

REPORT TO: CABINET MEMBER – CHILDREN’S SERVICES

DATE: 15th September 2009

SUBJECT: Code of conduct in respect of penalty notices for irregular school attendance, to include the issue of penalty notices in respect of excluded pupils

WARDS AFFECTED: ALL

REPORT OF: Peter Morgan Director Of Children’s Services

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**EXEMPT/
CONFIDENTIAL:** N/A

PURPOSE/SUMMARY:

The purpose of this report is to seek approval in relation to the local authority’s code of conduct for the issue of penalty notices for irregular school attendance, to include the issue of penalty notices in respect of excluded pupils

REASON WHY DECISION REQUIRED:

The Department for Children, Schools and Families (DCSF) as part of its regular monitoring require the local authority to provide figures to show the numbers of penalty notices used

The LA is now required to introduce penalty notices for excluded pupils. The code of conduct attached brings the arrangements for irregular school attendance and excluded pupils into line.

Penalty notices could be particularly effective when used to support the work of schools with high persistent absence figures, or schools at risk of high persistent absence

RECOMMENDATION(S): That:

The Cabinet Member approves the attached code of conduct in respect of penalty notices for parents/carers

Request a report on progress in the Summer term 2010

KEY DECISION: No

FORWARD PLAN: N/A

IMPLEMENTATION DATE: September 2009

ALTERNATIVE OPTIONS:

The LA is required to set up arrangements for the issue of penalty notices for excluded pupils. It is not an option to do nothing

IMPLICATIONS:**Budget/Policy Framework:****Financial:**

The number of Penalty Notices which will be issued each year is difficult to predict. Each payment is £50 if paid within 28 days but £100 if paid within 42 days. Parents who fail to pay may be prosecuted under school non-attendance legislation [Education Act 1996 Section 444.1 or 444.1a].

In order to fulfil Sefton's duty to co-ordinate the protocol and code of conduct regarding penalty notices, to administer and to provide the performance information to the DCSF, amongst others, it is anticipated that a post would be required term time only. (43 weeks a year) The Admin and Data Manager/ CME Co-ordinator would supervise the position.

It is intended to initially meet the cost within the allocated Revenue Services Grant. However a dedicated post for the issuing of the Penalty Notice and the process should aid efficiency as they become more popular to use if the schools deem them to be effective in tackling poor attendance

<u>CAPITAL EXPENDITURE</u>	2006/ 2007 £	2007/ 2008 £	2008/ 2009 £	2009/ 2010 £
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
<u>REVENUE IMPLICATIONS</u>				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton funded Resources				
Funded from External Resources				
Does the External Funding have an expiry date? Y/N	When?			
How will the service be funded post expiry?				

Legal:

The Anti-Social Behaviour Act 2003 [Section 23] gave Local Authorities, Police, and Head teachers the power to impose Penalty Notices on the parents of children who were persistently absent from school without the Head teacher's authorisation.

The Education And Inspections Act 2006 [Section 103] places a further duty on parents to ensure their child is not present during school hours in a public place during the first five days of each and every fixed period or permanent exclusion from school.

The Education [Penalty Notices] [England] Regulations 2007 set out the framework for the operation of Penalty Notice Schemes. The Local Authority has prime responsibility for developing a Penalty Notice Protocol within which all partners named in the legislation operate and which ensures powers are applied consistently, equitably and efficiently across the Local Authority Area.

Risk Assessment:

Failure to consider this information prevents the local authority complying with the reporting requirements submitted to the DCSF

Risk of failure to pay fines and extra administration will be avoided by careful assessment of the appropriate strategy in each case

Asset Management:

N/A

CONSULTATION UNDERTAKEN/VIEWS

Internal consultations have been made with Legal Services, the Internal Audit Service and Central Financial Services

It is proposed that the code of conduct with regard to the management of penalty notices is sent out to consultation with school, pupil referral unit, head teachers, chair of governors, designated attendance leaders and the police.

