

17 October 2016

Agenda Item: 07

REPORT OF THE SERVICE DIRECTOR, YOUTH, FAMILIES AND CULTURE

NOTTINGHAMSHIRE CODE OF CONDUCT FOR ISSUING FINES FOR PUPIL ABSENCES – IMPACT OF AMENDMENT TO THRESHOLD

Purpose of the Report

1. To provide the Committee with an update on the impact of the amendment agreed in July 2015 to the threshold for issuing Penalty Notices to parents for their child's unauthorised absences from school.
2. The report also seeks approval to maintain the Penalty Notice threshold at the level agreed by the Committee in July 2015, as set out in paragraph 3 of this report.

Information and Advice

3. Pupil absence rates nationally and locally have been steadily decreasing in recent years with the number of holiday related absences also reducing according to Department for Education (DfE) research set out in a recent study, "**The link between absence and attainment at KS2 and KS4**" (DfE: March 2016). Since 2011/12 Nottinghamshire's overall absence rates have fallen from 5.0% to 4.5% in 2014-15. This is evidence that the majority of parents work hard with schools to meet the expectation that children should be at school every day it is open. The majority of parents also make the choice not to take their children on holiday in term time despite the additional financial costs associated with booking holidays during school breaks.
4. Whilst the general trend is an improving one, tackling unauthorised absence from school continues to be a priority, particularly as the evidence shows that good attendance is linked to attainment, with pupils with no absence from school more likely to achieve five A* to C GCSEs, including English and mathematics.
5. In July 2015 the Children and Young People's Committee voted to reduce the threshold at which fines could be issued to parents in Nottinghamshire for their child's unauthorised absence from school. The Nottinghamshire Code of Conduct was amended to stipulate that parents could be issued with:
 - a Penalty Notice Fine if their child/children have in excess of 3 days (6 sessions) unauthorised absence during a 6 week period and there is evidence that the absence was for a family holiday
 - a Penalty Notice Warning Letter if their child/children have in excess of 3 days (6 sessions) unauthorised absence during a 6 week period

- a Penalty Notice Fine if their child/children have in excess of 5 days 10 sessions) unauthorised absence during a 6 week period.

This change came into effect from September 2015.

6. The report to Committee in July 2015 highlighted a number of potential challenges and risks that required consideration. This report provides an update on these along with any evidence of impact. During 2015-16 there has been some high profile media focus on Education Penalty Notices following a High Court ruling (Isle of Wight Council vs. Platt). This is also given consideration in this report.
7. The change to the threshold was made by Committee following an in-depth review of the use of Penalty Notices across 23 different local authorities in England and a consultation with Nottinghamshire Head Teachers. The decision to reduce the threshold was made in order to ensure Nottinghamshire's Education Penalty Notice arrangements were aligned with the national government expectations, and to ensure the threshold reflected the Council's commitment that pupils should only be absent from school in exceptional circumstances.
8. The main issues that the Committee considered in the 2015 report included:
 - a) the need to ensure that the threshold was set at a level that was fair, proportionate, maintained public confidence and allowed the Authority's resources to be focused on addressing regular and persistent absence
 - b) the financial implications of any change
 - c) the likely impact on pupil absence rates in Nottinghamshire
 - d) any potential additional pressures on court time
 - e) any potential additional administrative pressures for schools.
9. The report predicted that the number of fines issued by the Authority would increase significantly following a lowering of the threshold and this has proven to be the case. Since September 2015, the Authority has issued in excess of 2,200 fines to parents for their child's unauthorised absence from school. This equates to almost a six-fold increase compared to 2014-15.
10. The data on Penalty Notice Fines shows that there remains a significant variation in the use of fines by schools across Nottinghamshire. This is despite the changes to the England Pupil Registration Regulations in 2013 which restricted head teachers' discretion to agree a leave of absence in term time to exceptional circumstances and the change to the threshold in Nottinghamshire's Code of Conduct agreed by Committee in July 2015.
11. Whilst there is work being undertaken to address this issue, concerns about the uneven application of the local arrangements for Penalty Notices by schools are likely to remain. In part this is a consequence of the freedoms and discretion head teachers enjoy as well as some resistance at governing body level to introducing fines as a measure to address unauthorised leave of absences during term time for the purpose of a family holiday. Any further amendment to the threshold may well exacerbate this issue.
12. Nottinghamshire's 'overall' and 'persistent absence' rates continue to be below or in line with the England and regional averages. Figures for 2014-15 are shown in the table

below. We know that both overall and persistent absence rates nationally have been falling in recent years.

Area:	Overall absence rate 2014/15	Persistent absence rate 2014/15
England	4.6%	3.7%
East Midlands	4.6%	3.8%
Nottinghamshire	4.5%	3.7%

13. As part of the 2015 review into the use of Penalty Notices, their use across 23 different local authorities was compared. An analysis of the data indicated that there was no discernible benefit in having a Penalty Notice Threshold set at 10% or less, as shown in the table below.

