

CABINET MEMBER DECISION

Date of decision – 19 August 2024

LOCAL CODE OF CONDUCT IN RELATION TO SCHOOL ATTENDANCE (ISSUING FIXED PENALTY NOTICES)

Relevant Cabinet Member

Cllr David Chambers (Cabinet Member with Responsibility for Education)

Relevant Chief Officer

Director of Children's Services

Local Member(s)

All members

Recommendation

1. The Cabinet Member with Responsibility for Education is recommended to:
 - (a) Approve the updated local Code of Conduct for issuing fixed penalty notices relating to school attendance (attached at Appendix 1).

Background

2. The Department for Education (DfE) stated '*School is the best environment for the vast majority of pupils to learn in. Being surrounded by teachers and friends in school helps keep children safe and supports them to reach their potential. That's why we're committed to tackling the factors causing children to miss school. Being in school is important to your child's academic achievement, wellbeing, and wider development. There is evidence to suggest that regular school attendance is a key mechanism to support children and young people's educational, economic and social outcomes. Schools can facilitate positive peer relationships, which is a contributes to better mental health and wellbeing. Attendance at school is crucial to prepare young people for successful transition to adulthood, and to support their longer term economic and social participation in society. There is also evidence that the students with the highest attendance throughout their time in school gain the best GCSE and A level results.*'

3. Penalty notices are issued to parents as an alternative to prosecution where they have failed to ensure that their child of compulsory school age regularly attends the school where they are registered (Working Together to Improve School Attendance [DfE] 2024).

4. Penalty notices can be used by all state-funded schools, including both maintained schools and academies.

5. Penalty notices are intended to prevent the need for court action and should only be used where it is deemed likely to change parental behaviour, and where support to secure regular attendance has been provided and has not worked or been engaged with or would not have been appropriate in the circumstances of the offence e.g.: an unauthorised holiday in term time.

6. Penalty notices must be issued in line with the Education (Penalty Notices) England Regulations 2007, as updated by the 2024 Regulations and can only be issued by a headteacher or someone authorised by them (e.g. Deputy Head), a local authority officer or the police. Penalty Notices must be issued in-line with Local Codes of Conduct which are drawn up and maintained by each local authority.

7. The Education (Penalty Notices) (England) Regulations 2007 made it a requirement of each local authority to draw up a Code of Conduct in relation to issuing penalty notices relating to school absence and in particular which sets out measures to ensure consistency in the issuing of penalty notices. Each local authority created its own thresholds for issuing and therefore there were a range of thresholds across the county.

8. The purpose of the Code of Conduct is to outline how the penalty notice system will operate in each area with information including the procedure for issuing, the amount, the payment period, withdrawal criteria and non-payment of penalty notices.

9. In May 2022, the Department for Education (DfE) introduced the guidance 'Working together to improve school attendance'. This guidance stated the Secretary of State's intention to introduce a new National Framework to replace individual Codes of Conduct ahead of the 2023-24 academic year. The guidance was refreshed and re-published in February 2024 to set out the new National Framework for issuing penalty notices and to reflect changes to the law introduced through the Education (Penalty Notices) (England) (Amendment) Regulations 2024. The refreshed guidance, including the National Framework will become statutory from 19th August 2024.

10. The aim of the National Framework is to ensure consistency between local authorities and includes a requirement for all local authorities to update their existing Codes of Conduct in line with the National Framework by 19th August 2024.

11. There is a requirement for local authorities to consult with schools and the Police where there are proposed changes to local processes within the Code of Conduct, however there is no requirement to consult for the changes introduced within the new National Framework as local authorities are under an obligation to make the changes set out in the National Framework. The only element of the Code of Conduct specific to each Local Authority is the duration of the Notice to Improve (see point 12 below), which Worcestershire intend to change from 15 consecutive school days to 20 consecutive school days. Engagement with stakeholders (Police and Schools) is thus necessary to evaluate the impact of the changes. West Mercia Police have confirmed that the guidance is noted.