CORPORATE OBJECTIVE MONITORING:

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community	✓		
2	Creating Safe Communities	✓		
3	Jobs and Prosperity	✓		
4	Improving Health and Well-Being	✓		
5	Environmental Sustainability		✓	
6	Creating Inclusive Communities	✓		
7	Improving the Quality of Council Services and Strengthening local Democracy	✓		
8	Children and Young People	✓		

LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT

- A copy of the Penalty Notice Code of Conduct is attached
- The Education [Penalty Notices] [England] Regulations 2007
- DCSF Improving Behaviour and Attendance, Guidance on Exclusions from Schools and Pupil Referral Units. September 2007 Revised September 2008
- DCSF Guidance on Providing Full-time Education from day six of a Permanent Exclusion

1. BACKGROUND:

- 1.1 In Sefton a range of supportive measures are in place to assist parents in ensuring their child attends school regularly. This support is provided through a wide continuum of assessment and intervention strategies and sanctions of any nature are only used where parental co-operation is either absent or deemed to be insufficient. Sanctions are not used as a punishment but as a means of enforcing attendance when there is a reasonable expectation that parents are able to exercise their responsibility more effectively. Penalty Notices are an addition to the range of sanctions available.
- 1.2 In preparing the code of conduct the local authority is required to consult school governing bodies, head teachers and the chief officer of police for a police area which includes all or part of the local area of the local authority. The arrangements for this consultation are currently being undertaken
- 1.3 The Attendance and Welfare Service has consulted with neighbouring local authorities.
- 1.4 Penalty notices will be managed and administered for both irregular attendance and exclusions via the Attendance and Welfare Service.
- 1.5 As soon as an invoice is raised, it will be dated and tracked by the Central Financial Services.
- 1.6 Income from penalty notices will go to the local authority to be applied in meeting the cost of issuing and enforcing notices and prosecuting recipients who do not pay within the time scale.
- 1.7 The number of penalties likely to be issued is difficult to predict. It is not envisaged that significant levels of cost or income will be generated initially
- 1.8 The Code of Conduct has been discussed with and approved by the Department Of Children, Schools and Families Regional Advisor for Behaviour and Attendance, Sefton secondary Head teachers Association and Sefton Safer School Partnership. (Merseyside Police)
- 1.9 Research has provided evidence that a significant number of offenders play truant from school. Improving attendance at school reduces the risk of pupils being drawn into criminal and anti-social behaviour. Similarly, parents supervising their children during the first 5 days of an exclusion will help to reduce the risk of criminal and anti-social behaviour

2. RECOMMENDATIONS:

- 2.1 That the Cabinet Member approves the attached code of conduct in respect of penalty notices for parents/carers
- 2.2 Request a report on progress in the Summer term 2010

SEFTON PENALTY NOTICE CODE OF CONDUCT IN RESPECT OF TRUANCY AND EXCLUDED PUPILS

Rationale

Regular and punctual attendance of pupils at school is both a legal requirement and essential in order for pupils to maximise the opportunities available to them. The Attendance and Welfare Service will continue to investigate cases of irregular school attendance by undertaking targeted casework intervention and, where appropriate, instigate legal action under the Education Act 1996. A Penalty Notice will be a useful sanction at an early stage before attendance problems become entrenched and where the Local Authority considers that prosecution would be too heavy-handed.

Legal basis for issuing Penalty Notices

This code of conduct has been drawn up to comply with the Education (Penalty Notices) (England) Regulations 2007 that came into force on 1st September 2007.

The code of conduct applies to the parents of children of compulsory school age who are registered at a maintained school, a pupil referral unit and those attending alternative provision.

Section 23 of the Anti-Social Behaviour Act 2003 gives designated Local Authority Officers, Head teachers and the Police the power to issue penalty notices in cases of unauthorised absence from school.

The Education and Inspections Act 2006 Section 103 places a duty on parents to ensure that their child is not present during school hours in a public place during the first five days of each and every fixed period or permanent exclusion from school.

The power to issue the Penalty Notices must be applied fairly and consistently taking in to consideration the requirements of the Human Rights Act and Race Relations and Equal Opportunities Legislation.

The Local Authority has the prime responsibility for the introduction of a code of conduct with schools and Merseyside Police being partners agreeing to the code of conduct.

For the purposes of this code of conduct and other school attendance issues, a parent is as defined under section 576 of the Education Act 1996 i.e. All natural parents, whether they are married or not; any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person; and any person who, although not a natural parent, has care of a child or young person. Having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law.

Also for the purposes of this code of conduct: School hours means a school session or a break between sessions on the same school day; a public place means any highways or other place to which the public have access but does not include a school; the days of an exclusion is known as the specified days and will be detailed in a notice given to the parent.

