

Summary Sheet

Name of Committee and Date of Committee Meeting

Cabinet and Commissioners' Decision Making Meeting – 6 August 2018

Report Title

Proposed Revisions to the Local Authority Fixed Penalty Notices (FPN) Code of Conduct – School Attendance.

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Mel Meggs Acting Strategic Director of Children and Young People's Services

Report Author

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Ward(s) Affected

All

Summary

Good school attendance is 'everybody's business' and an integral part of the Early Help agenda. The Early Help and Family Engagement Service is committed to working in partnership with schools, academies, children, young people, parents and a wide range of partner agencies to achieve improved attendance levels across the Borough.

One of the Council's key priorities is; 'every child making the best start in life' and Aim 1 for the Health and Wellbeing Board is; 'children get the best start in life and go on to achieve their potential.' Improving attendance and reducing absence, especially persistent absence, is a key target in order to achieve these priorities.

The Local Authority has a responsibility to investigate instances of regular absence and will instigate legal action where applicable; this includes persistent absence and unauthorised holidays during term time. This function is currently discharged by the Early Help and Family Engagement Service in partnership with schools and academies.

The primary legislation that governs the attendance of children at school is the Education Act 1996. Section 7 of The Education Act 1996 states that:

'The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable...to his age, ability and aptitude, and...to any special educational needs he may have, either by regular attendance at school or otherwise.'

Any parent that breaches their duty to ensure that their child receives an education may be prosecuted for a criminal offence under the Education Act 1996. The offences set out within the Education Act 1996 could result in the parent being sentenced to a financial penalty or in more serious cases, a sentence of imprisonment.

The Education (Penalty Notices) (England) Regulations 2007 set out the necessary details for the operation of a fixed penalty notice scheme to deal with poor attendance at school. Amendments were made to the 2007 Regulations by the Education (Penalty Notices) (England) (Amendment) Regulations 2013. These amendments came into force on the 1st September 2013. These amendments reduced the timescales for paying a fixed penalty notice and brought attendance fixed penalty notices into line with other types of fixed penalty notices, allowing Local Authorities to act faster on prosecutions.

The above Regulations state that a code of conduct must be drawn up 'which sets out measures to ensure consistency in the issuing of fixed penalty notices.' In particular, the code of conduct should set out the circumstances when a fixed penalty notice will be issued and the maximum number of fixed penalty notices that can be issued to a parent in a 12 month period.

The current Code of Conduct was published in 2013 and has been reviewed on a regular basis. Following feedback from school and academy leaders in 2017 and looking at practice regionally, the Early Help and Family Engagement Service has revised the Fixed Penalty Notice (FPN) Code of Conduct.

The key changes proposed include:

- The use of a single aspirational attendance target for both primary and secondary age pupils (the current proposed target is 95.3% this is the combined National primary and secondary school average) to avoid confusion with parents and carers who may have children at both primary and secondary schools.
- That the time period considered in calculating the average attendance of a child is amended to now include the previous 12 months attendance including the holiday period (currently the actual holiday period isn't counted).
- Finally that a penalty notice can be issued when no permission has been sought for a leave of absence and attendance has dropped below the National average target. Currently parents can take a child out of school with no explanation, whilst this would amount to an unauthorised absence, the current Code of Conduct does not allow a penalty notice to be issued if it cannot be shown that the child was taken on holiday. This means that parents can attempt to avoid a penalty notice by taking the child out of school without first applying for permission from the school.

The Service has sought views and engaged with key stakeholders in a period of consultation (January 2018 – April 2018); this has included school and academy leaders, school and academy governing bodies, colleagues in Legal Services and South Yorkshire Police.

Recommendations

1. That the revised Fixed Penalty Notices (FPN) Code of Conduct be approved.
2. That the following proposed changes be approved:-
 - Use a single aspirational attendance target for both primary and secondary age pupils (the current proposed is 95.3%, which is combined National primary and secondary school average) to avoid confusion with parents and carers who may have children at both primary and secondary schools.
 - Amend the time period considered in calculating the average attendance of a child to include the previous 12 months and the holiday period.
 - Allow a penalty notice to be issued when no parental permission has been sought for a leave of absence and attendance has dropped below the National average target.
3. That the Fixed Penalty Notices (FPN) Code of Conduct be implemented at the start of the new academic school year in September 2018.

