

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Executive Member for Education
Date:	21 January 2015
Title:	Hampshire Code of Conduct for the Issuing of Penalty Notices for Unauthorised Absence from Schools
Reference:	6347
Report From:	Director of Children's Services

Contact name: Lisa Marie Smith

Tel: 02380816130

Email: Lisamarie.smith@hants.gov.uk

1. Executive Summary

- 1.1. All local authorities with responsibilities for education have a statutory duty to issue a Code of Conduct that sets out the circumstances in which the local authority itself, schools, education centres and the police should issue penalty notices to parents if their children's absence from school is unauthorised.
- 1.2. Hampshire's Code of Conduct was updated in January 2013 but further revisions – and strengthening – are needed to improve attendance in Hampshire schools further, to reflect recent regulations from government and to align the county's procedures more closely with those of neighbouring authorities.

2. Contextual information

- 2.1. All the evidence points to the relationship between a child's attendance at school and how well they attain. Research from the Department for Education (DfE) shows that the progress of children and young people begins to slow when they have been absent from school for 5% of the time or more and that this is the case throughout the years of schooling: as true with 16 year olds as with 6 year olds. The more absence from school they have, the worse they do.
- 2.2. Attendance rates in Hampshire schools are good. The overall rate has improved continually since 2001 and the overall level of persistent absence (the percentage of children and young people with an absence rate of 15% or more) has followed national trends and is declining.
- 2.3. Attendance remains above the national average in primary and special schools although the gap between the national figures and Hampshire's is narrowing.

- 2.4. The picture is not quite so positive in secondary schools. Hampshire was slightly above the national average for overall absence in 2011-12 and no better than at the national average in 2012-13. In both years it was a little above the national average for the percentage of pupils who were persistently absent.
- 2.5. Schools have a variety of ways of encouraging good rates of pupil attendance. These include good processes for ensuring that children and young people want to attend school because of the experience it provides; systems for rewarding good attendance; carefully checking attendance in each school session and ensuring a rapid follow-up with parents or carers and the children themselves if problems arise. The Issuing of penalty notices is the most robust action that schools and local authorities can take and amounts, in effect, to fining the adults for failure to ensure that their children are in school. Penalty notices are intended to be a swift intervention to remind parents of their responsibilities and to challenge parentally condoned absence. The level of penalty is not a matter for local discretion and currently stands at £60 per parent (if paid within 28 days) or £120 (if paid within 42 days). Non-payment results in prosecution by the local authority.
- 2.6. Hampshire's thresholds for the issue of penalty notices have been historically higher than those in most other local authorities and higher than those in most of the authorities that border Hampshire. Higher thresholds mean fewer notices. Table 1 summarises some of that information.

Table 1**Number of Penalty Notices issued by Hampshire in comparison to some neighbouring Local Authorities and some statistical neighbours**

*Prosecution can be up to 6 months after the non attendance and in a different academic year. This explains the differences in the number of prosecutions when a penalty notice issued is unpaid.

	Year	Hants	IOW	Southampton	Portsmouth	Cheshire East	West Sussex	West Berkshire
No. of penalty notices issued	2011-12	71	78	856	772	225	502	125
	2012-13	58	297	721	796	256	1092	170
PNs paid within 28 days	2011-12	12	44	318	470	85	310	71
	2012-13	40	166	340	508	99	449	112
PNs paid within 42 days	2011-12	0	3	0	26	10	8	0
	2012-13	8	9	0	37	5	40	1
*No of prosecutions following non payment	2011-12	1	7	277	171	78	34	34
	2012-13	13*	15	148	129	48	38	20

