

**15 June 2015****Agenda Item: 11****REPORT OF THE ACTING CORPORATE DIRECTOR, CHILDREN, FAMILIES  
AND CULTURAL SERVICES****NOTTINGHAMSHIRE CODE OF CONDUCT FOR ISSUING FINES FOR PUPIL  
ABSENCES – AMENDMENT TO THRESHOLD****Purpose of the Report**

1. This report seeks to provide an update on the use of Penalty Notices for non-attendance at school and to obtain approval to reduce the threshold for issuing a Penalty Notice Fine in the Nottinghamshire's Code of Conduct to 20% from September 2015 and the insertion of a clause that will inhibit families from taking multiple unauthorised leave of absences during the academic year for the purpose of a family holiday or other reason which does not meet the definition of exceptional circumstances.

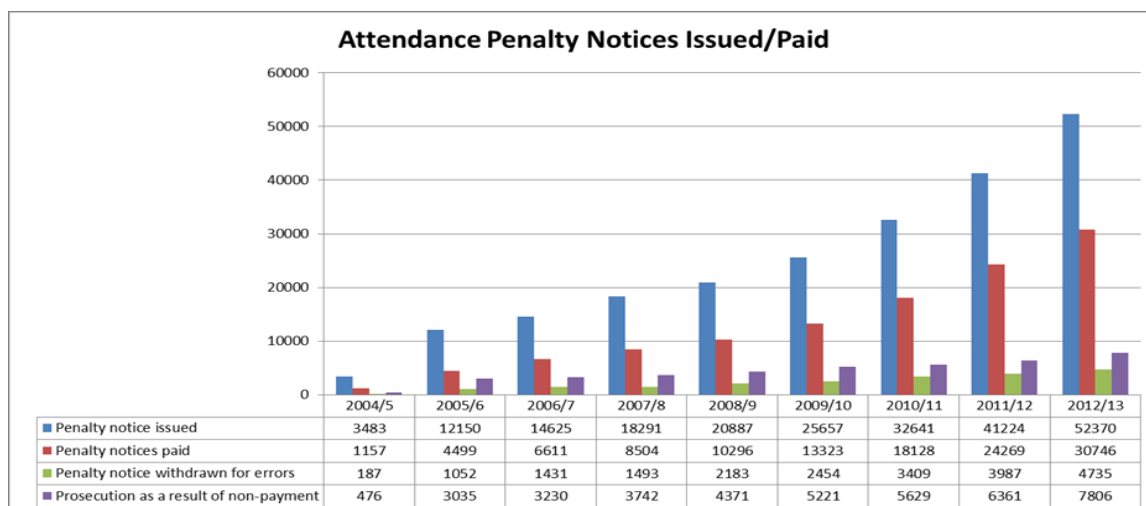
**Information and Advice**

2. The threshold in Nottinghamshire for issuing a parent/guardian with a Penalty Notice is outlined in the Authority's Code of Conduct as 25% absence over a 6 week period. This equates to 15 missed sessions or 7.5 days of absence over 6 weeks. It was set at this level to ensure any use of fines is fair, proportionate and focused on regular and persistent absence. The threshold is the same regardless of whether the unauthorised absence is general in nature or for the purpose of a family holiday during term time. The Nottinghamshire Code of Conduct was consulted on with schools in the spring of 2013 and no changes were made to the threshold at that point or since then.
3. Since September 2013 head teachers are only able to agree a leave of absence during term time in exceptional circumstances. The Department for Education removed the discretion for head teachers to agree up to 10 days leave during term time for a family holiday. This change was introduced following the 'Improving attendance at school' report (Taylor, C: 2012) which emphasised the impact of school absence on attainment and outcomes for children. In particular, Taylor underlined the need to tackle the issue of parents taking children out of school for a term-time holiday or for an occasional day off. As a result of his recommendations, the Education (Pupil Registration) Regulations (2006) were amended so that head teachers can only agree a leave of absence in exceptional circumstances. What constitutes an exceptional circumstance is not nationally defined and remains at the discretion of individual head teachers although the National Association of Head Teachers (NAHT) has issued some general guidelines.

