

## Brighton & Hove City Council

For general release

**Meeting:** Children, Families & Schools Sub-Committee

**Date:** Monday 14 March 2005

**Report of:** Director Children Families & Schools

**Subject:** Penalty Notice Code of Conduct

**Ward(s) affected:** All

### 1. Purpose of the report

- 1.1 To alert Committee to the requirement for a Penalty Notice Code of Conduct for unauthorised absence from school under Section 23 of the Anti-Social Behavior Act. To discuss the content of the code and to agree the process for its implementation.

### 2. Recommendations

- 2.1 That the attached Code of Conduct as the Penalty Notices Protocol for Brighton & Hove City Council (Background Paper 1) be adopted.
- 2.2 That the results of the consultation process be considered and the implications of the implementation process be noted.

### 3. Information/background

- 3.1 Section 23 of the Anti Social Behavior Act 2003 (which subsequently amended Education Act 1996 at 444A and 444B) empowers designated officers, Headteachers and the Police to issue Penalty Notices in cases of unauthorised absence from school. These powers came into force in February 2004. It is the duty of each LEA to develop a local 'Code of Conduct' with schools and the police to deal with all aspects of Penalty Notice use. All partners are bound to operate within the confines of the local code. In

Brighton & Hove a group was set up in the autumn term 2005 to produce a draft Code. The group was made up of representatives from:

- Education Welfare Service
- Legal Services
- Community Safety Team
- eb4u
- Youth Offending Team
- Sussex Police
- Headteachers
- Officers from the Authority
- Alternative Centre for Education, Brighton

- 3.2 The Code sets out the rationale for using Penalty Notices at paragraph 2. The impact of non-attendance at school severely affects achievement in all phases of education. Non-attendance is linked to offending behaviour and can be related to child welfare and protection issuers.
- 3.3 The use of Penalty Notices is intended to be another tool in the box of strategies that Education Welfare Services (EWS) can use to tackle non-attendance. They are to be seen as an early intervention strategy and an alternative to full court action.
- 3.4 All parents/carers will be warned before a Penalty Notice is issued and given 15 school days in which no further unauthorised absence is recorded for the child in question. The Code sets out in detail the criteria for issue and the amount of the fines.
- 3.5 Extensive consultation has taken place with all stakeholders following TMT approval to proceed. The Responsible Authorities Partnership (RAP) will be informed (meeting to be held on 18 March 2005) and the Code can be ready for implementation from the beginning of Summer Term 2005. The details of the consultation are in Section 5.
- 3.6 The Code must conform to all requirements of the Human Rights Act and all Equal Opportunities legislation. This has been checked with legal services and a Race Equality Impact Assessment has also been carried out.
- 3.7 There is no new money for the introduction of the Code. However, all monies collected from the use of Penalty Notices can be used to administer the scheme. The scheme will be administered within the Education Welfare Service.
- 4. Further information**

- 4.1 The use of Penalty Notices and the Code of Conduct sits alongside a whole range of strategies that the EWS is using to combat truancy. The traditional route to court will continue to be used and the introduction and piloting of 'attendance panels' in schools will all be part of the overall strategy to maintain and improve attendance levels across Brighton & Hove Schools.
- 4.2 The launch of the use of Penalty Notices will be coupled with information on the EWS/attendance and notices being issued to every parent via their child's school. Press releases and other positive coverage of the introduction of the Code will need to be considered nearer the time.

## **5. Consultation**

- 5.1 All stakeholders were consulted using the pack attached as Background Paper 2.
- 5.2 The list of agencies/individuals consulted is attached as part of Background Paper 2.
- 5.3 The consultation responses were unanimous in their support for the Education Welfare Service being the agency with responsibility for receiving referrals for and issuing any penalty notice.

In general terms all schools and most agencies were in agreement with the criteria for issue. However, amendments have been made to highlight the needs of looked after children (LAC), special educational needs (SEN), black and minority ethnic groups (BME) and other vulnerable groups and the consideration of all factors concerning these groups where attendance is or becomes an issue.

The Penalty Notice trigger has been raised to 20 sessions (10 school days) to be in line with the holiday trigger and on consideration of issues raised from the consultation. Detailed analysis of the number of prosecutions that could follow using the 5 school day trigger showed that it would become problematic for the EWS to manage if parents consistently did not pay the fine. This can be reviewed at the end of the first year of operation. External consultants have also advised that the 10 school day/20 sessions trigger is more realistic to effectively manage.

Consultation responses were received from schools, voluntary bodies, the police, legal services, social work teams and other specialist agencies working with children and their families.

## COMMITTEE REPORT APPENDIX



<b>Meeting/Date</b>	<i>Children, Families &amp; Schools Sub-Committee – 14 March 2005</i>
<b>Report of</b>	<i>David Hawker</i>
<b>Subject</b>	<i>Penalty Notices Code of Conduct</i>
<b>Wards affected</b>	<i>All</i>

### **Financial implications (Paul Brinkhurst)**

There is no additional funding for the Code of Conduct and any additional costs will be met from within the Children Families and Schools budget for 2005/06. Although income will be received officers need to do further work on the predicted number of notices likely to be issued, predicted income and the overall cost to the Directorate.

*Finance Officer consulted: Paul Brinkhurst Date 2 February 2005.*

### **Legal implications (Natasha Watson)**

The Anti Social Behaviour Act 2003, (Section 23) Amended Section 444 of the Education Act 1996 and enables authorised officers of the LEA and Headteachers to issue penalty notices in respect of offences under Section 444 (Failure to secure regular attendance at school). In accordance with the Education (Penalty Notices) Regulations 2004,) the LEA is under a duty to establish a code of conduct relating to the use of penalty notices in order to ensure consistency. In order to avoid the possibility of Judicial Review proceedings, the Code of Conduct must ensure the following:

that the policy is clearly explained to the public, to parents, to schools and other agencies; that the issue of penalty notices is carried out in a consistent manner; that all actions are justifiable; and that all decisions are reached reasonably and take into account all relevant factors. Wide publicity of the code and the circumstances in which penalty notices will be issued, together with the provision for a warning and adherence to the procedures, will ensure that the use of penalty notices does not contravene the rules of natural justice or the Human Rights Act. The results of the Racial Equality Impact Assessment must be taken into account.

### **Corporate/Citywide implications**

Code of Conduct supports all Council targets around improving attendance and reducing offending.

### **Risk assessment**

The scheme may cost more to administer than the monies collected from Penalty Notices. Very difficult to judge at the present time. Possibility that some families fined may have little capacity to pay and this needs to be balanced in decision to issue notice. In such cases, usual route to court may be preferable.

### **Sustainability implications**

Evaluation of the effectiveness of the Code and use of Penalty Notices will be carried out in Summer term 2006. Outcomes will be acted on.

### **Equalities implications**

Race Equality Impact Assessment carried out and consultation with group representing disability/ethnic minorities, etc carried out.

**Implications for the prevention of crime and disorder**

Improving attendance overall will reduce the likelihood of offending behaviour in young people during school hours.

**Background papers**

1. Draft Code of Conduct attached/Consultation pack and list of consultees.

**Contact Officer**

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