

20 May 2019

Agenda Item: 8

**REPORT OF THE SERVICE DIRECTOR, YOUTH, FAMILIES AND SOCIAL
WORK**

**UPDATE ON EDUCATION PENALTY NOTICES FOR UNAUTHORISED
ABSENCES FROM SCHOOL**

Purpose of the Report

1. The purpose of this report is to provide an update on the current use of Education Penalty Notices in Nottinghamshire to address unauthorised absence from school.

Information

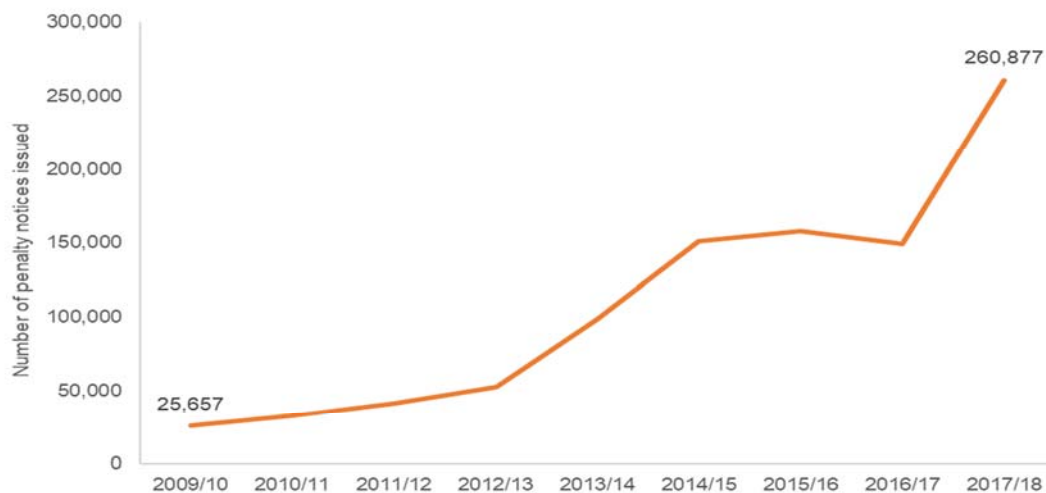
2. Where a child of Compulsory School age who is a registered pupil at a school fails to attend regularly then the parents can be guilty of an offence under Section 444(1) of the Education Act 1996. A Supreme Court judgement in April 2017 (Isle of Wight v Jon Platt) clarified that for a child's attendance at school to be considered regular they must be in attendance at school every day that the headteacher requires them to be.
3. Section 23 of the Anti-Social Behaviour Act 2003 empowers designated Local Authority (LA) officers, head teachers (and deputy and assistant headteachers authorised by them) and the Police to issue Penalty Notices in cases of unauthorised absence from school. They provide parents with an opportunity to discharge their liability under the legislation as an alternative to prosecution through the magistrates court.
4. Since September 2013 head teachers are only able to agree a leave of absence during term time in exceptional circumstances. The Department for Education (DfE) 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.

5. From September 2015 the definition of persistent absence from school changed from unauthorised absence from school in excess of 15% to any unauthorised absence over 10%.
6. In response to these changes the Children and Young People's Committee agreed in July 2015 to amend the Nottinghamshire Code of Conduct to bring the threshold for issuing Education Penalty Notices more in line with the national expectations in relation to school attendance as set out in the legislation and statutory guidance to schools and local authorities. Under the Education (Penalty Notices) (England) Regulations 2007 every local authority is required to have a Code of Conduct in place setting out the local arrangements and criteria for the use of Education Penalty Notices. The decision at Committee resulted in a change in the threshold for Education Penalty Notices in Nottinghamshire from unauthorised absence in excess of 15 sessions over a 6 week period to:
 - 1) unauthorised absence in excess of 3 days over a 6 week period where the absence related to a holiday in term time and
 - 2) unauthorised absence in excess of 5 days (10 sessions) over a 6 week period for other general unauthorised absence from school.
7. In October 2016 the Children and Young People's Committee made the decision to align the two thresholds above within the Nottinghamshire Code of Conduct into a single threshold for issuing an Education Penalty Notice which now stands at any unauthorised absence in excess of 3 days (6 sessions) over a 6 week period regardless of the reason or purpose for the absence. This decision helped to simplify the criteria for schools.
8. The penalty is set at £120 and must be paid in full within 28 days of the date on which the notice starts. If the penalty is paid within 21 days of the date on which the notice starts the sum is reduced to £60. Payments are made to the Local Authority. Fines can be issued to both parents/carers for each child who was absent from school.
9. Where a penalty is unpaid, the Local Authority is required to take legal action under Section 444(1) of the Education Act 1996 for the original offence. In this case it is necessary for the person who requested the issue of a penalty notice to provide evidence for the court case by way of a Section 9 Statement (a witness statement admissible in court under the Criminal Justice Act 2003 and the Magistrates' Courts Act (1980) and Magistrates' Courts (Amendment) Rules 2004). The standard of evidence required is the same as that required for court cases brought under section 444(1) of the Education Act 1996.
10. Nottinghamshire has experienced one of the highest increases in the use of Penalty Notices by schools and academies over recent years compared to other local authority areas as a means to address unauthorised absence from school. In particular since 2015 an increasing number of schools are utilising Education Penalty Notices to address the issue of unauthorised absence in term time for the purpose of a family holiday. The table below provides a breakdown since the 2012-13 academic year:

