

## ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	<b>Meeting:</b>	<b>Cabinet</b>
2.	<b>Date:</b>	<b>6<sup>th</sup> November 2013</b>
3.	<b>Title:</b>	<b>Fixed Penalty Notices (FPNs) for Unauthorised Holidays taken in Term Time.</b>
4.	<b>Directorate:</b>	<b>CYPS</b>

### 5. Summary

Amendments have been made to the Pupil Registration Regulations and the Penalty Notices Regulations. These amendments came into force on 1st September 2013.

Amendments to the Pupil Registration Regulations remove references to ‘family holiday’ and extended leave as well as the statutory threshold of ten school days. The amendments make clear that head teachers may not grant any leave of absence during term time unless there are exceptional circumstances.

Head teachers should determine what circumstances are to be considered ‘exceptional’ reasons for taking a holiday in term time and Heads must also determine the number of school days a child will be permitted to be away from school if the leave is granted.

Under the provisions of the Anti-social Behaviour Act 2003 it is possible that in certain cases of unauthorised absence a fixed penalty notice may be issued to the parents of compulsory school age children. These notices require an out of court fine to be paid by parents of pupils who have unauthorised absence from school.

Amendments to Penalty Notice Regulations have reduced the timescales for paying a fixed penalty notice fine. Parents must, from 1st September 2013, pay £60 within 21 days or £120 within 28 days of a penalty notice being issued.

After a period of consultation, with all schools including academies and the police, every local authority is required to draw up and publish a code of conduct for issuing fixed penalty notices for unauthorised absence from school. The code should set out the criteria that will be used to trigger the use of a penalty notice. This should include arrangements to issue penalty notices for unauthorised holidays.

DfE guidance requires that the local authority administers the FPN scheme for all schools in its area, including academies and Free schools

## **5. Recommendations**

- **That Cabinet endorse option 3 as the preferred recommendation permitting the Education Welfare Service to administer and issue fixed penalty notices, until the end of July 2014, for unauthorised absence, including for holidays in term time, ensuring consistency, fairness and transparency. *Proposal 3 - outlined in Section 6 of this paper 'Proposals and Details'***
- **Agree that EWS will undertake quarterly reviews of the FPN scheme until August 2014 to assess the service impact, volume of requests, and the number of penalty notices issued, paid, referred to court and withdrawn.**
- **Agree that the Education Welfare Service reserves the right to amend the code of conduct, via consultation, transferring the responsibility to issue FPNs to schools and individual Head Teachers.**

## 6. Proposals and Details

### 1. Consider omitting unauthorised holidays in term time from the local code of conduct

Department for Education allow each LA to negotiate and develop their own criteria. We may face a challenge from either Department for Education, schools and academies if we do not include unauthorised holidays in our local code of conduct. I have established that neighbouring authorities do intend to include unauthorised holiday in their local fixed penalty notice code of conduct.

### 2. Consider developing a local code of conduct that would permit individual Head Teachers to issue FPNs for unauthorised holidays in term time

The code of conduct could allow all primary, secondary and academy Head Teachers to issue FPNs in line with an agreed LA Code of Conduct administered by the local authority. This option may raise a number of concerns surrounding the level of consistency applied to the scheme by individual schools and will remove the LA's ability to tailor procedures to meet local need and Education Welfare Service resources.

### 3. Consider a local code of conduct permitting EWS to manage and issue fixed penalty notices for unauthorised absence, including for holidays in term time

This option would allow control and consistency for the local authority. Education Welfare Service will need to conduct a review of volume and appropriateness of the referrals to allow an assessment to be made with regard to Education Welfare Service capacity at current levels. This option will allow the Education Welfare Service to support all schools with the initial introduction of the FPN scheme.

Guidance does allow for schools and or the LA to *issue* penalty notices in line with the agreed local code of conduct. However, whatever is agreed with regard to who is permitted to issue the notices, the code of conduct is *always* administered by the Local Authority.

CYPS will reserve the right to amend the code of conduct, transferring the responsibility *to issue* FPNs to schools and individual Head Teachers. Under such circumstances the Education Welfare Service will continue to monitor and administer the FPN scheme for the local authority.

## 8. Finance

If agreement is reached for option 3. The scheme will be staffed and administered within current Education Welfare Service budget. Any additional financial burden is hoped to be covered by the fixed penalty notice levy generated.

It is envisaged that administration of the scheme will be covered by the initial standard issue fee of £60/£120. The Education Welfare Service will need to review the financial implications and costs associated with the management of the scheme on a 3 monthly basis.

As with other standard attendance enforcement matters, if successful the local authority is at liberty to request, any parent found guilty of an offence, for reimbursement of realistic costs incurred in bringing the matter to trial at the Magistrates Court.

## **9. Risks and Uncertainties**

A recent attendance register audit allowed Education Welfare to analyse the number of unauthorised absence sessions that were recorded across the borough during 2011/12 Autumn Census. The collated data revealed the scale of unauthorised absence for holidays taken in term time and therefore the potential scale of FPN referrals EWS may expect to receive.