List of Appendices Included

Appendix 1 Current Fixed Penalty Notices (FPN) Code of Conduct 2016
Appendix 2 Revised Fixed Penalty Notices (FPN) Code of Conduct 2018
Appendix 3 Consultation Feedback

Background Papers

None

Consideration by any other Council Committee, Scrutiny or Advisory Panel

No

Council Approval Required

No

Exempt from the Press and Public

No

Proposed Revisions to the Local Authority Fixed Penalty Notices (FPN) Code of Conduct – School Attendance

1. Recommendations

- 1.1. That the revised Fixed Penalty Notices (FPN) Code of Conduct be approved.
- 1.2. That the following proposed changes be approved:-
 - 1.2.1 Use a single aspirational attendance target for both primary and secondary age pupils (the current proposed is 95.3%, which is combined National primary and secondary school average) to avoid confusion with parents and carers who may have children at both primary and secondary schools.
 - 1.2.2 Amend the time period considered in calculating the average attendance of a child to include the previous 12 months and the holiday period.
 - 1.2.3 Allow a penalty notice to be issued when no parental permission has been sought for a leave of absence and attendance has dropped below the National average target.
- 1.3. That the Fixed Penalty Notices (FPN) Code of Conduct be implemented at the start of the new academic school year in September 2018.

2. Background

- 2.1 The Education Welfare Service historically worked with schools and academies to deal with all matters relating to poor school attendance, persistent absence and unauthorised holidays taken in term time.
- 2.2 The Education Welfare Service transferred into the Early Help and Family Engagement Service in October 2015 with Education Welfare Officers (EWO's) moving out into Early Help locality based teams and working 'whole family' using the Early Help Assessment process rather than a separate assessment and focus on just attendance.
- 2.3 The Service has retained two lead officers who focus on advice and guidance to Early Help staff, schools and academies and the legal processes and functions that can be utilised when all other methods have been exhausted.
- 2.4 The Local Authority has a responsibility to investigate instances of regular absence and will instigate legal action where applicable; this includes persistent absence and unauthorised holidays during term time. This function is currently discharged by the Early Help and Family Engagement Service in partnership with schools and academies.
- 2.5 The Education Act 1996 is the primary legislation that governs the attendance of a child at school. Section 7 of The Education Act 1996 states that:

'The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable...to his age, ability and aptitude, and...to any special educational needs he may have, either by regular attendance at school or otherwise.'

- 2.6 Regular and punctual attendance of pupils at school is both a legal requirement and essential in order for pupils to maximise the educational opportunities available to them. The Local Authority will investigate cases of regular absence from school and following appropriate casework intervention (including the Early Help Assessment process); will instigate legal action if applicable.
- 2.7 In law an offence occurs if a parent fails to secure a child's attendance at a school where they are a registered pupil and the absence is not authorised by the school. Fixed Penalty Notices supplement the existing sanctions currently available under Section 444 of The Education Act 1996, Section 103 of the Education and Inspections Act 2006 or Section 36 of The Children's Act 1989 to enforce attendance at school where appropriate, subject to statutory defences.
- 2.8 Parents and pupils are supported at school and Local Authority level to overcome barriers to regular attendance through a wide continuum of assessment and intervention strategies. Sanctions of any nature are for use only where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem. Sanctions are used primarily as a means of enforcing attendance where there is a reasonable expectation that their use will secure an improvement.
- 2.9 The Education (Penalty Notices) (England) Regulations 2007 set out the procedures for issuing penalty notices. Amendments were made to the 2007 Regulations in the Education (Penalty Notices) (England) (Amendment) Regulations 2013. These amendments came into force on 1st September 2013.
- 2.10 In accordance with the Regulations, each authority that intends to issue Fixed Penalty Notices must develop a code of conduct. Once a code of conduct is established, the authority can only issue a penalty notice in accordance with the rules contained within the code.
- 2.11 The amendments to 2007 Regulations reduced the timescales for paying a Fixed Penalty Notice. Parents must, from 1st September 2013, pay £60 within 21 days or £120 within 28 days. This brought attendance Fixed Penalty Notices into line with other types of Fixed Penalty Notices and allowed Local Authorities to act faster on prosecutions.
- 2.12 On the 6th April 2017 the Supreme Court delivered judgement on the widely publicised '*Isle of Wight Council v Platt case*'. The Supreme Court concluded that the term '*regular attendance*' means in '*accordance with the school's rules.*'

