

BARNSELY METROPOLITAN BOROUGH COUNCIL

REPORT OF THE: EXECUTIVE DIRECTOR CHILDREN'S SERVICES

CHANGES TO STATUTORY GUIDANCE ON WORKING TOGETHER TO IMPROVE SCHOOL ATTENDANCE

REPORT TO:	CABINET
Date of Meeting	10 JULY 2024
Cabinet Member Portfolio	CHILDREN'S SERVICES
Key Decision	Yes
Public or Private	Public

Purpose of report

To inform Cabinet of amendments to the statutory guidance "Working Together to Improve Attendance," which will come into effect from September 2024 and the Council's responsibilities towards helping implement these changes within schools and settings across the Borough. In particular, the report outlines the following:

- (1) The changes to the National Framework for Issuing Penalty Notices.
- (2) The required changes and consultation needed with partners in relation to Barnsley's Code of Conduct for issuing Penalty Notices, which includes the thresholds at which penalties must be considered and the increase in the penalty charge.
- (3) To provide information on the requirements to share daily attendance data with the government and the newly established absence codes.

Council Plan priority

The information outlined in this report primarily supports the Council Plan's Priority of a **Learning Barnsley** in which children and young people achieve the best education outcomes through improved attendance levels.

Recommendations

That Cabinet approves the measures required to be taken by the Council to support the implementation of the changes in statutory guidance from September 2024, as set out in the outline plan (*Please see Paragraph 2.26 – 2.37 of this report*)

1. **INTRODUCTION**

1.1 This report intends to provide an overview of the changes to Working Together to Improve School Attendance which will become Statutory from September 2024. *Appendix 1 outlines the full guidance for reference purposes.*

1.2 In summary the guidance has been updated to:

- Be clear on the link between improving attendance and wider school culture, including the importance of working in partnership with families to find supportive routes to improve attendance.
- Reflect changes to the law on keeping school attendance and admission registers including a revised set of codes, granting leave of absence and access to, and sharing of, attendance information introduced through the School Attendance (Pupil Registration) (England) Regulations 2024.
- Set out the new National Framework for issuing penalty notices and reflect changes to the law introduced through the Education (Penalty Notices) (England) (Amendment) Regulations 2024.
- Change 'parenting contracts' for attendance to 'attendance contracts' to better reflect the agreement between parents, schools and/or local authorities.
- To strengthen the responsibilities of schools, respond to absence and work in partnership with families and the Local Authority.
- To respond sooner to children who are experiencing physical or mental ill health.
- To provide further clarity on the role of the Local Authority in supporting schools to meet the requirements of the guidance.

2. **PROPOSAL**

2.1 **Changes to the National Framework for Issuing Penalty Notices for Pupil Absence**

2.2 The objective of the changes to statutory guidance is to make penalty notices more effective by ensuring they are only used in cases where they are the most appropriate tool to change parental behaviour and improve attendance.

2.3 To prioritise the 'support first' approach by, expecting support to be used in cases where it is appropriate and using penalty notices in cases where support is not appropriate (for example a term time holiday) or in cases where support has not worked or has not been engaged with.

2.4 Improve consistency in the use of penalty notices across England by introducing a new national threshold at which they are considered.

- 2.5 Improve the deterrent effect of a penalty notice by increasing the amount and introducing a new national limit of 2 penalty notices within a 3-year period to break cycles of repeat offending.
- 2.6 Nationally, Penalty Notices will increase from £60 to £80 if paid within 21 days or £160 if not paid within 28 days. In terms of the issuing of fines directly, it is at the jurisdiction of the schools to decide whether to issue the fines, but the Council will administer them. This approach is currently already in place. In cases where penalty notices are not paid the offence of the original absence will be heard in the magistrates' court.
- 2.7 From the Autumn term 2024, only two fines can be issued to the same parent for the same child within a three-year rolling period. The issuing of any second notice will be automatically charged at the rate of £160. The third offence will be brought to the magistrates' court under Section 444 of the Education Act (1996).
- 2.8 New "notices to improve" will also provide an opportunity for a parent to engage support in support first and improve attendance before a penalty notice is issued.
- 2.9 National Penalty Notice Thresholds
- 2.10 From September 2024, schools must consider a fine if a pupil misses 10 sessions (half days) of unauthorised absence in a rolling period of 10 school weeks. They should "not have a blanket position of issuing or not issuing penalty notices". However, they must adopt a 'support first' approach where appropriate and this support must be evidenced when requesting a Penalty Notice or a Notice to Improve attendance.
- 2.11 The Threshold can be met with "any combination of unauthorised absence.
- 2.12 The period of 10 weeks can also span "different terms or school years".
- 2.13 Councils "retain the discretion to issue a Penalty Notice before the threshold is met" This could include where parents "are deliberately avoiding the national threshold by taking several term time holidays below threshold, or for repeated absence for birthdays or other family events".
- 2.14 Use of Recouped Fines to Support Attendance
- 2.15 In line with the guidance, penalty notices are "not a money-making scheme and local authorities should not have income targets". Any revenues borne out of penalty notices "must be ringfenced for attendance".
- 2.16 Previously, local authorities could only use revenues to administer penalty notice systems, however this revised approach now means they can now use any surplus in relation to "attendance support". If there are "any remaining surplus at the end of the year these must be paid to the Secretary of State."

