

TRAFFORD COUNCIL

Report to: Council Executive
Date: 24th February 2014
Report for: Decision
Report of: Executive Member Education

Report Title

School Attendance – Revised Policy on Parental Responsibility Measures

Summary

As a result of the revised statutory guidance a review of our approach to supporting regular school attendance has been undertaken. Within the guidance parenting contracts, parenting orders and penalty notices are interventions available to promote better school attendance and behaviour.

Every Local Authority is required to have a policy in line with the national guidance that is applied to all state schools in their area. This report sets out proposed changes to update Trafford's Penalty Notice Code of Conduct with recommendations following consultation.

There are two distinct scenarios in which a Penalty Notice or Prosecution will be used under the policy;

- Ongoing irregular attendance and in these cases it is likely a range of interventions and casework work will be undertaken to support the child to attend on a more regular basis.
- Exceptional leave during term time that has not been authorised by the Headteacher. The most common scenario would be for a family holiday.

The key changes to Trafford's Penalty Notice Code of Conduct are set out in Section 5 of the report;

- Revision to timescale for payment of Penalty Notice to bring Trafford in line with national guidance. Payment will be £60 within 21 days or £120 within 28 days with withdrawal of the notice and decision on prosecution after 28 days.
- Clarification of the threshold for issuing a Penalty Notice for irregular attendance at below 90% attendance rate over a half term period
- Exceptional Leave in term time without permission from the Headteacher will trigger a Penalty Notice after 8 sessions (4 days)

A Penalty Notice will be issued by the Local Authority if the criteria within the policy are met and notification is received from the Headteacher. There is no appeal against a Penalty Notice and they can only be withdrawn in very specific circumstances set out in the guidance.

A decision to prosecute must be based on the LA's assessment of the evidence base established in relation to the attendance issue and cannot be for non-payment of a penalty notice. As with any prosecution the parent would have to put the case in their defence through the criminal justice system but we only use prosecution if all other potential interventions and strategies have been unsuccessful.

It is proposed to implement the revised protocol from 1st April 2014 to enable communication of the changes to parents, schools and key professionals. The implementation will be supported by work with Headteachers to try and ensure consistency on how discretion is applied to exceptional absence due to specific issues i.e. religious holidays and flexibility for military families.

Recommendation

- **That the Executive approve the proposals to amend the Council's policy set out in Section 4 of this report and implement the new policy (Appendix 1) from 1st April 2014.**

Contact person for access to background papers and further information:

Name: John Pearce, Director Service Development – Children, Families and Education

Extension: 5100

Background Paper: None

Implications:

Relationship to Policy Framework/Corporate Priorities	Corporate Priority; <ul style="list-style-type: none"> • Excellence in education
Financial	Implementation of the recommended policy is cost neutral.
Legal Implications:	Section 23 of the Anti-Social Behaviour Act 2003 empowers designated Local Education Officers, Headteachers (and Deputy or Assistant Headteachers authorised by them) and the police to issue penalty notices for unauthorised absence from school. Education (Penalty Notices) (England) Regulations 2007 are the basis for this policy.
Equality/Diversity Implications	No E&D implications have been identified but will be monitored through the implementation.
Sustainability Implications	Not Applicable
Staffing/E-Government/Asset Management Implications	Not Applicable
Risk Management Implications	Not Applicable
Health and Safety Implications	Not Applicable

1.0 Background

1.1 The Department for Education (DfE) issued updated guidance on School Attendance in August 2013. The guidance covered the following areas;

- Advice on pupil registers and attendance codes
- Advice on the school day and school year
- Statutory guidance education related parenting contracts, parenting orders and penalty notices

1.2 As a result of the revised statutory guidance a review of our approach to supporting regular school attendance has been undertaken. Within the guidance parenting contracts, parenting orders and penalty notices are interventions available to promote better school attendance and behaviour.

1.3 Local authorities also have other powers to enforce school attendance where this becomes problematic, including the power to prosecute parents who fail to comply with a school attendance order, or fail to ensure their child's regular attendance at school.

1.4 A police constable, local authority officer, head teachers and those authorised by them (deputy and assistant head only) are authorised to issue penalty notices. All state schools can use penalty notices including maintained, academies, Free Schools, alternative provision and pupil referral units in England. The local authority is required to publish a local code of conduct which sets out how the penalty notice scheme will work for all schools in the area.

