

# Cabinet

16 July 2024

## Local Code of Conduct in relation to school attendance

### Recommendation

That Cabinet approves the updated local Code of Conduct for issuing penalty notices relating to school attendance, attached at **Appendix 2**.

### 1. Executive Summary

- 1.1 The Education (Penalty Notices) (England) Regulations 2007 made it a requirement of each local authority to draw up a Code of Conduct in relation to issuing penalty notices relating to school absence and in particular which sets out measures to ensure consistency in the issuing of penalty notices. Each local authority created its own thresholds for issuing and therefore there were a range of thresholds across the country.
- 1.2 The purpose of the Code of Conduct is to outline how the penalty notice system will operate in each area with information including the procedure for issuing, the amount, the payment period, withdrawal criteria and non-payment of penalty notices.
- 1.3 In May 2022, The Department for Education (DfE) introduced the guidance 'Working together to improve school attendance'. This guidance stated the Secretary of State's intention to introduce a new National Framework to replace individual Codes of Conduct ahead of the 2023-24 academic year. The guidance was refreshed and re-published in February 2024 to set out the new National Framework for issuing penalty notices and to reflect changes to the law introduced through the Education (Penalty Notices) (England) (Amendment) Regulations 2024. The refreshed guidance, including the National Framework will become statutory from 19<sup>th</sup> August 2024.
- 1.4 The aim of the National Framework is to ensure consistency between local authorities and includes a requirement for all local authorities to update their existing Codes of Conduct in-line with the National Framework by 19 August 2024.
- 1.5 There is a requirement for local authorities to consult with schools and the police where there are proposed changes to local processes within the Code of Conduct, however, there is no requirement to consult for the changes introduced within the new National Framework as local authorities are under an obligation to make the changes set out in the National Framework. The existing local Code of Conduct has therefore been reviewed and updated to

reflect the new National Framework, but there have been no changes made to any of the local (Warwickshire) processes in relation to issuing and the payment process for penalty notices for school attendance.

## **2. Financial Implications**

- 2.1 The DfE has widened the purpose for which the revenue from penalty notices can be used. Previously the revenue could only be used for administering the system and prosecution with anything left over being paid to the Secretary of State for Education. That revenue can now also be used to fund attendance support.
- 2.2 Local authorities should not have income targets related to this work as the penalty notice system is not a money-making scheme. Any remaining surplus at the end of the year must be paid to the Secretary of State.

## **3. Environmental Implications**

- 3.1 None arising directly from this report.

## **4. Supporting Information**

- 4.1 Penalty notices are issued to parents as an alternative to prosecution where they have failed to ensure that their child of compulsory school age regularly attends the school where they are registered (Working Together to Improve School Attendance (DfE) 2024).
- 4.2 Penalty notices can be used by all state-funded schools, including both maintained schools and academies.
- 4.3 Penalty notices are intended to prevent the need for court action and should only be used where it is deemed likely to change parental behaviour, and where support to secure regular attendance has been provided and has not worked or been engaged with or would not have been appropriate in the circumstances of the offence e.g.: an unauthorised holiday in term time.
- 4.4 Penalty notices must be issued in line with the Education (Penalty Notices) England Regulations 2007, as updated by the 2024 Regulations and can only be issued by a headteacher or someone authorised by them (e.g. Deputy Head), a local authority officer or the police. Penalty Notices must be issued in-line with Local Codes of Conduct which are drawn up and maintained by each local authority.
- 4.5 Every local authority must have a local Code of Conduct for issuing penalty notices, Warwickshire's existing Code can be found at **Appendix 1**.

- 4.6 Following extensive development with schools and local authorities the DfE has introduced a new National Framework for Penalty Notices for school absences, through changes to secondary legislation these new regulations will come into effect from 19 August 2024.
- 4.7 All local authorities are required to take the necessary steps to be ready for the changes which includes updating their local Code of Conduct in-line with the new National Framework.
- 4.8 The New National Framework aims 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.
  - **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, has not worked or has not been engaged with.
  - **Improve consistency in the use of penalty notices across England** by introducing a new national threshold at which they are considered.
  - **Improve the deterrent effect of a penalty notice** by increasing the amount and introducing a new national limit of two penalty notices within a three-year period to break cycles of repeat offending.
- 4.9 The National Framework requires the following to be incorporated into all local authority codes of conduct from August 19<sup>th</sup>, 2024:
- A single consistent threshold for when a penalty notice must be considered of 10 sessions (usually equivalent to 5 school days) of unauthorised absence within a rolling period of 10 school weeks. This has changed from the current 10 sessions over a static 10-week period.
  - A requirement that when the national threshold is met, schools make an assessment on a case-by-case basis whether a penalty notice can and should be issued. Previously there was no such requirement.
  - An option to use a Notice to Improve where support is appropriate but not being engaged with. This is a new option.
  - An increase to the rate of the penalty notice per offence period from £120 to £160 if paid within 28 days, and £60 to £80 if paid within 21 days.
  - A second penalty notice issued to the same parent for the same child within a three-year rolling period being charged at the higher rate of £160 with no option for the second offence to be discharged at the lower rate. This is a change to the current system.
  - A national limit of two penalty notices issued to a parent for the same child within a rolling three-year period, so at the third offence another tool will need to be considered. This is a new limit.
  - Widening the purpose for which the revenue from penalty notices can be used so that local authorities can now spend any surplus on attendance support as well as on administering the system and

prosecution. Ringfencing the surplus to attendance support is a new requirement.

4.10 Local Codes of Conduct are expected to include:

- details of the national threshold, two penalty notice limit and escalation process,
- means of avoiding duplicate penalty notices,
- the process for issuing penalty notices,
- arrangements for co-ordination between the local authority and neighbouring local authorities,
- local arrangements for determining if the support provided is sufficient and how a decision will be made,
- details of the local Notice to Improve process,
- details of what options the local authority will consider if a third (or subsequent) offences are committed within a three-year rolling period,
- details of how outcomes from the penalty notice will be communicated to the school.

4.11 Warwickshire County Council has written to all Headteachers regarding preparing for the changes, which included reviewing the local processes within the Code of Conduct and offered the opportunity to provide feedback on Warwickshire's local approaches. In addition, the national changes have been discussed with Headteacher representatives as part of the Warwickshire Education Partnership Board.

4.12 Warwickshire County Council has updated the proposed local Code of Conduct in-line with the National Framework, there have been no changes made to any of the local (Warwickshire) processes in relation to issuing and the payment process for penalty notices in relation to school attendance.

## **5. Timescales associated with the decision and next steps.**

5.1 The Department for Education require all local authorities to have an updated Code of Conduct in place by 19 August 2024.

5.2 Subject to Cabinet approval, the updated code will be published on the Warwickshire County Council website and distributed to all schools.

## **6. Appendices**

6.1 Appendix 1 – Existing Code of Conduct - [Pupils non-attendance and fixed penalty notices – Warwickshire County Council](#)

6.2 Appendix 2 - Proposed Code of Conduct

## Background Papers

None

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The report was circulated to the following members prior to publication:

Local Member(s): none this is a county wide report.

Other members: Councillors Marian Humphreys, Jerry Roodhouse and Barbara Brown