2.17 Mandatory Daily Data Sharing

2.18 From September 2024 schools must share their daily attendance data directly with the government. Schools are encouraged to utilise the government's attendance reporting system "WANDE".

2.19 The "View Your Education Data" dashboard will allow schools and local authorities to monitor their attendance and access "near real time data to understand in order to better understand any trends in attendance patterns".

2.20 Long Term Sick Leave

2.21 From September, schools will have to give local authorities the name and address of any pupils who are sick who they believe will miss 15 consecutive or cumulative days from school.

2.22 Schools will also be "expected to inform a pupil's social worker and/or youth offending team worker if there are unexplained absences from school".

2.23 Consideration of Mental Health and Providing Support to Young People to Ensure Regular Attendance

2.24 The revised guidance states that schools should now be "particularly mindful of pupils absent from school due to mental or physical ill health or their special educational needs and/or disabilities and provide them with additional support".

2.25 The guidance acknowledges "many children will experience normal but difficult emotions that make them nervous about attending school, such as worries about friendships, schoolwork, examinations or variable moods". However, it is "important to note that these pupils are still expected to attend school regularly". Doing so "may serve to help with the underlying issue".

2.26 Responding to the Changes in the Guidance

2.27 All schools should be sighted and understand the changes to the new guidance, which is now a mandatory requirement from September 2024, so they are clear on the process. A briefing paper has been compiled and shared with all settings including through Primary and Secondary Headteacher meetings in the Borough.

2.28 All schools will be encouraged by the Barnsley Schools' Alliance and Education Welfare Service to actively utilise the government's WANDE education attendance reporting system.

2.29 The Council must consult with school, police, and the Cabinet in relation to the code of conduct for issuing Penalty Notices prior to the Autumn term.

2.30 A new co created policy for responding to pupils with health needs should be written and promoted to ensure that schools and partners are intervening in line

with the new guidance.

2.31 Current local attendance guidance needs to be updated to ensure that it encompasses the recent changes to statutory guidance.

2.32 The Barnsley Schools' Alliance will be the vehicle and mechanism for supporting around the messaging and communication in respect of these fundamental changes.

2.33 Consideration also needs to be given to a clear communication and marketing plan to also raise awareness amongst professionals, parents, and carers across the borough.

2.34 Action Plan

2.35 The Council's Education Welfare Service (EWS) will revise the code of conduct for issuing Penalty Notices (*See Appendix 3 of this report*) and consult with schools' police and Cabinet over the summer term on the following areas in respect on the Code of Conduct for issuing penalty notices:

- How long we monitor attendance for following a notice of intent being issued.
- What improvement we expect to see to prevent the penalty notices being issued.
- EWS proposals in relation to proposed monitoring periods and improvements are.
- A Notice to Improve sent to a child with attendance below 50% will involve setting a monitoring period of 3 weeks and will expect to improve their attendance by 20% in the monitoring period.
- A child with 51% attendance and above will be set a monitoring period of 6 weeks and expect to see attendance improved by 20%.
- What support we expect school to have implemented prior to the notice being issued:
- As outlined in the draft Code of Conduct EWS would expect the schools to provide documented evidence of discussions with parents and carers, regarding their concerns about the child's absence, alongside a relevant and up to date plan that outlines and evidences the interventions and reasonable adjustments made to remove the barriers to regular school attendance. Within this evidence we would expect to see letters to the parent outlining the attendance concerns, records of meetings that identify barriers and capture the voice of the child, SMART action plans, attendance contracts, and pastoral plans to remove identified barriers. Referrals to other agencies to target any

identified need, consideration of the need for an Early Help Assessment and 'Team around the Family' meetings. Evidenced discussions with other professionals involved, such as Social Workers, school special educational needs co-ordinator or SENCO, Designated School Safeguarding Leads or Targeted Early Help Practitioners as to whether they also feel that a Notice to Improve and Penalty Notice is appropriate and proportionate action.

- 2.36 The EWS and SEND and Inclusion Services are to co create a policy and procedure on how to respond to pupils with health needs that prevent them from regularly attending school. This policy will outline the expectation of the school and ensure that the Local Authority intervenes with education support when attendance at school is not possible.
- 2.37 As per the guidance the Council will consider how to prioritise the use of revenue generated through the penalty notice sanction in supporting attendance and in responding to the new national guidance Any surplus will be returned to the secretary of state

3. IMPLICATIONS OF THE DECISION

3.1 Financial and Risk

- 3.1.1 Consultations have taken place with representatives of the Director of Finance (S151 Officer).
- 3.1.2 There are no direct financial implications arising from the amendments to the statutory guidance "Working Together to Improve Attendance," which will come into effect from September 2024 as outlined in this report.
- 3.1.3 It is anticipated this amendment will create additional workload pressure, additional capacity will be considered to support attendance and mitigate this pressure within the guidelines set out by government.