3 Proposals

- 3.1 The proposed revisions to the Code of Conduct lower the thresholds and will undoubtedly result in more penalty notices being issued in Hampshire. The evidence from other local authorities suggests that the attendance rate in the county will also improve.
- 3.2 The Code of Conduct in full appears at Appendix 1 but, in essence, the key changes are these. A Hampshire school, or the local authority, will issue a penalty notice for any unauthorised absence where a pupil has:
- been absent, without authorisation, for 10 or more sessions (previously 20) during any 10 school week period
 - been persistently late for 10 or more sessions (previously 20) after the close of the register
 - been persistently late before the close of the register but the school has met with parents and warned them
 - missed any public examinations where dates have been published in advance
 - missed formal school assessment, tests or examinations where the dates have been published in advance.
- 3.3 In considering these revisions officers have been mindful of the Council's childhood poverty strategy, as outlined in the existing Children and Young People's Plan. There is an implicit dilemma. On the one hand, there is a risk that any anticipated increase in fines may disproportionately affect poorer families whose children are more likely to have attendance issues, and we need to be sure the approach does not further disadvantage those children. On the other hand, we know that poorer children have most to gain from the improved educational outcomes which are inextricably linked to improved attendance.
- 3.4 Penalty notices will not usually be issued where other intervention strategies are already being pursued and a penalty notice would be, accordingly, unhelpful.
- 3.5 These proposals have been the subject of consultation with schools and other stakeholders and have very broad support. In particular, headteachers have welcomed the lower thresholds and the support they will get to tackle parentally condoned absence or parental refusal to discuss a pupil's absence or lateness with the school.
- 3.6 There is one issue that has proved contentious since the DfE issued its revised regulations. Headteachers are only to authorise absence in 'exceptional circumstances'. A family holiday during school time is no longer regarded as acceptable by government and headteachers cannot regard a family holiday as an exceptional circumstance. If it is of sufficient length the absence, unauthorised, leads to a penalty notice. Some, including the Local Government Association, believe this to be unreasonable and have made their views widely known. The government has not moved its position and Hampshire headteachers will need to apply the government's view of what

constitutes 'exceptional circumstances' until such time as the regulations change, should that happen.

4 Finance

- 4.1 The DfE recommends that the local authority delivers annual training for all 'authorised persons' in schools and education centres to enable them to adequately use their powers to issue penalty notices to the parents in cases of unauthorised absence from school.
- 4.2 Some small costs are being absorbed to ensure this training takes place in 2014-15 but from April 2015 all training costs will be recovered from providers.
- 4.3 The costs concerned with the issuing of penalty notices are recovered from the fines levied. No profit is made through issuing them. All revenue is used to pay for the legal costs incurred and the administration involved in preparing cases for court and tracking the payments. If the revenue accrued is higher than the legal costs in any one financial year this revenue will be used to fund promotional materials and resources for schools on promoting the importance of attendance.
- 4.4 There are some small additional costs associated with developing the IT system to handle the traffic and with the administration of the local authority database that, among other things, is used to make the statutory returns to the DfE. These will be absorbed into existing budgets.

5 Recommendation

- 5.1 That the Executive Member for Education agrees the lower thresholds for the issuing of penalty notices relating to the school attendance of children and young people.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	Yes
Maximising well-being:	Yes
Enhancing our quality of place:	No

Other Significant Links

Links to previous Member decisions:		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
Direct links to specific legislation or Government Directives		
<u>Title</u> Sections 444A and 444B of the Education Act 1996 empower authorised officers of the Local Authority, headteachers and the police to issue Penalty Notices to the parents in cases of unauthorised absence from school.		<u>Date</u> 1996
The Education (Penalty Notices) (England) Regulations (as amended) require the Local Authority, in consultation with all of the above, to develop a code of conduct for issuing Penalty Notices.		2007
For definitions of a parent/carer see section 576 of the Education Act 1996 and the Children Act 1989).		1996 & 1989
The Education (Pupil Registration) (England) (Amendment) Regulations 2013.		2013
Parental Responsibility Measures for school attendance and behaviour: Statutory Guidance for maintained schools, academies, local authorities and police (DfE).		Nov 2013

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

None

IMPACT ASSESSMENTS:

Equalities Impact Assessment:

Analysis of pupil absence rates by pupil characteristics has shown little change over time. Absence in some groups is higher than in others. In particular, in 2012-13:

- 10.6% of all persistent absentees pupils were entitled to free school meals compared to 3.3% of rest of school population
- The overall absence rate for pupils entitled to free school meals was 7.6%, contrasted with 4.7% for other children
- Absence levels were substantially higher for pupils with special educational needs compared to those without. 10.7% of pupils with a statement of special educational needs were persistent absentees compared to 3.8% of the rest of school population.
- Overall absence levels for Irish Traveller, and Gypsy, Roma and Traveller children, were 21.4% and 13.4% respectively. However, the law states that pupils of traveller and showman heritage can travel for work purposes and pupils can have approved Traveller absence if they have attended 100 days of school in any rolling 12 month period.
- The highest overall absence rate within ethnic groups is for white British at 5.4%, with Chinese and black African being significantly below the national averages.