- The unauthorised absence sessions recorded for a term time holiday in maintained Secondary schools was 6704 absence sessions representing 6.7% of the total pupil absence recorded during the period.
- The unauthorised absence sessions recorded for a term time holiday in academy status Secondary schools was 2716 absence sessions representing 7.3% of the total pupil absence recorded during the period.
- The number of absence sessions recorded for authorised holidays in term time (those holidays agreed by the school) for maintained Secondary aged pupils was 3675 sessions and for Academy pupils 2125

A further review on the wider impact these changes will have on EWS staffing and capacity will need to be undertaken at the end of academic year 2013-14.

If agreed by all parties, the Code of Conduct will include strict criteria under which EWS will accept referrals from schools to issue penalty notices for holidays taken in term time, although at this stage we are unable to quantify the potential referral requests beyond the figures listed above.

Local authorities are ultimately responsible to pursue any subsequent prosecutions resulting in the non-payment of the penalty notice. They are also responsible for agreeing and publicising a code of conduct and for the overall administration of any FPN scheme. The local code of conduct is seen as the key to the successful use of penalty notices. The Code of Conduct will ensure consistency, fairness and transparency in the way notices are issued. It will also allow the local authority to manage the system and tailor procedures to meet local need and Education Welfare Service resources.

If we do not have agreement for the whole FPN scheme to be managed centrally by the Education Welfare Service the Local Authority must consider developing a process and code of conduct that would allow each individual Head Teacher or their representative to issue FPNs on a school by school basis. Each school would potentially develop a different system and the duty placed on the Local Authority to oversee and administer these processes would require considerable investment in order to quality assure and audit such arrangements. Additionally, this option may raise a number of concerns surrounding the level of consistency applied to the scheme by individual schools and will remove the Local Authority's ability to tailor procedures to meet local need and Education Welfare resources.

A number of regional neighbours have experienced difficulties with regard to fairness and consistency with which the local code of conduct has been applied. One local authority reported that they have been required to repay thousands of pounds to parents where it was felt FPNs had been inappropriately issued. Another example highlights that having developed a due process which allowed schools and academies to individually issue FPNs considerable effort is now required to ensure monies generated by the penalty notices are paid in accordance with the national guidance directly to the local authority.

Failure of the local authority to have in place an effective Code of Conduct for the administration and process of fixed penalty notices may result in future challenge from the Department for Education and/or local schools and academies. Many schools experience scrutiny during Ofsted inspection with regard the challenge they make to parents surrounding holidays in term time. Schools and academies would therefore look to the local authority to have appropriate measures in place to support all schools in their endeavours to improve attendance and reduce holidays taken during the school term.

In order to comply with Human Rights legislation it is essential that Penalty Notices be issued in a consistent manner. The proposed Code of Conduct will govern the issuing of Penalty Notices in respect of unauthorised absence from school for holidays taken in term time, and unauthorised absence

## **10. Policy and Performance Agenda Implications**

Department of Education guidance states that the local authority administers the FPN scheme for all schools in its area, including academies and Free schools.

Regulations provide that the LA can retain revenue for any penalty notices issued to cover the costs of issuing or enforcing notices or the costs of prosecuting parents who do not pay.

Local Authorities should produce an auditor statement showing that income received from penalty notices does not exceed enforcement.

Penalty Notices will only be issued for offences where the Local Authority is willing and able to prosecute should the out of court fine remain unpaid.

FPNs can be issued to each 'parent' liable for a child's attendance. Under the provisions of the Education Act 1996 'parent' means all natural parents, whether they are married or not, and includes any person who, although not a natural parent, has day to day care for a child. A person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law.

Previously, Head Teachers could grant extended leave for more than ten school days in exceptional circumstances. Such absences usually occur where a family requests leave of absence to visit the family's country of origin. In Rotherham such requests are predominantly made for extended holiday periods to Pakistan.

The Education Welfare Service has begun a consultation process in relation to the draft fixed penalty notice code of conduct with school, academy and police

representatives. The first stage of the consultation process indicates that the majority of school representatives would support a local code of conduct solely managed by the Local Authority.

It is proposed that Penalty Notices will be issued by the Education Welfare Service in order to avoid the issue of duplicate notices. The Education Welfare Service will ensure consistent and equitable delivery, retain school-home relationships and allow cohesion with other enforcement sanctions.

The Education Welfare Service will receive requests to issue Penalty Notices from all schools regardless of status.

If the penalty is not paid in full by the end of 28th day period the LA must either prosecute for the offence to which the notice applies (the period of unauthorised holiday from school) or withdraw the notice.

The arrangements for the paying of penalties will be detailed on the Penalty Notices.

From 1st September 2013 Penalty Notices are set at £60 per parent per child if paid within 21 days of receipt of the notice increasing to £120 per parent per child if paid within 28 days of receipt of the notice.

Payment of a Penalty Notice discharges the parent's liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Penalty Notice.

The Education Welfare Service will review the Code of Conduct on the Issue of Penalty Notices in regard to unauthorised holidays taken in term time and poor school attendance at regular intervals and produce reports on this area of activity as required. Additionally, in conjunction with colleagues from Legal Services an impact and analysis report will be undertaken to review any resource/capacity implications for legal services associated with potential increased litigation following non-payment of penalty notices.

## **11. Background Papers and Consultation**

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