3.2 Legal

- 3.2.1 Whilst Cabinet have no authority to depart from legislative changes, it is important they are sighted on changes to the Statutory guidance which impacts on all schools with the borough.

The law, Section 444 (1) of the Education Act (1996) sets out that If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.

- 3.2.2 Section 444(1A) sets out that if in the circumstances of S.444(1) the parent knows that his child is failing to attend regularly at the school and fails to cause him to do so, he is guilty of an offence.

- 3.2.3 The Statutory Guidance does not change the above legislation and Cabinet has no authority to depart from this. Therefore any decision of Cabinet must not interfere with the legislative provision or the statutory guidance.
- 3.2.4 Section 444 (1A) sets out that if in the circumstances of Section 444 (1) the parent knows that their child is failing to attend regularly at the school and fails to cause him to do so, they are guilty of an offence.
- 3.2.5 The Statutory Guidance does not change the above legislation and Cabinet has no authority to depart from this. Therefore any decision of Cabinet must not interfere with the legislative provision or the statutory guidance.

Section 103(2) Education and Inspections Act 2006 states that:

The parent of the excluded pupil must ensure that the pupil is not present in a public place at any time during school hours on a day which—

- (a) is one of the first five school days to which the exclusion mentioned in subsection (1)(a) relates or, where that exclusion is for a fixed period of five days or less, any of the days to which the exclusion relates, and
- (b) is stated in the notice under Section 104 to be a day on which the parent is subject to this subsection.

Then the parent commits an offence under Section 103(3) of the Education and Inspections Act 2006.

- 3.2.6 The issuing of penalty notices is governed by Section 105 and for the purposes of an “authorised officer” the Local Authority must make provision for this in the scheme of delegation as do the Head teachers to any person in the school.

3.3 Equality

- 3.3.1 An equality impact assessment of the proposed changes resulting from the revised statutory guidance, National Framework and local Code of Conduct on addressing absences from school and improving attendance is attached as Appendix 4 of this report.

3.4 Sustainability

- 3.4.1 There are no implications for sustainability in the Borough arising through consideration of this report.

3.5 Employee

- 3.5.1 Subject to Cabinet’s approval of the action plan to introduce the changes in statutory guidance, in Barnsley, it is proposed that additional capacity be created in the EWS to provide additional capacity within the team to support attendance and manage the issuing of penalty notices in line with government guidelines. .

3.6 Communications

- 3.6.1 A communications plan is to be developed as part of ensuring that schools and settings, together with parents, carers, families are aware of the forthcoming changes and their responsibilities under the revised guidance, National Framework and local Code of Conduct.
- 3.6.2 The Plan will also make sure that elected members, together with the Area Councils and Family 'Hubs' Network are in a position to help facilitate the changes.

4. CONSULTATION

- 4.1 The Council's Senior Management Team and the Barnsley Alliance for Schools Board have been consulted on the changes as part of the proposals. A online SMART Survey was issued to Headteachers, Attendance Leads and the Police allowing colleagues to express their views on the proposed changes to practice in order to meet the requirements of the guidance. 26 education colleagues responded to the consultation and the majority endorsed the proposed steps to be taken to implement the guidance locally. The consultation findings will be shared with respondents in the summer term and all proposed changes to operational practice and paperwork will be in place for September 2024. Briefing sessions with Headteachers and Attendance Leads are booked in for the summer term and training sessions for operational staff will take place in early September.

5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 The Council will have a statutory responsibility in ensuring the changes to the Guidance, National Framework and local Code of Conduct are implemented and that the objectives are supported in the Borough.

6. REASONS FOR RECOMMENDATIONS

- 6.1 The changes to the statutory guidance, National Framework and local Code of Conduct, will support our ongoing work in ensuring all children in Barnsley are engaged with and participating in their education in order to improve their attainment and achieve their potential. This is a crucial step towards levelling-up opportunity and ensuring inclusion through education by improving the life chances and social mobility of vulnerable groups of children.

7. GLOSSARY

- 7.1 None, applicable.

8. LIST OF APPENDICES

- 8.1 Appendix 1: 'Working Together to Improve School Attendance: Statutory guidance for schools and local authorities (February 2024)

Appendix 2: National Framework for Penalty Notices for School Absence:
Implementation Guide for Local Authorities

Appendix 3: Barnsley MBC Code of Conduct for the Issuing of Penalty
Notices for Schools and Academies

Appendix 4: Equality Impact Assessment of the proposed changes

9. BACKGROUND PAPERS

9.1 If you would like to inspect background papers for this report, please email governance@barnsley.gov.uk so that appropriate arrangements can be made

10. REPORT SIGN OFF

Financial consultation & sign off	Senior Financial Services officer consulted and date <i>Ashley Gray 30/05/2024</i>
Legal consultation & sign off	Legal Services officer consulted and date <i>Andrew Perriman 29/05/24</i>

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