

BARNSELY METROPOLITAN BOROUGH COUNCIL

This is a Key Decision within the Council's definition and has been included in the relevant Forward Plan.

Report for the Executive Director People to Cabinet

CODE OF CONDUCT FOR ISSUING PENALTY NOTICES FOR UNAUTHORISED ABSENCE AND LEAVE OF ABSENCE.

1. Purpose of this Report

To seek approval to implement a revised BMBC Code of Conduct for issuing Penalty Notices for unauthorised school absence and leave of absence (holidays in term time), effective from the 2019/20 academic year (Appendix 1 – Revised Code of Conduct). This has been subject to full consultation with Governing Bodies, Chief Executives of Academy Trusts, Head teachers and the Chief Officer of Police.

2. Recommendations

It is recommended that the proposed changes be approved in order to implement the revised Code of Conduct from the start of the academic year in September 2019.

3. Introduction

- 3.1 The Education Welfare Service issues Penalty Notices for all Schools and Academies across Barnsley as part of the Council's statutory duties. Penalty Notices are issued by the Local Authority at the request of Head teachers (or designated Deputy). Prior to any request, the School must ensure that they can evidence that there are reasonable grounds to suspect that the parent/carer has committed an offence under Section 444(1) of the Education Act 1996. The offence subject to potential legal action relates to the unauthorised absence during the period in question and not the non-payment of the fine, therefore, Schools must consider each case on its merits to ensure it passes the evidential test.
- 3.2 In April 2015 the Isle of Wight Council issued a parent (Mr Platt) with a Penalty Notice following an unauthorised seven day break. Mr Platt argued that his daughter had attended school regularly because the school register recorded her attendance at 92.3%. He launched a legal challenge against the Isle of Wight Council which was upheld in both the Magistrates and Divisional Court.
- 3.3 The case was subsequently heard in the Supreme Court on the 6th April 2017 in favour of the appeal by the Isle of Wight Council. At issue was the meaning of the words "fails to attend regularly" in Section 444(1) of the Education Act 1996. The court ruled that in relation to the Act, "regularly" means "in accordance with the rules prescribed by the school".

3.4 Following the ruling the DfE confirmed that they would examine the judgement and issue updated statutory guidance. Barnsley Legal Services advised that any changes to local guidance and requirements would need to be amended in line with this guidance however this is still to be issued. During this time, an increasing number of Local Authorities across the country have changed their Code of Conduct in line with outcome of Supreme Court hearing despite the delay in the issuing of updated statutory guidance. It has therefore been deemed necessary to make the required changes to Barnsley's Code of Conduct.

3.5 Barnsley Council advocates the importance of children regularly attending school and that children should only be taken out of school in exceptional circumstances. Whilst the Supreme Court ruling retains the authority of Head teachers to decide when exceptional circumstance allow for a child to be absent the ruling removes the criteria relating to what constitutes regular attendance and for this to be considered when deciding if an absence is authorised.

4. Consideration of Alternative Approaches

The consideration of alternative approaches is not applicable to this report because of the duty to comply with the Supreme Court hearing in 2017.

5 Proposal and Justification

5.1 It is proposed that the Authority progress with the changes to the current Code of Conduct (Appendix 2 – Current Code of Conduct) following consultation. This will provide clarity to schools and families as to when a Penalty Notice can be issued in Barnsley. BMBC Legal Services and Audit have both been consulted and contributed to the proposed changes.

5.2 The proposed main change to the Code of Conduct is the removal of the following criteria which Head teachers are required to consider under the current Code of Conduct when assessing the merits of a leave of absence request during term time:

- previous periods of leave of absence
- leave of absences taken in the first term
- exams and assessments
- employers letter(s)

5.3 Under the proposed new Code, Penalty Notices can be issued if **any** of following three conditions applies:

- A pupil has accrued five or more consecutive days of unauthorised leave of absence (holiday in term time)
- If due to sporadic absences, then, other than in specific circumstances, the liable parent/carer will receive a formal warning of the possibility of a Penalty Notice being issued and given a maximum of 15 school days to effect an improvement. If there are further absences within the 15 day monitoring period then a Penalty Notice may be issued

- An excluded pupil present in a public place without justification, during the school hours of the school day where the pupil is on roll, during the first five days of each fixed period or permanent exclusion

5.4 Consultation with Governing Bodies, Chief Executives of Academy Trusts, Head teachers and the Chief Officer of Police commenced on the 18th January 2019 and concluded on the 15th February 2019. Feedback was received from 3 Academy Trusts which includes 8 Primary Schools and 2 Secondary Schools in Barnsley. The overall feedback was supportive of the proposed changes (Appendix 3 – Consultation Letter and Feedback).