4. From September 2015 the persistent absence definition will change nationally from 15% to 10%. As a result from the beginning of the 2015/16 academic year any pupil with less than 90% attendance will be defined as being persistently absent from school.
5. In light of these two significant changes the decision was taken to conduct a benchmarking exercise to compare Nottinghamshire's use of fines for non-attendance with other local authorities. This was done in order to determine whether Nottinghamshire had set its current threshold at an appropriate level and if not to ascertain what would be a proportionate and effective level at which to set the threshold for issuing fines within the Nottinghamshire Code of Conduct. The benchmarking exercise compared Nottinghamshire against a number of other local authorities both regionally and nationally by looking at the threshold level itself, the application of fines and the absence rates for those authorities. The payment rates for fines were also looked at.
6. Overall pupil absence rates in England across both primary and secondary phases combined have been falling over the last five years from 6.0% during the 2009/10 academic year to 4.5% in 2014/15. As the table below indicates overall absence rates have also fallen in Nottinghamshire and they remain in line with the England and Regional averages.

	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14*</b>
<b>England</b>	5.1%	5.3%	4.5%
<b>East Midlands</b>	5.1%	5.4%	4.5%
<b>Nottinghamshire</b>	5.0%	5.4%	4.5%

7. Similarly, the national picture shows that persistent absence rates have been steadily falling since the 2008/09 academic year. Over the last three academic years persistent pupil absence rates across England for the primary and secondary phases combined have fallen from 5.2% (2011-12) to 4.6% (2012-13) and 3.6% (2013-14). The reduction in persistent absence rates across Nottinghamshire during the same period was from 4.9% (2011-12) to 4.8% (2012-13) and 3.5% (2013-14).
8. Although Nottinghamshire remains broadly in line with the England and Regional averages for both overall and persistent absence rates across the primary and secondary phases combined, there are some differences between the two phases. For the 2013/14 academic year Nottinghamshire persistent absence rate for state funded primary schools (1.8%) was below the England average (1.9%). Conversely during the 2013/14 academic year the persistent absence rate for state funded secondary schools in Nottinghamshire (5.7%) was above the England average (5.3%).
9. The chart overleaf underlines that since the 2004/05 academic year there has been a steady increase in the number of fines issued for pupil absence in England.



10. During the 2013-14 academic year 184 fines were issued across Nottinghamshire. So far this academic year, over 200 Penalty Notices have been issued to parents.
11. As part of the benchmarking exercise, a total of 23 local authorities from across England were approached for information about their Code of Conduct and their use of Penalty Notices to address pupil absence. From an analysis of the information received, the following trends were identified:

- **Nationally pupil absence rates have been steadily falling at the same time as the use of fines for absence has increased.**

Since the 2008/09 academic year, overall absence rates across England have steadily fallen from 6.3% (2008/09) to 4.5% (2013/14). Similarly over the same period persistent absence rates have also been declining, falling from 7.4% (2008/09) to 3.6% (2013/14).

At the same time the use of Penalty Notices increased across England by 60% from 20,887 (2008/09) to 52,370 (2011/12). Whilst the use of fines to address pupil absence is likely to be only one of a series of interventions schools and local authorities use, this data does suggest a correlation between the use of penalty notice fines and any reduction in absence rates.

- **There are considerable variations in Penalty Notice Thresholds across different authorities.**

From the 17 responses received it is immediately apparent that there is very little consistency in the thresholds set by individual local authorities within their local Code of Conduct. Most local authorities had thresholds equating to on average about 17% over a fixed period (usually 6 or 12 weeks). Even at that the application of the threshold could be quite nuanced with the use of warnings and monitoring periods before a fine was eventually issued.

Nottinghamshire's threshold is currently 25% over a 6 week period.

- **There are significant variations in the volume of fines used by different local authorities**

Regardless of the level at which the threshold is set, there are significant variations in the numbers of penalty notices issued by individual local authorities. Nottinghamshire currently issues fewer fines than many other local authorities even where the threshold is set at a similar level. In some cases the difference was very significant.

- **A high proportion of Penalty Notices are unpaid**

A significant proportion of penalty notices are not paid and not all cases where the fine is unpaid then proceeded to court action for the original offence. Charlie Taylor's (2012) report indicated that about 40-50% of fines were unpaid. More recent data from the Department for Education covering the academic years from 2004/05 through to 2012/13 confirm a payment rate of 53%.