Academic Year	Number of Nottinghamshire schools using Education Penalty Notices	Number of Education Penalty Notices issued in Nottinghamshire	Average Number of Penalty Notices issued by school
2012-13	7	84	12
2013-14	26	184	7
2014-15	40	369	9
2015-16	88	2,240	25
2016-17	105	3,756	36
2017-18	147	5,276	36

11. The increase in Nottinghamshire mirrors the national trend over recent years as evidenced in the chart below taken from the 2017-18 DfE Parental Responsibility Measure which shows a year on year increase in the volume of Penalty Notices being issued by local authorities. The increase in Nottinghamshire has put the County Council more in line with other local authorities nationally in the use of Penalty Notices to address unauthorised absence from school.

Figure 1
Number of penalty notices (PN) issued
2009/10 to 2017/18
England

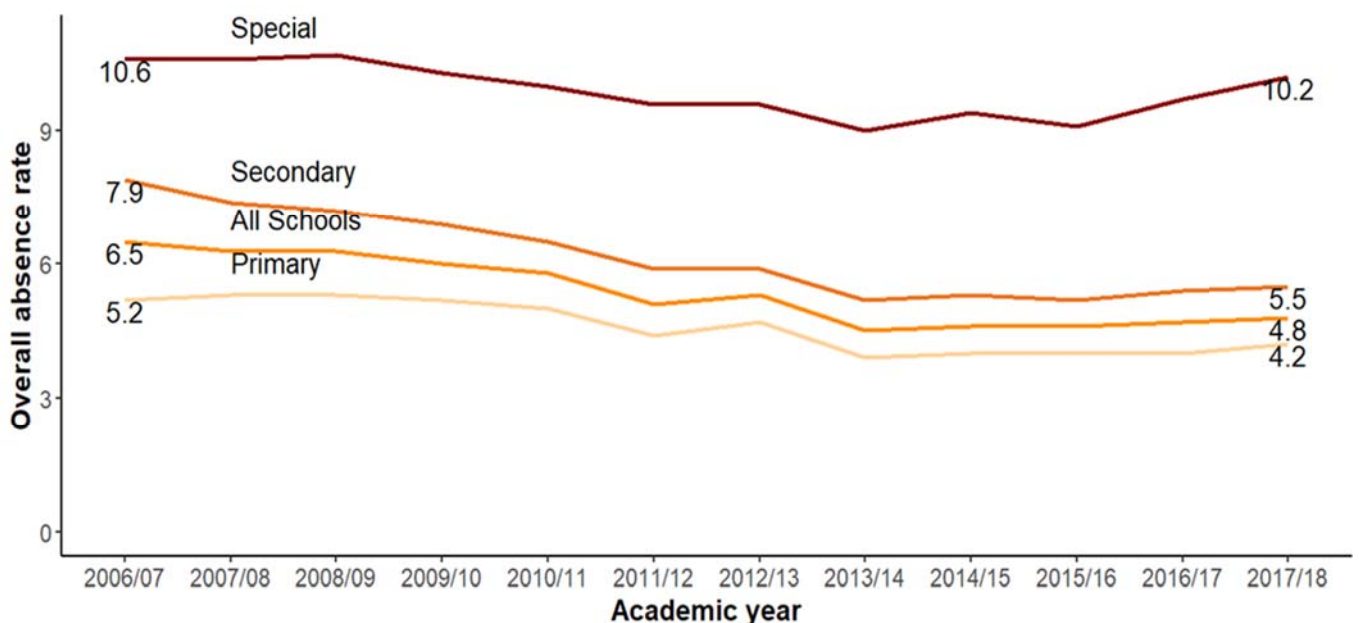


PN issued:	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
	25,657	32,641	41,224	52,370	98,259	151,125	157,879	149,321	260,877

Source: Parental responsibility measures attendance census

12. Based on discussions with schools it is believed that the increase in the use of Education Penalty Notices in Nottinghamshire has largely been as a result of schools reviewing their behaviour and attendance policies particularly following a HMI visit or Ofsted inspection. Academies and schools joining academy trusts where the use of Penalty Notices is already commonplace has also driven up the use of Penalty Notices in Nottinghamshire. Whilst just under 50% of schools in Nottinghamshire currently utilise Education Penalty Notices, based on recent trends it is anticipated that the number will be increasing further over the next 18 months.