12. The Worcestershire Code of Conduct for the issuing of Penalty Notices has therefore been amended to reflect the changes required by the government/DFE namely:

- The qualifying criteria for issuing a Penalty Notice for unauthorised leave in term time (aka Holidays) will now be 10 sessions (i.e. 5 school days) of absences within the previous 10 school weeks. Previously the Code of Conduct required 12 sessions (i.e.6 school days) in the previous 12 school weeks.
- The financial penalties have increased in line with government guidance from £120 to £160 per parent per child (with the option to pay within 3 weeks reduced to £80) on the first occasion within in a 3-year rolling period commencing from 19th August 2024.
- On the second occasion within the 3-year rolling period the minimum fine will be £160 per parent per child.
- On the third occasion within the 3-year rolling period the Local Authority Officers are required to consider a formal prosecution for unauthorised absences under s4441 Ed Act 1976 for irregular school attendance rather than any further penalty notices.
- In line with National Framework, Worcestershire Local Authority will implement the use of 'Notices to Improve' for parents of pupils where there are unauthorised absences from school, to encourage regular attendance. A Notice to Improve is a final opportunity for a parent to engage in support and improve attendance before a penalty notice is issued. If the national threshold has been met and support is appropriate but offers of support have not been engaged with by the parent or have not worked, a Notice to Improve should usually be sent to give parents a final chance to engage in support. The DFE allows the Notice to Improve to be between 15 and 30 school days (3 to 6 weeks) but has recommended 20 school days to be optimal, to test the parent's commitment to improving attendance and for the pupil to adopt good attendance habits going forward. In order to ensure consistency in practice and administration across Worcestershire County Council schools and academies, the local authority will be setting the notice to improve period as 20 consecutive school days. If there is insufficient improvement in the pupil's attendance and there are unauthorised absences recorded in the pupil's school register, during the 20-day warning period, a Penalty Notice can be issued.

Legal Implications

13. There are some specific legal considerations. The Department for Education guidance ('Working Together to Improve Attendance') becomes statutory in September 2024 (specifically on August 19th). This places a legal responsibility on the Local Authority to provide some additional personnel support to all schools in their efforts to improve attendance.

14. Pursuant to s.444 of the Education Act 1996, a parent is guilty of an offence if a child of compulsory school age, and registered as a pupil, fails to regularly attend school. Notwithstanding this, before proceeding with a prosecution for non-attendance, the Legal officer must be satisfied that having considered the evidence, they believe there is a realistic prospect of conviction and is it in the public interest to instigate a prosecution. Prosecutions for failure to comply with penalty notices shall

continue to be considered on a case-by-case basis, despite the introduction of the National Framework.

Financial and HR Implications

15. The DfE has widened the purpose for which the revenue from penalty notices can be used. Previously the revenue could only be used for administering the system and prosecution with anything left over being paid to the Secretary of State for Education. That revenue can now also be used to fund attendance support. Local authorities should not have income targets related to this work as the penalty notice system is not a money-making scheme. Any remaining surplus at the end of the year must be paid to the Secretary of State.

Joint Equality, Public Health, Data Protection and Sustainability Impact Assessments

16. A joint impact assessment has been completed in respect of these recommendations. The JIA screening identified one action – to review the Privacy Notice. This was actioned – reviewed and updated, then approved by Information Governance Services.

17. Reference number for the JIA: #763

Supporting Information

- Appendix 1 Code of Conduct for School Attendance
- Appendix 2 Joint Impact Assessment – Project Screening
- Appendix 3 Joint Impact Assessment – Data Protection full impact assessment report

Contact Points

County Council Contact Points

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Specific Contact Points for this report

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Background Papers

In the opinion of the proper officer (in this case the Director of Children's Services) the following are the background papers relating to the subject matter of this report:

- [Working together to improve school attendance \(applies from 19 August 2024\) \(publishing.service.gov.uk\)](#)