Procedure for issuing Penalty Notices

In Sefton, penalty notices will be issued by Attendance and Welfare Services, in writing, following authorisation by the Attendance and Welfare Services Manager. Penalty Notices will always be issued by first class post as there may be health and safety implications involved in the operation of direct delivery. The Service will ensure that the issuing of Penalty Notices is closely monitored. In the event of the Penalty Notice not being paid within the stated period, and where withdrawal of the Penalty Notice is not appropriate, the Attendance and Welfare Service will instigate action through the Courts as required by the legislation. Prosecution in such cases would be for the offence to which the Penalty Notice refers.

The Attendance and Welfare Service will receive referrals to issue attendance-related Penalty Notices from schools and Merseyside Police. Referrals from schools will be sent direct to the Attendance Lead, and Welfare Service Manager, Children's Services. All exclusion-related Notices will be received and co-ordinated by the Attendance and Welfare Service.

With regard to cross border practice, Authorities have agreed that;

- LAs will take responsibility for any issuing of Penalty Notices for their own pupils as defined by the school attended in accordance with their local protocols.
- There will be prompt cross-LA contact in every case where a Penalty Notice is being considered and where there is reason to believe that siblings within the family may attend schools in more than one LA.
- A prompt and accurate transfer of data between LAs when pupils from another LA are encountered on truancy sweeps or a Sefton resident is permanently excluded from a school in another LA.

All Penalty Notice referrals will be actioned provided that:

- All relevant information is supplied in the specified manner.
- The circumstances of the pupil's absence meet all the requirements of this Protocol.
- Family circumstances/ability to pay is set against the likelihood of securing an improved attendance by issuing a Penalty Notice (this to include any cases of possible multiple issues to any one family).
- The issue of a Penalty Notice does not conflict with other intervention strategies that may be in place, or where prosecution is being considered or could be reasonably viewed as a more suitable intervention.

The Attendance and Welfare Service will respond to all referrals for the attendance-related Penalty Notices within 10 school days of receipt and where all criteria are met will:

- Issue a formal written warning to the parent/carer informing them of the possibility of a Penalty Notice being issued.
- In the same letter, set a period of 20 school days within which the pupil must have no unauthorised absence.

- Issue a Penalty Notice through the post at the end of the 20 day period if the required level of improvement has not been achieved (or earlier if further unauthorised absences can be shown to have occurred within the warning period).

The Attendance and Welfare Service will receive and investigate the circumstances of each referral for exclusion-related Penalty Notices and respond within 10 school days of receipt.

Where all criteria are met they will:

- Request immediate issue of a Penalty Notice via the Children Missing Education (ME Co-ordinator.)
- Advise school and any other Agencies/Service who are involved with the pupil or family of the actions taken.
- Record and monitor the progress of the Penalty Notice.

Recipients of Penalty Notices:

Penalty Notices can apply to the parents/carers of children of compulsory school age, who are registered at a mainstream school, a pupil referral unit or alternative provision.

All those recognised as a parent under section 576 of the Education Act are parents for the purposes of these provisions.

Though the corporate parent for looked after children, the LA is outside the scope of the legislation, it will however, continue to give the attendance of looked after children highest priority and will also ensure any LAC pupils are not present in a public place in the first five days of any exclusion.

Circumstances when Penalty Notices will be issued

A Penalty Notice for the attendance may only be issued in cases of unauthorised absence from a school or alternative provision. The issue of a Penalty Notice may be considered appropriate in any of the following circumstances:

- In cases of overt truancy (including pupils caught on Truancy Sweeps).
- In cases of parental-condoned absence, where this can be demonstrated. This may include instances of parents stopped on truancy sweeps whilst accompanied by their children.
- In instances of leave taken in term time (eg for the purposes of a family holiday) ie. where leave of absence has not been granted by the Head teacher or absence over and above any period authorised by the Head teacher.
- In cases of persistent late arrival at school after the register has closed and an unauthorised absence is created.
- If parents fail to attend the School Attendance Panel to discuss their child's attendance without reasonable justification.

