

13 July 2015**Agenda Item: 04****REPORT OF THE ACTING SERVICE DIRECTOR, YOUTH, FAMILIES AND
CULTURE****NOTTINGHAMSHIRE CODE OF CONDUCT FOR ISSUING FINES FOR PUPIL
ABSENCES – AMENDMENT TO THRESHOLD****Purpose of the Report**

1. This report seeks to provide a further update on the use of Penalty Notices for non-attendance at school following an amendment to the motion moved at the Committee meeting on 15 June 2015 that the penalty notice threshold be amended to 10% from September 2015. The matter was withdrawn and placed on the agenda for Committee today so that additional information could be provided on the financial and other implications of this proposed change to the threshold. The report seeks approval for the Penalty Notice threshold to be amended as described in paragraph 12. This report should be read in conjunction with the original report which is provided as a background paper.
2. The report also proposes that a review examining the impact of changes is presented to the Committee in 12 months' time assessing the benefits with a view to establishing whether a further reduction in the threshold is appropriate

Information and Advice**Background**

3. 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. £60 fines are issued to each parent to be paid in full within 21 days otherwise they automatically become £120 fines. All fines must be paid in full with 28 days. The threshold was set at this level to ensure any use of fines is fair, proportionate and focused on regular and persistent absence. The current 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.
4. As outlined in the previous report, in order to compare Nottinghamshire with other local authorities, requests for data were made from 23 local authorities to which 17 fully or partly responded. In summary:
 - one local authority had the same threshold at 25%

- five authorities had a threshold of 20%
- seven had a threshold between 11 and 19%
- three had a threshold of 10% or lower
- one did not disclose their threshold.

Analysis of the Benchmarking Exercise

5. An analysis of the information available from the benchmarking exercise conducted with other local authorities has indicated the following trends:
 - nationally pupil absence rates have been steadily falling at the same time as the use of fines for absence has increased
 - there are considerable variations in Penalty Notice Thresholds across different authorities
 - there are significant variations in the volume of fines used by different local authorities
 - a high proportion of Penalty Notices are unpaid requiring further action through the Courts
 - 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.
6. In order to look in more depth at the potential performance implications from a change to a 10% threshold, the data available has been aggregated in order to assess whether the Council might expect an improvement in persistent absence if such a change is implemented. Based on the data available to the Council, it is concluded that a change to a 10% threshold for issuing Penalty Notices is unlikely to achieve significantly better performance than a threshold between 11% and 20%.

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% or less	4.4%	-10%

*Nottinghamshire's PA rate for 2013-14 was 3.5%

Issues for Consideration when Amending the Threshold

7. There are a number of consequences and considerations for the Council and other organisations when making changes to the threshold for issuing fines for poor attendance and these are detailed below.
8. The cost to the public purse in relation to enforcing school attendance can be significant and it is important that the efficacy of spending more on this area is matched by improved outcomes. As is stated above the evidence for this is far from conclusive. The average cost to the County Council of enforcement is £247 per case taking into account the full range from those which are promptly paid to the up to 50% that are unpaid and which the Council must pursue through the Courts. Whilst some Court costs are recoverable the majority cannot be recouped and taking the DfE's upper prediction of the number of the

school population who would meet the 10% absence threshold (12.7% or 13,716 pupils) the additional costs of enforcement to the Council could reach £3.1m per year. The estimated costs modelled using different thresholds are shown in the table below. There would also be significant costs to Her Majesty's Courts and Tribunals Service in relation to the administration and collection of fines and the holding of hearings and trials in relation to non-payment.

Threshold	25%	20%	15%	10% (a)	10% (b)
%School population expected to meet the threshold	0.27%	2.3%	3.5%	5.75%	12.7%
Number of school population affected	300	2484	3780	6210	13716
Number of EPNs issued (c)	450	3726	5670	9315	20574
Cost of enforcement /prosecution (d)	£111,150	£920,322	£1,400,490	£2,300,805	£5,081,778
Income from fines (e)	£24,300	£201,204	£306,180	£501,010	£1,110,996
Income from Court costs (f)	£2,562	£41,917	£52,537	£104,793	£231,457
Net Cost	£84,288	£677,201	£1,041,773	£1,695,002	£3,739,325
Current budget allocated to enforcement	£85,000	£85,000	£85,000	£85,000	£85,000
Absorbable cost within new Family Service Structure	-	£550,000	£550,000	£550,000	£550,000
Potential additional budget required	-	£37,201	£406,773	£1,060,002	£3,104,325
<p>(a) This takes the median from the DfE estimate of between 1.2% and 12.7%</p> <p>(b) This takes the top of the DfE estimate of between 1.2% and 12.7%</p> <p>(c) Based upon assumptions of 75% of children having two prosecutable parents</p>					

- (d) Based on an average cost of £247 per enforcement/prosecution
- (e) Based on 90% of fines being paid at the £60 rate
- (f) Based on half of all fines being unpaid and requiring Court action, £90 Court Costs recovered in 25% of cases

9. There are likely to be some additional pressures on schools from a change in threshold in relation to the collation and presentation of evidence and attendance at Court in relation to contested fines or prosecutions. Contested fines are particularly likely where there are contact arrangements between separated parents, both of whom will be subject to a fine. Since 2013 head teachers have been allowed to issue fines themselves without reference to the Local Authority, although none has yet done so. If schools were to take on the issuing of fines it would reduce the cost to the Council.

