



People Directorate
Education Welfare Service
 Keren Harben, Service Manager

 BARNSLEY Metropolitan Borough Council	People Directorate Education, Early Start and Prevention (Business Unit 1)
--	--

Consultation regarding the Code of Conduct for issuing Penalty Notices for Unauthorised Absence and Leave of Absence.

Barnsley Metropolitan Council (BMBC) is commencing a consultation period with Governing Bodies, Chief Executives of Academy Trusts, Head teachers and the Chief Officer of Police regarding the proposed changes to the BMBC Code of Conduct for issuing Penalty Notices for unauthorised school absence and leave of absence (holidays in term time). The Revised Code of Conduct regarding the issuing of Penalty Notices September 2019 is enclosed.

The consultation period will commence on the 18th of January 2019 and end on the 15th February 2019 at 4pm. We are seeking your feedback on the proposed changes. Please send your feedback, suggestions or comments to the following email address, headed 'Penalty Notice Consultation':

educationwelfarepenaltynotice@barnsley.gov.uk

The final proposed, revised Code of Conduct will then go to the Council Cabinet for approval, with a view to implementing the Code, in September 2019. This implementation date allows sufficient time for School Governing Bodies and Academy trusts to update their associated policies and Code of Conduct.

Legal Context

The Education Welfare Service issues Penalty Notices on behalf of 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 Headteachers (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 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 own merits to ensure it passes the evidential test.

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. 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".

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, a number of Local Authorities across the country have changed their Code of Conduct in line with the decision of Supreme Court, 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.

Barnsley Council advocates the importance of children regularly attending school and that they 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.

Proposal

Changes to the Code of Conduct

It is proposed that consultation commences in order to instigate changes to the current Code of Conduct. This will provide clarity to schools and families as to when a Penalty Notice can be issued in Barnsley.

The main proposed change to the Code of Conduct is the removal of the following criteria which Head teachers were 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)
- removal of school attendance target

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 unauthorised 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

BMBC Legal Services and Audit have both been consulted and contributed to the proposed changes.

Impact on Attendance

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 other Local Authorities across the country that have amended their respective Codes. The proposal will further promote to families the importance of consistent 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 is part of a strategy across the Council and the Barnsley Alliance to improve attendance.

Impact on Schools

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 lawful. 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 the possibility of a 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.

Yours sincerely

Keren Harben

Service Manager, Pupil Inclusion
Attendance and Education Welfare