- 2.13 The decision was important to Local Authorities, schools and parents across England and Wales because it provided some clarification for the meaning of *regular* school attendance. The decision emphasised the importance of having a code of conduct which defines the circumstances when a Fixed Penalty Notice will be issued.
- 2.14 The decision also emphasised the importance of ensuring regular school attendance, which is the responsibility of parents, and it reduced the ability of parents to avoid conviction if prosecuted for failing to ensure regular attendance caused by unauthorised absence, including by reason of term-time holidays.
- 2.15 The functions of the Local Authority under Section 444A (6) of the Education Act 1996 Act and Section 105(5) of the Education and Inspections Act 2006 is issuing and enforcing fixed penalty notices and prosecuting recipients who do not pay.
- 2.16 Any sums received by the Local Authority must be used for the purposes of the functions specified in 2.15. If they are not used for these functions they must be paid to the Secretary of State.
- 2.17 School and Academy leaders requested that Rotherham Metropolitan Borough Council reviewed its Fixed Penalty Notices (FPN) Code of Conduct in summer 2017, following the *Isle of Wight v Platt* judgement; as schools felt the existing code of conduct was confusing with different targets for primary and secondary age pupils and was not robust and aspirational enough.
- 2.18 During November 2017 – February 2018 officers undertook visits to Derbyshire County Council, Sheffield City Council, Doncaster Metropolitan Borough Council, Barnsley Metropolitan Borough Council and Lincolnshire County Council to look at practice relating to attendance more broadly and Fixed Penalty Notices (FPN).
- 2.19 If the proposed changes are agreed, Rotherham Council's Code of Conduct and Legal Processes are still more 'family friendly', lenient and flexible than neighbouring Authorities; this is evidenced in the comparatively low number of unpaid Fixed Penalty Notices resulting in a prosecution and the number of successful prosecutions conducted under Section 444.

3. Key Issues

- 3.1 In order to comply with Human Rights legislation it is essential that Fixed Penalty Notices be issued in a consistent manner. This Code of Conduct will govern the issuing of Fixed Penalty Notices in respect of unauthorised absence from school for holidays taken in term time and other unauthorised absence for Rotherham Metropolitan Borough Council.
- 3.2 If Cabinet do not approve the proposed changes to the Fixed Penalty Notice (FPN) Code of Conduct there would be implications for school and academy leaders and South Yorkshire Police who have through consultation informed the proposals.

- 3.3 If the proposals are delayed then the revisions cannot commence at the start of a new Academic year in September 2018; this could lead to inequity in the issuing of Fixed Penalty Notices and legal processes during the Academic year 2018/2019.
- 3.4 Schools ultimately decide what they submit to the Local Authority for consideration under Section 444 of The Education Act 1996; and this can lead to a 'postcode lottery' for parents, children and young people.
- 3.5 The Early Help Service continues to work with all schools regarding this issue; however they can only submit cases that comply with the Code of Conduct.
- 3.6 The proposed aspirational single target of combined National average of 95.3% is slightly lower than the current Rotherham primary school average of 95.5% in 2016/2017; but is higher than the Rotherham secondary school average of 94% in 2016/2017.
- 3.7 The difference between the Rotherham secondary average % and the National combined average % is 1.3%; over a school year of 190 days this equates to approximately 2.5 school days. This sets an ambitious target of attending school 2.5 days more per academic year for parents, children and young people at secondary school, the expectations at primary school remain broadly unchanged.
- 3.8 The Early Help Service is currently in consultation to commence phase two and phase three of the Early Help Strategy; the Attendance Offer forms part of the proposals and the revised Code of Conduct supports a graduated implementation of the proposals.

4. Options Considered and Recommended Proposal

- 4.1 **Option 1:** That Cabinet approves the revised Fixed Penalty Notices (FPN) Code of Conduct. This includes approving the proposed changes to:-
 - 4.1.1 Use a single aspirational attendance target for both primary and secondary age pupils (the current proposed is 95.3% this is combined National primary and secondary school average) to avoid confusion with parents and carers who may have children at primary and secondary schools.
 - 4.1.2 Amend the time period used to calculate the average attendance of a child to include the previous 12 months and the holiday period.
 - 4.1.3 Allow a Fixed Penalty Notice to be issued when no parental permission has been sought for a leave of absence and attendance has dropped below the National average target.
 - 4.1.4 That the Code of Conduct is implemented at the start of the new academic school year in September 2018.

- 4.2 **Option 2:** That the Code of Conduct remains unchanged; this would have implications for partners and could undermine the Consultation conducted in accordance with Regulation 15 of The Education (Penalty Notices) (England) (Regulations) 2007.
- 4.3 **Option 3:** That the Code of Conduct is reviewed in line with the Early Help Review with proposed implementation in March 2019; this would have implications for children, young people and families as a different target would be used part way through an academic year. The Code of Conduct can be amended now without any significant impact on the Early Help review process.
- 4.4 Option 1 is the recommended proposal, as it will ensure that parents are dealt with consistently across the Borough from the beginning of the new academic year.