10. Whilst there are no significant equality issues inherent in a change to the threshold there will remain differing interpretations by Head Teachers and this can lead to apparent unfairness into how unauthorised absence is addressed and this may be polarised by a change of the threshold to 10%.

11. There are also particular concerns relating to parents whose work restricts them to taking holidays at certain times. This includes workers in some sections of the private sector and also some in emergency and armed services whose circumstances are unlikely to be considered as exceptional.

Proposal to Amend the Threshold

12. Taking into account all of these considerations it is proposed that head teachers are given the freedom and the support of the Local Authority to act earlier in the case of both persistent absence and the taking of holidays during term time. In order to ensure that the costs of enforcement is commensurate with the effectiveness of this as a method of reducing unauthorised absence it is proposed to have the facility to issue official warnings and Education Penalty Notices using differing thresholds as indicated below.

Persistent Absence

- once a child has reached the 10% (6 sessions/3 days over a rolling 6 week period) unauthorised absence threshold the school can issue or ask the Local Authority to issue a warning letter. The letter will make it clear that any further absence will result in the issuing of an Educational Penalty Notice to each parent for each child to whom persistent absence applies
- the duration of the warning letter will be 12 weeks from issue
- if the unauthorised absence rises to 15% (10 sessions/5 days over a rolling 6 week period) then the school can issue or ask the Local Authority to issue Educational Penalty Notices to the parents
- in these cases the Local Authority will also consider what services or measures may be required to prevent or reduce further unauthorised absence.

Holidays During School Term Time

- if the school has evidence that a parent has removed a child from school for the purposes of a holiday during term time without authorisation and the level of absence

is above 6 sessions/3 days in total then the school can issue or request the Local Authority to issue an Educational Penalty Notices to the parents.

Other Options Considered

13. Consideration has been given to amending the threshold to 20% and to 10%. When discussed by the Committee in June 2015 there was considerable concern that a figure so far removed from the government definition of persistent absence gave the wrong message to parents about the importance of regular school attendance. Consideration has also been given to amending the threshold to 10%. Given the very significant cost of this measure and the lack of evidence that this would significantly improve school attendance this measure is not proposed.

Reason/s for Recommendation/s

14. The recommendation has been made to make sure 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 government's Persistent Absence definition from September 2015. The recommendation also seeks to limit the costs associated with a change of threshold by using warning letters where appropriate to change behaviour which will not require assessment of evidence and ongoing monitoring and additional actions by the Local Authority.

Statutory and Policy Implications

15. 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

16. 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. The introduction of warning letters, the impact of which can be subsequently monitored by schools, and a differentiated threshold for persistent absence and holidays in term times will limit work to some extent and therefore limit costs. It is projected that this increase in work could be managed in the first instance through the recruitment of a further 3.5 FTE Senior Case Managers for enforcement and a 0.5 FTE Senior Professional Practitioner at a cost of £182,000 per year. This could be met by the reprioritisation of services within the Family Services budget for 2015/16 and 2016/17. A potential budget pressure would be created in 2017/18 when the current Option for Change saving of £1.000m is actioned for this service. There would also be additional income generated from the increased issue of penalty notices to contribute towards the additional cost. A further report to establish these posts would be put before Committee at a later date.

RECOMMENDATION/S

That:

- 1) the Committee notes the update on the use of Penalty Notices for non-attendance at school
- 2) the Committee gives approval for the Penalty Notice threshold to be amended as described in paragraph 12
- 3) a review examining the impact of changes is presented to Committee in 12 months' time assessing the benefits with a view to establishing whether a further reduction in the threshold is appropriate.

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Constitutional Comments (SLB 26/05/15)

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

Financial Comments (SS 02/07/15)

18. The financial implications of this report are contained within paragraph 16 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.

Report to the Children and Young People Committee, Nottinghamshire Code of Conduct for Issuing Fines for Pupil Absences – Amendment to Threshold (15 June 2015)

Full Report – Review of Penalty Notice Code of Conduct Threshold

Electoral Division(s) and Member(s) Affected

All.

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