation in question to seek their co-operation. In the event that any organisation refuses to comply with a specific stewarding ratio recommended by Strathclyde Police then the Notice of Proposal to hold a Public Procession will be put before the Licensing Committee for consideration. As processions don't need to be notified to the council until 28 days before the planned date, this may require the committee to meet at relatively short notice.

### **Condition No. 26 - Playing of Music**

Officers recommend that no change is necessary to the existing wording in the code of conduct in relation to the timing of when music is played. The current code states:-

*Unless specifically stipulated in the notification, no band shall play or music shall be played before 9.00 am or after 9.00 pm.*

No complaints have ever been received by the police, Licensing Team or Environmental Health in relation to any music being played during processions at any time of the day.

### **Proposed New Condition**

Officers consulted on the proposal to add a new condition to the existing code. The proposed new condition states:-

*The organiser shall ensure that, in the event that persons attached to or following the procession commence sectarian singing, the organiser/band major should immediately instruct a band to cease playing.*

Having heard the views of representatives of the Dumbarton Orange & Purple District No. 27 and representatives from Strathclyde Police 'L' Division Operational Planning, it became apparent that it would not be feasible for the organiser/band major to instruct the band to cease playing. Officers recommend therefore that the proposed wording of the additional condition should state:-

*The organiser shall ensure that, in the event that persons attached to or following the procession engage in behaviour which is aggressive, threatening, abusive, homophobic, sectarian or racist, and the police are of the view that the playing of music is exacerbating the situation, the organiser/band major should immediately instruct a band to cease playing when asked to do so by Strathclyde Police.*

This would remove the responsibility away from the organisation and onto the Police.

### **Condition No. 8 - Removal of the term followers**

Officers recommend that the term followers is removed from the wording of the existing condition. This change is as a result of the recommendations contained within the decision by Sheriff Dunlop in the case of the Provincial Grand Black Chapter v West Dunbartonshire Council in 2009. The current code states:-

*The organiser shall take responsibility for the behaviour of all participants including followers and, where appropriate, bands and for ensuring general compliance with the Council's Code of Conduct on Public Processions and police instructions.*

Officers recommend therefore that the proposed wording of the amended condition should state:-

*The organiser shall take responsibility for the behaviour of all participants and, where appropriate, bands and for ensuring general compliance with the Council's Code of Conduct on Public Processions and police instructions.*

#### **Condition No. 9 - Proposed amendment to existing condition**

Officers recommend that an additional sentence is added to the existing condition. This change is as a result of the recommendations contained within the decision by Sheriff Dunlop in the case of the Provincial Grand Black Chapter v West Dunbartonshire Council in 2009. In addition, officers recommend that the phrase 'reasonable diligence' inserted by Sheriff Dunlop should be clarified.

The current code states:-

*The organiser shall ensure that the behaviour of participants is not such as can be reasonably perceived to be aggressive, threatening, abusive, homophobic, sectarian or racist;*

Officers recommend therefore that the proposed wording of the amended condition should state:-

*The organiser shall ensure that the behaviour of participants is not such as can be reasonably perceived to be aggressive, threatening, abusive, homophobic, sectarian or racist. The organiser shall exercise reasonable diligence to ensure that any follower of the procession also refrains from such behaviour, for example by bringing such matters to the attention of the Police as soon as possible.*

#### **4. People Implications**

4.1 There are no personnel issues.

#### **5. Financial Implications**

5.1 There are no financial implications.

## **6. Risk Analysis**

- 6.1** The council has a positive obligation to take appropriate steps to protect an organiser's right to freedom of peaceful assembly. That right can only be restricted if it is necessary, for example, to prevent crime and disorder or protect the rights and freedoms of others. The council's code of conduct for public processions must therefore balance these conflicting rights in a way that minimises the risk of legal action against the council. For example, in 2009 a decision by the licensing committee to refuse permission for a procession was appealed to the Sheriff Court and the council lost that action. If approved, the recommendations in this report should minimise the risk that our code of conduct is successfully challenged.

## **7. Equalities, Health & Humans Rights Impact Assessment**

- 7.1** A copy of the Equality Impact Assessment is attached as Appendix 1.

## **8. Strategic Assessment**

- 8.1** There are no strategic implications.

## **9. Conclusions and Recommendations**

- 9.1** It is recommended that Council makes the following changes to the existing Code of Conduct for Public Processions, namely

- (i) insert the following new condition:-

*The organiser shall ensure that, in the event that persons attached to or following the procession engage in behaviour which is aggressive, threatening, abusive, homophobic, sectarian or racist, and the police are of the view that the playing of music is exacerbating the situation, the organiser/band major should immediately instruct a band to cease playing when asked to do so by Strathclyde Police.*

- (ii) Condition 8 should be amended to the following:-

*The organiser shall take responsibility for the behaviour of all participants and, where appropriate, bands and for ensuring general compliance with the Council's Code of Conduct on Public Processions and police instructions.*

- (iii) Condition 9 should be amended to the following:-

*The organiser shall ensure that the behaviour of participants is not such as can be reasonably perceived to be aggressive, threatening, abusive, homophobic, sectarian or racist. The organiser shall exercise reasonable diligence to ensure that any follower of the procession also refrains from such behaviour, for example by bringing such matters to the attention of the Police as soon as possible.*

Head of Legal, Democratic and Regulatory Services

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**Person to Contact:** Robert Mackie, Senior Officer (Licensing Services), Licensing Team, Rosebery Place, Clydebank, G81 1TG.  
Tel. No. (Direct line) 01389 738742.  
robert.mackie@west-dunbarton.gov.uk

**Appendices:** Equality Impact Assessment Form

**Background Papers:**

1. Strathclyde Police Authority Committee Report - Strathclyde Police - Parade Review 2010.
2. Glasgow City Council revised Code of Conduct on Public Processions.
3. Letter sent to consultees dated 6 October 2011.
4. West Dunbartonshire Council - Current Code of Conduct.
5. West Dunbartonshire Council - Current Public Procession Guide.
6. 22 responses to consultation to the proposed changes to the Code of Conduct.
7. Note of meeting held on 2 December with representatives of the Dumbarton, Orange & Purple District No. 27.

**Wards Affected:** N/A.