1.5 A decision to prosecute by the LA must meet a range of criteria with an evidence base that supports the likelihood of a successful outcome. Therefore it does not always follow that prosecution will automatically be the outcome of non-payment of a penalty notice. The prosecution is for failing to secure regular attendance at school rather than non-payment of the fine related to the penalty notice.

2.0 Local Context

2.1 Trafford currently issues a low number of Penalty Notices when compared to other local authorities. Prosecutions for failing to secure regular attendance at school are also much lower in Trafford than in the majority of authorities.

2.2 Attendance in Trafford is amongst the best in the country with the level of unauthorised absence the second lowest nationally. There may be a range

of factors impacting on this but there does not seem to be a correlation between the low levels of enforcement action and the rate of unauthorised absence in Trafford.

- 2.3 National policy encourages a wider use of these Parental Responsibility measures and locally there has been frustration expressed by schools that enforcement action is not used more widely by the local authority.
- 2.4 Head teachers can use their discretion when authorising requests for exceptional leave but there is a need for far clearer parameters of when the local authority will support their requests and issue Penalty Notices and subsequent prosecutions. The recommended changes to the Trafford Penalty Notice Code of Conduct would address this concern.
- 2.5 A letter was sent to all parents from the Children, Families and Wellbeing Directorate during the Summer Term 2013 advising them of the national guidance with a particular focus on potential enforcement action for unauthorised absence to take holidays during term time.
- 2.6 It remains the LA's decision to prosecute and it important that there are mechanisms in place to ensure appropriate decision making. There are a range of factors that needs to be balanced in deciding whether to proceed with a prosecution.
- 2.7 Extracts from the Code for Prosecution;
 - 4.4 *Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.*
- 2.8 A small task & finish group was established to look at a variety of issues surrounding prosecutions for failing to secure regular attendance at school. This comprised the Strategic Lead for Attendance, Senior Education Welfare Officer (EWO) West (PRAB officer), solicitor, and Equalities officer. The Senior EWO North also joined the group on request. The group compared Trafford data to other local authorities and looked at studies which had been carried out in relation to parental responsibility measures.

3.0 Trafford's Current Policy

3.1 Trafford's current code of conduct was last reviewed and published in November 2012. Under the current Trafford protocol only the council can issue a Penalty Notice for failing to ensure regular school attendance. It sets out the following criteria for issuing a penalty notice;

- § At least 10 sessions (5 school days) lost to unauthorised absence by the pupil during the current term
- § Other than in the circumstances below, a formal written warning of a Penalty Notice will have been issued to both parents and a period of 15 school days given for the situation to be improved
- § Where a family takes a holiday in term-time without permission from the school and it can be demonstrated that the parent/carers understood that permission had not been granted and where this has created a period of unauthorised absence in the term of 10 or more sessions
- § Where a warning has been given following a multi-agency attendance initiative and a child has been stopped again in unauthorised circumstances within 15 days

3.2 The current penalty is £60 if paid within 21 days of receipt rising to £120 if paid after 28 days but within 42 days. The payment must be paid direct to the local authority. The parents can only be prosecuted if 42 days have expired and full payment has not been made. There is no right of appeal by parents against a penalty notice.

3.3 If the penalty is not paid in full by the end of the 42 day period, the local authority must decide either to prosecute for the original offence to which the notice applies, or withdraw the notice. Prosecution can only be based on the evidential criteria in relation to attendance and is not for non-payment of the fine.

4.0 Proposed Changes to the Trafford Protocol

4.1 The updated Trafford Penalty Notice Code of Conduct is attached as Appendix 1. It outlines the following changes following consultation;

- Revision to timescale for payment of Penalty Notice to bring Trafford in line with national guidance. Payment will be £60 within 21 days or £120 within 28 days with withdrawal of the notice and decision on prosecution after 28 days.
- Clarification of the threshold for issuing a Penalty Notice for irregular absence at below 90% attendance rate over a half term period

- Exceptional Leave in term time without permission from the Headteacher will meet the threshold for a Penalty Notice after 8 sessions (4 days)

5.0 Reason for Recommendation

5.1 The recommendations for amendments to the Penalty Notice Code of Conduct will ensure Trafford's approach is compliant with revised statutory guidance. Feedback from schools and key groups of professionals has identified the need to have clearer criteria to trigger a Penalty Notice to ensure consistency.

6.0 Other Options

6.1 The consultation process outlined alternative options to the threshold to trigger a penalty notice for both irregular attendance and exceptional leave. Options considered included using the current threshold of 85% for irregular attendance and a zero tolerance approach for exceptional leave. The recommended thresholds have been proposed based on the consultation feedback.