Threshold for issuing fines	Average rate of persistent absence (2013/14)	Average reduction in persistent unauthorised absence rates (2013/14)
25%	4.1%	-17%
20%	4.66%	-18%
11-19%	4.47%	-21%
10%	4.4%	-10%

14. Local authority level data for the 2015-16 academic year is not yet available from the Department for Education. The autumn term data 2015 recently published by the Department for Education does not include any local authority level figures either. Even if it were available, it may not be particularly helpful as it covers the period immediately after the change was introduced when schools were still assimilating the changes into their own policies and alerting parents. Therefore it is not possible at this point to draw any definitive conclusions about whether the 2015 change in threshold resulted in a reduction in absence rates for Nottinghamshire. In hindsight, absence trends probably need to be monitored for at least a further academic year to ascertain what, if any, impact the threshold change has had on parental habits and choices.
15. Education Penalty Notices were subject to some media coverage this year following a case, Isle of Wight Council vs. Platt, where a parent chose not to pay the fine issued for a holiday in term time and successfully contested the case in Court. The parent's defence was that his child had regular attendance and he was therefore not guilty of breaking the law by taking her out of school for a holiday in term-time. The Isle of Wight Council appealed this outcome at the High Court in the spring but the appeal was dismissed. The Isle of Wight Council is taking the case to the Supreme Court this autumn with their costs being underwritten by the Department for Education. Whilst the Isle of Wight case did not result in a change in the law or redefine what constitutes regular attendance, the two court outcomes and the manner in which they were reported by the media has created a great deal of uncertainty both for local authorities and for parents.
16. Nottinghamshire continues to deal with each case on its individual circumstances. This is in contrast to some authorities which have reduced or ceased the use of Penalty Notices. The evidence is that parents who are familiar with the Isle of Wight case and have the personal resources and inclination to contest the fine are more likely to do so now. As a

result the Authority may begin to see more contested cases and trials in Nottinghamshire than there have been previously.

17. The Department for Education is considering its options having made clear its expectation that regular attendance still means pupils attending every day the school is open. It may be some time before the outcome of the Isle of Wight appeal to the Supreme Court is known, or there is any change in legislation or statutory guidance if required. The government is considering introducing a national Code of Conduct. In this context a further reduction in the Nottinghamshire threshold may not have public confidence and may prove to be premature if, for example, the Isle of Wight appeal proves unsuccessful and the Department for Education feels it necessary to legislate or issue statutory guidance to local authorities that supersedes any additional change the Committee may choose to make.
18. Currently around 60% of fines are paid in Nottinghamshire and this is broadly in line with the national picture. A small proportion are withdrawn. The change in threshold has resulted in an increase in the proportion of Court prosecutions that are related to fines that are not being paid. The figures below dating back to the 2011-12 academic year illustrate this point. It is of note that Court prosecutions for non-payment of fines have increased since September 2013 when the England Pupil Registration regulations changed and again from September 2015 when the threshold was reduced.

Academic Year	All Court Prosecutions	% of Prosecutions that were not related to non-payment of fines	% of Prosecutions that were related to non-payment of fines
2011-12	60	98.3%	1.7%
2012-13	81	75%	25%
2013-14	211	61.6%	38.4%
2014-15	217	69.6%	30.4%
2015-16	234*	37.6%	62.4%

*This is not a final figure for the academic year.

19. It currently takes on average 2-3 months to have a case heard in court. The introduction of the Single Justice scheme, where guilty pleas can be dealt with in the offender's absence, may help to alleviate some of these issues in the longer term but the scheme is still being piloted. The Council has secured additional court time, although ensuring cases are heard in a timely manner and ensuring cases where there is an aggravated feature are prioritised remains a challenge. Any further increase in court work arising from an additional change to the threshold is likely to exacerbate the pressure on court time in the short to medium term.
20. The cost to the Authority of administering fines and prosecuting cases for non-payment in court is high. In order to administer the fines, the Children and Young People's Committee agreed to establish three additional posts (Education Enforcement Officers). The difference in the income generated since September 2015 from fines paid as a direct result of the change in threshold does not cover the full cost of these posts. There are a large number of schools who as yet have not been requesting fines but who are indicating that it is their intention to do so. Consequently, it is expected that there will be a further

increase in requests for fines during 2016-17. A further reduction in the threshold would in all probability require additional staffing investment at a time when the Authority is under considerable financial pressure.

Other Options Considered

21. Consideration was given to making a further amendment to the Code of Conduct so that the threshold for issuing Penalty Notices changed to 10% or 3 days (6 sessions) over a 6 week period across the board.

Reason/s for Recommendation/s

22. It is recommended that no further change is made to the Code of Conduct at this point. The reasons for this recommendation include:
- The change implemented in 2015 has not yet had time to fully bed in with many schools yet to implement the changes
 - There is insufficient data available at this time to be able to properly evaluate the impact of the change against what is already known about the effectiveness of penalty notices
 - With the current legal uncertainties arising out of the Isle of Wight case a further reduction would almost certainly lack public confidence. It is more prudent to wait until the legal position is further clarified by the Supreme Court ruling and any response from the Department for Education is received.

Statutory and Policy Implications

23. 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 services), the public sector equality duty, safeguarding of children and adults at risk, 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

24. The financial implications are contained within paragraph 20 of this report.

RECOMMENDATION/S

That the Committee:

- 1) notes the update on the impact of the amendment to the threshold for issuing Penalty Notices to parents for their child's unauthorised absence from school.
- 2) gives approval to maintain the Penalty Notice threshold at the level agreed by the Committee in July 2015 and as set out in paragraph 3 of this report.

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Constitutional Comments (SMG 16/09/16)

25. The proposals in this report fall within the remit of this Committee.

Financial Comments (TMR 19/09/16)

26. The financial implications are set out in paragraph 20 of the report.

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.

Nottinghamshire Code of Conduct for issuing fines for pupil absences – amendment to threshold – report to Children and Young People’s Committee on 13 July 2015.

Electoral Division(s) and Member(s) Affected

All.

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