The Code of Conduct will be used to challenge any unauthorised absences to bring about improvements in attendance and punctuality. Based on existing absence patterns the code of conduct will be used as a swift legal intervention to minimise disadvantages suffered by pupils who have a statement of special educational need or are entitled to receive free school meals. Hampshire schools need to improve the performance of children and young people who are entitled to free school meals and ensuring better attendance is an important step on that journey.

Impact on Crime and Disorder:

There is a widely accepted correlation between pupils who truant or have truanted from school and juvenile crime. Reducing absence rates and bringing legal sanctions against parents who condone absence from school will positively impact on juvenile crime rates.

Climate Change:

No expected impact.



Code of Conduct:

Issuing Penalty Notices for Unauthorised Absence from Schools (Sept 2014)

This local code sets out the procedures and terms under which penalty notices for unauthorised absence can, and should, be issued in Hampshire. It applies to statutory school age children from age 5 to age 16 and to all maintained schools and academies within the county of Hampshire. All 'authorised persons' must issue penalty notices in compliance with this code.

The Code is to be read in conjunction with 'Guidance for schools on available support and procedures for pursuing legal action against non attendance at school' (March 2015).

Sanctions for periods of unauthorised absence are for use only where parental co-operation in securing good attendance is either absent or deemed insufficient to resolve the presenting problem. Penalty notices will be issued before absence patterns become entrenched and where there is a reasonable expectation that to do so will secure improved school attendance.

1. Legal background

- 1.1. Sections 444A and 444B of the Education Act 1996 empower authorised officers of the Local Authority, headteachers (and deputy headteachers if authorised by them) and the police, to issue penalty notices to the parents in cases of unauthorised absence from school.
- 1.2. The Education (Penalty Notices) (England) Regulations 2007 (as amended) require the Local Authority, in consultation with all of the above, to develop a code of conduct for issuing penalty notices. Any person issuing a penalty notice for the unauthorised absence of a Hampshire child must do so within the terms of this code of conduct.
- 1.3. The definition of a 'parent' includes: all natural parents, whether they are married or not; any person or body who has parental responsibility for a child; and any person who, although not a natural parent, has care of a child. Having care of a child means that a person with whom a child lives and who looks after a child, irrespective of their relationship with that child, is considered to be a parent in education law (see section 576 of the Education Act 1996 and the Children Act 1989).

2. Rationale for issuing Penalty Notices

- 2.1. Regular and punctual attendance at school is a legal requirement as well as essential if pupils are to maximise their educational opportunities.

- 2.2. In law, parents/carers are committing an offence if they fail to ensure the regular and punctual attendance of their child at the school at which the child is registered unless the absence has been authorised by the school. Only schools have the power to authorise or grant a leave of absence. Further detail is available in Section 3 of 'Promoting Pupil Attendance Recording Absence' Guidance.
- 2.3. A range of sanctions to enforce regular school attendance exists under section 444 of the Education Act 1996 and section 36 of the Children Act 1989. The purpose of a penalty notice is to offer a swift intervention for cases of unauthorised absence before the problem becomes too entrenched.
- 2.4. The purpose of the Code of Conduct is to ensure that the penalty notices are issued consistently and fairly across the area of Hampshire County Council ("the County Council") and that suitable arrangements are in place for the administration of the scheme.
- 2.5. The issuing of penalty notices must conform to all requirements of the Human Rights Act 1998 and all Equalities legislation.
- 2.6. Designated officers of Hampshire County Council's Children's Services Department will automatically consider the use of penalty notices in all cases of unauthorised absence at the level defined below. If the absence meets any of the thresholds in section 4.1, authorised persons in schools should either issue a penalty notice, issue a penalty notice warning letter, or make a referral into their local Attendance Legal Panel (ALP), co-ordinated by the Early Help Hub. The panels meet monthly to consider the most appropriate interventions to improve school attendance in individual cases.