To ensure consistent and fair delivery of Penalty Notices, the following criteria for their use shall apply:

- Use of Penalty Notices shall be one per pupil per parent/carer per academic year. Where families contain more than one poorly-attending pupil and multiple issues may occur this must be subject to careful consideration and co-ordination.
- The pupil concerned must have lost at least ten sessions (5 school days) to unauthorised absence during one term.

- The liable parent/carer shall receive a formal warning of the possibility of a Penalty Notice being issued, and shall be given a maximum of 20 school days to effect an improvement, except where:–

Leave of absence is deliberately taken in term time, without or against school permission, creating a period of unauthorised absence of 10 sessions or more and it can be shown that the parent/carer understood that permission had not or would not be given. In such cases the LA will move direct to issue of a Penalty Notice without any warning period.

- Schools must consider every aspect of a pupil's case before judging whether or not to issue a Penalty Notice. This must include discussions with the assigned EWO and any other attendance support staff who have knowledge of, or involvement with the family.
- There shall be no restrictions on the number of times a parent may be issued with formal warning of a possible Penalty Notice.

A Penalty Notice for excluded pupils may only be issued where it can be wholly established that:

- The pupil has been excluded (either fixed-term or permanently) from a school, PRU or Alternative Education Provision in the LA and that the school or alternative provider has followed all agreed processes in notifying parents and the LA.
- The pupil has been permanently excluded from a school outside the LA but is a resident of the LA.
- The parent/carer received notice of their responsibility for the first five days of the exclusion, those five 'specified days of the exclusion' were clearly identified and the possible consequences of failing to adhere to this were specified.
- The pupil was present in a public place within the first five days of a fixed or permanent exclusion.
- The parent cannot prove that the pupil was present in a public place with reasonable justification.

To ensure consistent and fair delivery of Penalty Notices, the following criteria for their use shall apply:

- Use of Penalty Notices for exclusion shall be per pupil, per parent/carer, per academic year.
- There will be no restriction on the number of such Notices that may be issued in any one academic year, although repeat use must be reviewed against effectiveness and where appropriate a multi-agency response will be considered.
- The circumstances of all cases considered for such Notices must be considered on an individual basis, to establish whether there is a reasonable justification for their presence in a public place.
- Acceptable cause will include pre-arranged or unavoidable medical appointments, attendance at a Court or similar statutory venue, but may also take into account particular pupil, parental or family circumstances. Information must be sought from any other agencies or service areas engaged with the pupil or family.
In all cases however the burden of proof rests with the parent/carers.

Procedure for withdrawing Penalty Notices

Once issued a Penalty Notice may only be withdrawn in the following circumstances:

The Penalty Notice was issued to the wrong person

Or

It was issued outside of the terms of the local code of conduct

Or

It contains a material error

And

It has not been paid in full, and the Local Authority has not, and does not intend to, instigate proceedings.

Payment of Penalty notices

Arrangements for payment will be detailed on the Penalty Notice.

Payment of the Penalty Notice discharges the parent's liability for the period in question and they cannot subsequently be prosecuted under Section 444 of the Education Act 1996 for the period covered by the Penalty Notice.

Payment of a Penalty Notice is £50 if paid within 28 days and £100 if paid after this time, but within 42 days.

The Local Authority retains any revenue from the Penalty Notices to cover enforcement costs. (issue, collection or prosecuting in the event of non-payment).

Non-Payment Of Penalty notices:

Non-payment of a Penalty Notice will result in the withdrawal of the notice and may trigger a prosecution of parents by the Attendance and Welfare Service under Section 444 Education Act 1996.

Policy and Publicity

Use of Penalty Notices as a sanction is included in the Attendance and Welfare Service Plan. Sefton will include information on the use of Penalty Notices in promotional/ public information material.

All School Attendance Policies should include information on the deployment of Penalty Notices and this will be brought to the attention of all parents.

The LA will include information on the use of Penalty Notices in promotional and public information material.

The Attendance and Welfare Service will report to partners on the outcomes of Penalty Notices and will review the code of conduct at regular intervals.

This Code of Conduct is drawn up in compliance with the provisions of The Education (Penalty Notices) (England) Regulations 2007, having regard to the guidance issued by the Secretary of State and in consultation with Head teachers, Governing Bodies of all schools maintained by the Local Authority and the Chief Officers of Police for the Local Policing areas within Sefton.

Tracy McKeating/Julie Palin
Acting Attendance and Welfare Service Managers