5. Consultation

- 5.1 Before making any changes to the Code of Conduct the Local Authority must conduct a consultation in accordance with Regulation 15 of The Education (Penalty Notices) (England) (Regulations) 2007, which identifies those that need to be consulted:-

“Consultation on the code of conduct

(1) In preparing the code of conduct the local education authority must consult governing bodies, head teachers and the chief officer of police for a police area which includes all or part of the area of the local education authority, and must have regard to any guidance issued by the Secretary of State.

(2) In this regulation-

“chief officer of police” has the meaning given by section 101(1) of the Police Act 1996(1); and “police area” means a police area provided for by section 1 of that Act.”

- 5.2 The Service provided opportunities for the above partners and those in CYPS and Legal Services to share their views on amendments to the Code of Conduct during October 2017 – December 2017.
- 5.3 A full consultation in accordance with Regulation 15 of The Education (Penalty Notices) (England) (Regulations) 2007 was conducted from February 2018 – April 2018.
- 5.4 Detailed analysis around the consultation can be found in Appendix 3 Consultation Feedback.

6. Timetable and Accountability for Implementing this Decision

- 6.1 The Fixed Penalty Notice (FPN) Code of Conduct is agreed at Cabinet – August 2018.

- 6.2 The Attendance Leads and Early Help Senior Leadership Team and staff inform all stakeholders of the amendments and issue the new Code of Conduct to all schools and academies – September 2018.
- 6.3 The Early Help Service seeks approval to deliver the Early Help Review – October 2018.
- 6.4 Any further changes to the Attendance Offer and implications for the Code of Conduct are reviewed - March 2019.

7. Financial and Procurement Implications

- 7.1 The functions of the Local Authority under Section 444A(6) of the Education Act 1996 Act and Section 105(5) of the Education and Inspections Act 2006 is issuing and enforcing fixed penalty notices and prosecuting recipients who do not pay.
- 7.2 Any sums received by the Local Authority must be used for the purposes of the functions specified in 7.1. If they are not used for these functions they must be paid to the Secretary of State.
- 7.3 Regulation 23 of the Education (Penalty Notices) (England) Regulations specifies that the functions ‘are issuing and enforcing penalty notices, and prosecuting recipients who do not pay.’
- 7.4 Any income generated will be used to contribute to the salary costs of Early Help staff that perform the function outlined in Regulation 23 of the Education (Penalty Notices) (England) Regulations 2007, as well as contributing towards the legal costs resulting from any court action.
- 7.5 There is a potential that more income could be generated if the amendments are approved as this could mean more parents are issued with a Fixed Penalty Notice. Any increases in income will be reviewed annually and will continue to be used in accordance with the relevant Regulations.
- 7.6 The table below shows income 2015 – 2018:

Year	2017-18	2016-17	2015-16
Value of Fixed Penalty Notices	- £23,760.00	- £14,495.00	- £14,760.00

8. Legal Implications

- 8.1 There are implications for Legal Services as the amendments could mean more parents are issued with a penalty notice and non-payment of a Fixed Penalty Notice will result in the matter being referred to Legal Services to consider instigating a prosecution under the provisions of Section 444 of the Education Act 1996. This will result in cases being prepared for court and attendance of Legal Services at court to present the case.

8.2 The Local Authority will also consider whether it would be appropriate (instead of, or as well as instituting proceedings) to apply for an Education Supervision Order. Any application for an Education Supervision Order would require the input of Legal Services to prepare the case for court and attend court to present the case.

9. Human Resources Implications

9.1 Increasing the percentage for issuing Fixed Penalty Notices could increase the number of fines issued; which have been rising since 2015. This will have implications for the staffing resources required to process and issue Fixed Penalty Notices.

9.2 More admin support will be required and potentially more time from colleagues in Legal Services, in schools and Early Help staff.

9.3 This additional resource is being considered as part of the Early Help Review and Business Support Review in CYPS.

10. Implications for Children and Young People and Vulnerable Adults

10.1 Under the amended Code of Conduct the changes could affect more parents as the criterion has the potential to extend the number of parents that fall within the scope of the Code of Conduct.

10.2 Research has shown that good attendance is linked to good attainment, raising the attendance expectations for children and young people will support this.

10.3 In the last three years the Local Authority has issued an increased number of Fixed Penalty Notices as more parents chose to take their children on holidays during term time, as they would prefer to pay a fine; this is a rise that is mirrored Nationally.