3. Before issuing Penalty Notices

- 3.1. Schools should take all reasonable steps to ensure good attendance without the use of penalty notices.
- 3.2. In cases where an authorised person has concerns about a pupil's attendance, s/he must ensure that contact has been made with the parent/carer in order to try to resolve any difficulties.
- 3.3. If the issuing of a penalty notice is under consideration the authorised person should, in most cases, arrange for a penalty notice warning letter, signed by the headteacher in the case of schools, to be sent to the parent/carer. This should be on the Hampshire County Council penalty notice warning template (housed within SIMS). The letter should include:
 - details of the pupil's absence
 - an offer to meet with the parent to discuss the concerns and to provide advice and support in an attempt to resolve any difficulties
 - a statement of the legal responsibilities of the parent regarding attendance

- the consequences for the parent in failing to ensure his/her child's regular attendance; in particular, warning that further unauthorised absences could result in a penalty notice or prosecution
 - an expectation that, after receipt of the warning letter, the level of attendance will significantly improve and that this improvement will be maintained.
- 3.4 In all cases involving a child in care the authorised person must also send a copy of the warning letter to the child's social worker as well as to the Director of Children's Services for the local authority which has responsibility for the child.
- 3.5 If this warning and the offer of support does not effect a significant improvement in attendance, the Authorised Person should consider every aspect of a pupil's circumstances before deciding whether to issue a Penalty Notice.
- 3.6 The Department for Education (DfE) guidance indicates that a penalty notice can be issued for a first offence in exceptional circumstances, for example where a parent takes a child on holiday during term time without the school authorising the absence. Parents should be made aware of this. If a request for leave of absence is declined by the school and the unauthorised absence meets the thresholds in 4.2, parents should know that a penalty notice will be issued.

4. Circumstances in which a Penalty Notice may be issued

- 4.1 Penalty Notices can only be issued in cases where a pupil of compulsory school age has been absent or late and the absence or lateness has not been authorised by the school.
- 4.2 After taking the steps set out in paragraph 3 Hampshire County Council or the schools in Hampshire will issue a penalty notice for any unauthorised absence where the pupil has been:
- absent for 10 or more half-day sessions (5 school days) of unauthorised absence during any 100 possible school sessions. These do not need to be consecutive.
 - persistently late (coded 'U') for up to 10 sessions (5 days) after the register has been closed
 - persistently late before the close of the register (coded 'L') but the school has met with parents and has clearly communicated that they will categorise as unauthorised any further lateness (code 'O'), and where the threshold of 10 sessions (5 days) has been met
 - absent for any public examinations of which dates are published in advance
 - absent for any formal school assessments, tests or examinations where the dates have been published in advance;

unless the issuing of a penalty notice would conflict with other intervention strategies in place or other sanctions already being processed.

- 4.3 Penalty notices are intended to be used in tackling parentally condoned absence where it is reasonable to expect that the parent can ensure the child's regular attendance but s/he is not willing to take responsibility for doing so e.g. where a parent is not cooperating with advice or support offered to help improve his or her child's attendance.
- 4.4 If, after a warning letter has been issued, there is sufficient irregular attendance to merit a penalty notice, it must be issued unless there are exceptional reasons against taking this action.

5. Who may issue a Penalty Notice?

- 5.1 The Early Help Hub Managers are the designated officers for Hampshire Children's Services Department responsible for issuing penalty notices on behalf of the County Council.
- 5.2 In schools the headteacher is the authorised person, in accordance with DfE guidance. The headteacher may wish to identify a deputy headteacher to become the authorised person but the headteacher maintains overall responsibility and his or her signature is required on the penalty notice warning, the penalty notice, and any pupil registration certificate corresponding to the warning or notice issued.
- 5.3 Every school must inform Hampshire County Council who the authorised school persons are (Section 2.5 of Hampshire County Council: Guidance for schools on the available support and procedures for pursuing legal action against non attendance at school (March 2015)).
- 5.4 All schools' attendance policies will include information about the use of penalty notices and whether they wish to issue their own penalty notices or have officers within the Children's Services Department issue them on their behalf. This information should also be drawn to the attention of all parents.
- 5.5 The police should decide who, within the police or agents acting on their behalf in relation to Penalty Notices, should issue Penalty Notices.

6. Procedure for issuing a Penalty Notice

- 6.1 If the warning letter has not solved the problem or if the school has refused to authorise absence due to holiday – which will almost always be the case – the authorised person should make a record of his/her considerations and decision, and issue a penalty notice.
- 6.2 The notes should be completed on the declaration forms within SIMS. All of this documentation should be returned to the Area Early Help Hub within 24 hours of the penalty notice being issued. Every school must

ensure that the Local Authority is informed of the issuing of a penalty notice so that it can track payment and so that it can complete the statutory annual return to the DfE (Section 4 Guidance for schools on the available support and procedures for pursuing legal action against non attendance at school (March 2015)).