13. During the 2017-18 academic year 87.2% of the 5,276 education Penalty Notices issued in Nottinghamshire where as a result of an unauthorised absence during term time for the purpose of a family holiday. This is slightly higher that the England average of 85.4% and lower than the East Midlands regional average of 91.7% (DfE 2018).
14. The majority of Education Penalty notice fines are paid within the 28 days statutory timescale (71%). This matches the England average when comparing figures for the last three academic years (2015/16, 2016/17 and 2017/18). In Nottinghamshire over the same time period after further consideration of the evidence it was agreed to withdraw around 6% of the Penalty Notices issued. This is significantly lower that the England average of 13% and demonstrates more robust evidence gathering in Nottinghamshire before a Notice is issued.
15. Approximately 10% of adults in Nottinghamshire make a payment after the statutory timescale has elapsed once they have received a Notice of Intention to Prosecute. The average cost of prosecuting a case at the Magistrates court is around £270 and therefore it is in the best interest of the both the Local Authority and the individual adult concerned to deal with the matter outside the court process wherever this is possible.
16. Since the 2015/16 academic year Nottinghamshire County Council has prosecuted around 1,000 adults who had failed to pay a Penalty Notice issued to them for their child's unauthorised absence from school. The prosecution is for the original offence under Section 444(1) of the Education Act 1996. This equates to around 8.5% of the cohort of adults who were issued with a fine over the last three academic years. The Nottinghamshire figure for the proportion of cases proceeding to prosecution is exactly in line with the England average for the same period. Since January 2016 these cases have been dealt with through the Single Justice process which allows for summary-only non-imprisonable offences to be dealt with by a single magistrate sitting with a legal adviser on the papers provided without the attendance of either a prosecutor or the defendant.
17. As the graph below indicates the overall absence rates have been gradually falling nationally in recent years.



18. Figures for the 2017/18 academic year published by the DfE confirm that the overall absence rate in Nottinghamshire (4.5%) was below both the England (4.8%) and East Midlands region (4.7%) averages. The data also confirmed that the persistent absence rate (the percentage of pupil enrolments whose attendance is considered to meet the persistent absence threshold) for Nottinghamshire (9.5%) is lower than the England (11.2%) and East Midlands region (10.8%) averages.
19. Since the 2014/15 academic year the overall absence rates in Nottinghamshire has remained stable at about 4.5%. Over the last 2-3 years there have been slight decreases in the percentage of pupil enrolments whose attendance is considered to meet the persistent absence threshold from 9.9% in 2015/16 to 9.5% in 2017-18. Based on 2017-18 enrolments, this equates to around 500 less pupils meeting the persistent absence threshold.
20. This year it is hoped to pilot and introduce an online Education Penalty Notice application process for schools and an online payment process for members of the public. These will improve the system and hopefully provide some efficiencies as the Council endeavours to meet the increasing demand to issue fixed Penalty Notice fines for unauthorised absence from school. There will be some development costs yet to be defined. However, once introduced these should provide efficiencies in the system.
21. The current threshold for issuing Education Penalty Notices (as detailed in **paragraph 7**), as set out in the Nottinghamshire Code of Conduct and agreed by the Children and Young People's Committee in October 2016, is set at a level which provides a proportionate remedy for head teachers to use when dealing with unauthorised absences from school in term time. The ever increasing number of schools using Education Penalty Notices in recent years suggests that the current threshold and criteria meets the needs of head teachers and schools across Nottinghamshire. The threshold is now well established and supports schools to meet the national expectations placed on them around attendance at school.

Other Options Considered

22. No other options have been considered.

Reason/s for Recommendation/s

23. The decision to set the threshold was agreed at Children and Young People's Committee in July 2015 and revised in October 2016 and it was agreed that the Committee would be updated on the use of Penalty Notices in Nottinghamshire.

Statutory and Policy Implications

24. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, 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, smarter working, sustainability and the environment 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

25. There are no financial implications arising from this report.

RECOMMENDATION/S

That:

- 1) Members consider whether there are any actions they require in relation to the information contained within the report.
- 2) Members agree to receive a further update report in the next 12 months and that this be included in the work programme.

Steve Edwards

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Constitutional Comments (AK 24/04/19)

26. The recommendation falls within the remit of the Children and Young People's Committee under its terms of reference.

Financial Comments (SAS 08/05/19)

27. There are no financial implications arising directly from this 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 15th June 2015

Nottinghamshire Code of Conduct for issuing fines for pupil absences – impact of amendment to threshold: report to Children and Young People's Committee on 17th October 2016

Electoral Division(s) and Member(s) Affected

All.

C1238