6.2 An option of only applying the exceptional leave criteria outside of the recommended Trafford school holiday period was considered through the consultation. This was not progressed as feedback suggested it would not be practical to implement in the context of school autonomy over their holiday dates in line with national policy.

7.0 Consultation

7.1 A consultation was undertaken with schools and key professionals based on the options identified by the internal working group. The consultation included the following aspects;

- Consultation document circulated to all Headteachers and Chairs of Governors
- Consultation with key professional groups within Children's Services including Education Welfare Officers, School Improvement, Behaviour and Attendance and Area Family Support Teams
- Briefings at established forums with Headteachers and the Attendance Leads Networks
- Consultation documentation on the council website to enable input from other interested parties

7.2 The response to the consultation was limited with only two written responses received from schools and one from an internal service. The options outlined in the consultation have been subject to detailed scrutiny through the briefings undertaken. In particular feedback from the Primary Heads group and the Attendance Leads Network has informed the recommendations.

Key Decision (as defined in the Constitution): **Yes**

Finance Officer Clearance (type in initials)... PH.....

Legal Officer Clearance (type in initials)... mrj.....

CORPORATE DIRECTOR'S SIGNATURE (electronic)...



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To confirm that the Financial and Legal Implications have been considered and the Executive Member has cleared the report.

PENALTY NOTICE CODE OF CONDUCT

1. Legislation

Section 23 of the Anti-Social Behaviour Act 2003 empowers designated Local Education Officers, Headteachers (and Deputy or Assistant Headteachers authorised by them) and the police to issue penalty notices for unauthorised absence from school.

Education (Penalty Notices) (England) Regulations 2007 are the basis for this policy. Penalty Notices must be issued in accordance with existing legislation including the Human Rights Act 1998.

2. Rationale

In order for pupils to maximise their educational potential, it is essential that they attend school regularly.

Penalty Notices provide an alternative to prosecution and will offer parents an opportunity to discharge potential liability for conviction for that offence by paying £60 if paid within 21 days and £120 if paid within 28 days.

If the penalty is not paid by the end of 28 days, the local authority must withdraw the notice, or commence proceedings for the offence to which the notice relates. The prosecution is not for the non-payment of the notice but is for failure to ensure regular attendance at school. Their use is an early deterrent to the development of patterns of unauthorised absence and, as such, supplements the wider powers already available. As with other legislative action, they are used for the enforcement of attendance and not for use as a punishment for absence.

The Education Welfare Team delivers the Children and Young People's Service responsibility in accordance with current casework and enforcement procedures. The Education Welfare Team offers support and advice to parents whose children are not attending school regularly. Sanctions are used where parents fail to follow advice given or where co-operation is insufficient to bring about necessary improvement.

3. Issuing Penalty Notices

Penalty Notices can only be used for periods of unauthorised absence, and the defences in law replicate those in place for enforcement actions under the provisions of Section 444 Education Act 1996. One Penalty Notice will be issued to each parent for each child who is not attending school. A maximum of one Penalty Notice will be issued for a pupil during an academic year. For the purpose of this document a parent is defined as "anybody who has responsibility for the young person".

All Penalty Notices will be issued by post.

Casework

Penalty Notices will be used as part of an Education Welfare Officer's casework management. A parent will be warned at the outset of intervention of their legal responsibilities regarding their child's attendance at school and of the likely sanctions if the situation does not improve. Assessment will take place, advice and support given and where a parent fails to meet agreed and appropriate targets or condones the absence from school, a penalty notice can be issued. Their use is intended as an early intervention to the development of patterns of unauthorised absence and as such supplement and do not replace alternative sanctions. If unauthorised absence continues after the period of the notice, proceedings will be taken in accordance with Section 444 (1) or (1A) Education Act 1996. A Penalty Notice will only be used once per pupil before prosecution takes place.

Multi Agency Attendance Initiatives

Where a pupil is stopped on a multi-agency attendance initiative and there is no valid reason for the absence from school, a letter will be sent to the home address containing a clear warning that a further offence can result in a Penalty Notice. In the instance that a pupil is stopped again and the absence is unauthorised by the school, a Penalty Notice will be issued.

Leave During Term-time

Any leave during the term-time taken without the approval of the Headteacher will trigger a Penalty Notice after 8 missed sessions (4 days).