- 6.3 Any Penalty Notice issued must be addressed to one parent but a Penalty Notice may be issued to each parent liable for the offence or offences.
- 6.4 An Authorised Person has discretion when deciding whether to issue one or more parents of a child with a penalty notice. This is to enable account to be taken of the specific circumstances in individual cases (see frequently asked questions: 'Guidance for schools on the available support and procedures for pursuing legal action against non attendance at school' (March 2015)).
- 6.5 The maximum number of Penalty Notices is 2 per child, per parent, during a 12 month period. If the child continues to have periods of unauthorised absence and the penalty notices have been paid (so have not affected an improvement) the child should then be referred to the local ALP for further legal action.
- 6.6 In families where more than one child is not attending regularly, or has requested leave of absence, the consideration of issuing multiple penalty notices (one for each child) will need to be carefully considered. The authorised person may need to liaise with another authorised officer of any sibling's school before making a final decision. It would be the Local Authority's expectation that, where two siblings have high attendance but have the same period of unauthorised leave of absence, parents are issued with a penalty notice for the absence of both children.
- 6.7 If the unauthorised absence is continuing but the authorised person decides not to issue a penalty notice, s/he should refer the case to the local ALP or the Early Help Hub.
- 6.8 Where an authorised person recommends that the County Council should issue a penalty notice they should refer the case to the local ALPs via the Early Help Hub. The panel will consider the recommendation to issue a penalty notice as well as any alternative means of intervention it may take. This would include the offer of family support, a parenting contract, referral to another agency or parental prosecution.

7. Payment of Penalty Notices

- 7.1 Arrangements for the payment will be detailed on the penalty notices themselves. Penalties are to be paid to Hampshire County Council. For detailed guidance see 'Section 4 Guidance for schools on the available support and procedures for pursuing legal action against non attendance at school' (March 2015)).
- 7.2 If paid within 21 days of receipt of the Penalty Notice, the Penalty is £60. If not paid within 21 days the Penalty is automatically increased to £120 to be paid within 28 days.

- 7.3 Any revenue resulting from payment of Penalties will be retained by the County Council and is used to cover the enforcement costs i.e. costs associated with the issue, collection or prosecution, in the event of non-payment, of Penalty Notices. Payment of a Penalty discharges a parent's liability for the period in question and means that they cannot subsequently be prosecuted under any other enforcement powers for the period covered by the Penalty Notice.

8. Non-payment of Penalty Notices

- 8.1 The non-payment of a penalty within the prescribed period of time will result in the Early Help Hub Managers and Authorised Person who issued the notice to consider next steps. It is likely that non payment will lead to a prosecution under section 444, Education Act 1996. The prosecution cannot be for the non-payment of the penalty notice but must relate to the original unauthorised absence.

9. Withdrawal of a Penalty Notice

- 9.1 There is no statutory right of appeal against the issuing of a penalty notice. Furthermore, once issued, a penalty notice can only be withdrawn if it is established that it ought not to have been issued e.g. where it has been issued outside the terms of the Code of Conduct, where no offence has been committed or where it has been issued to the wrong person.
- 9.2 Where an authorised person withdraws a penalty notice, s/he must notify the early help hub manager explaining the reasons for the withdrawal.

10. Other roles and responsibilities

- 10.1 The Early Help Hub managers will monitor the use of Penalty Notices and will report at regular intervals to CSDMT and on the deployment and outcomes of the use of Penalty Notices.
- 10.2 Annual training will be offered to all authorised persons in schools. This will help ensure consistent and equitable delivery and allow cohesion with other enforcement sanctions.
- 10.3 The Senior Teaching and Learning Advisor: Behaviour & Attendance will complete the DfE annual census return (PRA) on the issuing of warnings and penalty notices.
- 10.4 Through the Senior Teaching and Learning Advisor: Behaviour & Attendance, the ALP will provide annual feedback to headteachers and the police (and neighbouring LEAs where appropriate) on the use of penalty notices in Hampshire and resulting outcomes.
- 10.5 Where it appears to the County Council that the Code of Conduct requires amendment, the Children's Services Department will consult headteachers, the police, and any other person or body it deems appropriate, regarding the proposed changes.