One Academy Trust whilst supportive of the proposed revision to the Code of Conduct raised an additional issue outside of the basis for the consultation relating to who is liable for the Penalty Notice. The Education (Penalty Notices) (England) Regulations 2007 sets out that where there is more than one person liable for an offence, a separate notice may be issued to each person, however the Education Welfare Service and Legal Services are content that issuing a penalty to one parent, that being to the parent that applied for the leave of absence, to be a sufficient sanction and which can be proved in proceedings at Court should the parent fail to pay.

The focus of this consultation is the removal of specific criteria which Head teachers were required to consider under the current Code of Conduct when assessing the merits of a leave of absence. The issuing of penalty notices to both parents does not form part of the proposed changes and is not the basis of this consultation.

5.5 The changes will provide clarity across the system which has been lacking since the Supreme Court hearing in April 2017 and the continued delay in the issuing of revised guidance from the DfE. The proposal will ensure that Barnsley is aligned with the majority of other Local Authorities across the country that have amended their respective Codes. The proposal will further promote to families the importance of good attendance and this will support the ongoing efforts of Schools and the Council in raising awareness of children, young people and families of the impact that attendance has on their education and longer term outcomes. The proposal forms one part of a strategy across the Council and the Barnsley Alliance to improve attendance.

5.6 The Local Authority relies on Head teachers to consider every aspect of cases when assessing requests for leave of absence and ensure that this is demonstrated by evidence of discussions with parents/carers and compliance with the associated procedural requirements in order to ensure that the issuing of the Penalty Notice is legally sound. Head teachers must consider each case on its own merits and Schools are required to respond in writing to parent/carers and to have made every effort to warn them of a pending Penalty Notice.

The implementation date of September 2019 will allow sufficient time for School Governing Bodies to update their associated policies and Code of Conduct.

6 Impact on Local People (Local area Implications)

There are no specific area implications arising from this report.

7 Compatibility with European Convention on Human Rights

The proposal is compatible with the European Convention on Human Rights.

8 Promoting Equalities, Diversity and Social Inclusion

An Equality Impact Assessment (Policies and Strategies) has been completed and can be found at Appendix 4.

9 Risk Management Issues

Failure to update the Code of Conduct may present a risk to the council.

10 Financial Implications

10.1 There are no direct financial implications arising from the revision to the code of conduct as outlined in this report.

10.2 Whilst it is forecast that there will be a significant increase in the number of requests from Schools for the Education Welfare Service (on behalf of the Local Authority) to issue Penalty Notices following the removal of criteria relating to previous attendance levels, the level of increased penalty fees is difficult to estimate at this stage.

10.3 The number of fixed penalty notices (FPN) issued in 2018/19 is approximated 1200 generating a total fee income of £33,520 (represents around 5% of the total income to the service). There is a risk that the projected increase in demand cannot be accommodated within existing capacity in the Education Welfare Service and BMBC legal Service.

10.4 It is proposed that the service monitors the impact on service capacity following the change in September 2019 to ensure that the service is able to meet demand within legal timescales.

11 Employee Implications

There are no employee implications arising from the report. The potential issues highlighted at section 10 will be monitored by the service.

12 Glossary

N/A

13 Appendices

Appendix 1 Revised Code of Conduct regarding the issuing of Penalty Notices
September 2019

Appendix 2 Current Code of Conduct

Appendix 3 Consultation Letter and Feedback

Appendix 4 Equality Impact Assessment (Policies and Strategies)

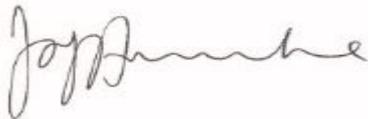
14 Background Papers

N/A

Officer Contact: Nina Sleigh

Date: 11 April 2019

Financial Implications / Consultation



...03 March 2019.....
(To be signed by senior Financial Services officer)