Experience suggests that penalty notices are usually less effective with families where there are longer-term or persistent absence issues and/or significant underlying factors that need to be addressed. Examples of underlying factors that can impact on attendance include poor parental mental health, acute anxiety for the child, parental alcohol or drug misuse, domestic violence, involvement in crime or anti-social behaviour and long term unemployment.

- **There is mixed evidence that having a much lower threshold and issuing a much higher number of fines results in a bigger reduction in absence rates**

Finally and most importantly from the responses received there appears to be mixed evidence that having a much lower threshold and/or issuing much higher numbers of fines results in a bigger reduction in absence rates compared to authorities with higher thresholds and a record of issuing fewer fines.

12. During the Spring of 2015, head teachers in both maintained schools and academies (primary and secondary) were provided with the results of the benchmarking exercise and asked to comment through an online survey on a proposal to alter the Penalty Notice threshold in Nottinghamshire's Code of Conduct to 20% from September 2015. Twenty four head teachers responded to the survey. Of these just over 85% were in favour of amending the threshold. Four head teachers stated a preference for the Nottinghamshire threshold to mirror the government's revised Persistent Absence rate of 10% from September 2015 as this was the expectation placed on schools by Ofsted. Two schools also raised a concern about the potential for parents to take their children on multiple holidays during the school year and requested that the threshold in the Code of Conduct needs to address this potential issue.
13. It is important to note that Nottinghamshire's pupil absence rates are in line with the England and regional averages. Our overall and persistent absence rates have fallen in line with the national trend. However, in view of the imminent national change to the persistent absence definition from September 2015 and in light of the findings from the benchmarking exercise there is a case for altering the Nottinghamshire threshold.

14. The proposal is for a more modest reduction in the threshold to 20% which will provide head teachers with increased opportunity to use fines to address regular and persistent absence in their schools without setting the threshold at a level that might become overly punitive. It is recommended that 20% will establish the threshold for Nottinghamshire at a level which will:
- Be effective in addressing regular and persistent absence,
  - Support schools and their own strategies to improve attendance,
  - Be fair, proportionate and will meet the “*public interest*” test ,
  - Retain public confidence,
  - Be consistent with the principles set out in the Local Authority’s Enforcement Policy, and
  - Complement the Early Help offer across Nottinghamshire.
15. It will also harmonise the threshold arrangements for issuing fines with those for prosecuting cases in court.

### **Other Options Considered**

16. Consideration was given to reducing the threshold to a level more in line with the new Persistent Absence definition of 10%. However, this would have set the threshold at a level that was inconsistent with Nottinghamshire’s arrangements for prosecuting cases in court. It might mean that families where a child has had as little as three days absence in a monitoring period without the means to pay the fine could find themselves being prosecuted in court. It would also be incongruent with the principles set out in the Enforcement Policy and as such could set the threshold at a level that was overly punitive and would not command sufficient public confidence.

### **Reason/s for Recommendation/s**

17. To ensure that the Nottinghamshire Code of Conduct remains fit for purpose and is effective in addressing pupil absence rates within Nottinghamshire and more closely reflects the planned change to the Persistent Absence definition from September 2015.

### **Statutory and Policy Implications**

18. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

### **Financial Implications**

19. Any change to the threshold is likely to result in an increase in demand for fines from schools and possibly court work where fines are not paid. Whilst it is uncertain at this stage what the overall impact will be, we aim to meet any increase in demand as a result of the proposed change within our existing resources. We will need to keep this under review. By introducing a more modest change to the threshold we will mitigate against the

likely need for the authority to increase capacity very significantly to deal with a much greater increase in requests for fines from schools as a result of a larger change to the threshold.

## **RECOMMENDATION/S**

That the Committee:

- 1) notes the update on the use of Penalty Notices for non-attendance at school
- 2) gives approval for the Penalty Notice threshold to be amended to 20% from September 2015 and the insertion of a clause that will inhibit families from taking multiple unauthorised leave of absences during the academic year for the purpose of a family holiday or other reason which does not meet the definition of exceptional circumstances.

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### **Constitutional Comments (SLB 26/05/15)**

20. Children and Young People's Committee is the appropriate body to consider the content of this report.

### **Financial Comments (SS 02/06/15)**

21. The financial implications of this report are contained within paragraph 19 above.

### **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Full Report – Review of Penalty Notice Code of Conduct Threshold

### **Electoral Division(s) and Member(s) Affected**

All.

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