10.4 The table below shows the increase in Fixed Penalty Notices issued, although the number of families has not increased at the same rate (meaning some Fixed Penalty Notices have been issued to the same families for multiple holidays).

Academic year	No of FPN's issued	No of families Affected
2015-2016	295	178
2016-2017	334	207
2017 -2018	453	250

10.5 Schools, academies and the Early Help Service will continue to use good professional judgement, safeguarding knowledge and take into account the family circumstances before issuing a fine.

- 10.6 If the proposed changes are agreed Rotherham Council's Code of Conduct and Legal Processes are still more 'family friendly', lenient and flexible than neighbouring Authorities; this is evidenced in the comparatively low number of unpaid Fixed Penalty Notices resulting in prosecution and the number of successful prosecutions conducted under Section 444.

11. Equalities and Human Rights Implications

- 11.1 In order to comply with Human Rights legislation it is essential that Fixed Penalty Notices be issued in a consistent manner. This Code of Conduct will govern the issuing of Penalty Notices in respect of unauthorised absence from school for holidays taken in term time, and other unauthorised absence, for Rotherham Metropolitan Borough Council.
- 11.2 The Code of Conduct applies equally to all pupils, irrespective of race, gender, religion, sexuality and/or disability. The consideration of issuing a Fixed Penalty Notice will be done by considering the contents of the Code of Conduct and all relevant legislation. As a result, an Equality Impact Assessment if not deemed necessary.
- 11.3 The amendments to the Education (Penalty Notices) (England) Regulations 2007 brought the Fixed Penalty Notice for attendance in line with other Fixed Penalty Notices issued by Councils such as littering, graffiti and fly posting. The parents are issued with a fine not the child, the only data collated under General Data Protection Regulation (GDPR) is name and address; As a result, this does not enable an Equality Impact Assessment to be completed.
- 11.4 Schools, academies and the Early Help Service will continue to use good professional judgement and take into account the individual and whole family circumstances before issuing a Fixed Penalty Notice.
- 11.5 This will include consideration to those who are SEND and ensuring schools and academies correctly authorise absence for; religious observance, travelling families, illness, medical and dental appointments, exceptional circumstances and study leave as set out in the DfE Guidance '*School attendance -Guidance for maintained schools, academies, independent schools and local authorities (November 2016).*'

12. Implications for Partners and Other Directorates

- 12.1 There are implications for schools and academies in the amendments to the Code of Conduct; the proposed revisions should enable schools to move swiftly on unauthorised absences, particularly those relating to holidays in term time.
- 12.2 Schools and academies can still decide on their own attendance policy.
- 12.3 There are implications for Legal Services at the amendments could mean more parents are issued with a Fixed Penalty Notice and the non-payment of a Fixed Penalty Notice will result in the matter being referred to Legal Services to consider instigating a prosecution under the provisions of Section 444 of the Education Act 1996.

12.4 The Local Authority will also consider whether it would be appropriate (instead of, or as well as instituting proceedings) to apply for an Education Supervision Order, which again will revert in a referral to Legal Services.

13. Risks and Mitigation

13.1 If the amendments to the Code of Conduct are not approved there is a risk this would have implications for partners and could undermine the Consultation conducted in accordance with Regulation 15 of The Education (Penalty Notices) (England) (Regulations) 2007.

13.2 If the amendments were delayed this could lead to inequity for families during the academic year 2018/2019.

13.3 These risks can be mitigated if:

13.4 Cabinet approves the revised Fixed Penalty Notices (FPN) Code of Conduct.

13.5 This includes approving the proposed changes to:-

13.5.1 Use a single aspirational attendance target for both primary and secondary age pupils (the current proposed is 95.3% this is combined National primary and secondary school average) to avoid confusion with parents and carers who may have children at primary and secondary schools.

13.5.2 Amend the time period considered when calculating the average attendance of a child to include the previous 12 months and the holiday period.

13.5.3 Allow a penalty notice to be issued when no parental permission has been sought for a leave of absence and attendance has dropped below the National average target.

13.6 That the Fixed Penalty Notices (FPN) Code of Conduct is implemented at the start of the new academic school year in September 2018.

14. Accountable Officer

Karla Capstick – Head of Service, Early Help

Approvals obtained on behalf of:-

	Named Officer	Date
Strategic Director of Finance & Customer Services	Viv Ford	19/06/2018
Assistant Director of Legal Services	Liz Anderton	20/06/2018
Head of Procurement (if appropriate)	Karen Middlebrook	10/07/2018
Head of Human Resources (if appropriate)	Amy Leech	06/07/2018