Persistent Late Arrival at School

When a pupil persistently arrives late to school, investigations should take place to determine the reason, and support offered where appropriate to rectify the situation. Where the arrival time is after the close of registration and investigations show that there is not an acceptable reason, a school can request that a Penalty Notice is issued by the Education Welfare Team provided that these sessions have been coded U (Unauthorised Absence). Schools are advised to have a policy on how long registers should be kept open. DfE guidelines suggest that 30 minutes from the beginning of registration would be reasonable, but schools can set shorter periods.

4. Procedure for Issuing Penalty Notices

To ensure consistent delivery of Penalty Notices the following criteria will apply:

- § In the case of irregular absence of a pupil a Penalty Notice will be issued if attendance rate falls below 90% during any half term

- § Other than in the circumstances below, a formal written warning of a Penalty Notice will have been issued to both parents and a period of 15 school days given for the situation to be improved

- § If exceptional leave is taken during term without approval of the Headteacher a Penalty Notice will be issued after 8 sessions (4 days)

- § Where a warning has been given following a multi-agency attendance initiative and a child has been stopped again in unauthorised circumstances within 15 days

All Penalty Notices will be issued and monitored by the Education Welfare Team in Trafford. This will ensure consistent and equitable delivery, maintain home/school relationships, be mindful of health and safety issues and allow cohesion with other enforcement action. Penalty Notices will be issued through the post and not as 'on the spot' action allowing for the necessary evidential requirements to be in place.

The Education Welfare Team will receive requests to issue Penalty Notices from Trafford schools, Greater Manchester Police and neighbouring local authorities. These will be considered provided that:

- § They are received on a referral form with a copy of an accurate, up to date registration certificate attached, signed by the Headteacher
- § The circumstances of the absence meet the criteria according to the protocol
- § The period of absence is not being considered for proceedings according to Section 444 (1) Education Act 1996
- § The issue of a Penalty Notice does not conflict with other intervention strategies in place by the Education Welfare Team or by other agencies where the circumstances are known to the Education Welfare Team

The Education Welfare Team will respond to all requests within 10 school days of the receipt; and where the criteria are met, will:

- § Send a formal warning in writing about the possibility of a Penalty Notice being issued and give the parent/carer 15 school days to improve the attendance
- § Issue a Penalty Notice to the parent/carer in the post after the 15-day period if the improvement has not been achieved. In the 15 day period nil unauthorised absence must be recorded
- § Issue a Penalty Notice to the parent/carer immediately if a formal warning has previously been served or the absence is as a result of an unauthorised period of leave of 8 sessions (4 days) or more

5. Payment of Penalty Notices

The arrangements for payment will be stated on the Penalty Notice.

Payment of a Penalty Notice is £60 within 21 days or £120 within 28 days of receipt. Payment in full discharges a parent/carer liability for the period in question and this

period cannot then be part of a Section 444 Education Act 1996 prosecution. The local authority retains any revenue to cover enforcement costs.

6. Non-Payment of Penalty Notices

Non-payment of a Penalty Notice will result in the withdrawal of the notice and the instigation of proceedings in accordance with Section 444(1) or (1A) of the Education Act 1996. It should be noted that prosecution cannot be undertaken for non-payment of a Penalty Notice and the evidential test will only apply to the attendance issue.

7. Procedure for Withdrawal

Once a Penalty Notice has been issued, it can only be withdrawn in the following circumstances:

- § It has been established that the notice was issued to the wrong person.

- § The circumstances of the absence do not comply with the conditions of the protocol.

- § Payment has not been made within 28 days. If this is the case, the Local Authority will prosecute the parent/carer under the provisions of S444(1) or (1A) Education Act 1996.

Please Note: Withdrawal of a Penalty Notice after 28 days for non-payment does not automatically trigger a prosecution. The local authority needs to make a judgement about whether the evidence available of non-attendance meets the test for prosecution.

8. School and EWT Policy Documents

All schools must include clear reference to the Children and Young People's Service Penalty Notice Code of Conduct in their attendance policies and this should be brought to the attention of all parents. Education Welfare Team documentation will include reference to the use of penalty notices to supplement existing practices. Parents will be informed about the use of the sanction through the use of leaflets, the media, a general information letter and a formal warning letter.

9. Monitoring and Review

The Education Welfare Team will monitor and evaluate the success of Penalty Notices in terms of improvement in school attendance, payment, and any subsequent legal action. The use of the notices will be reviewed at regular intervals and the enforcement strategy of the Education Welfare Team amended accordingly. Service reports will include data on the deployment and outcomes of their use.