

# Impact Assessment



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Assessment of: School Penalty Notice Code of Conduct

Service: Inclusion and other services for vulnerable children

Head of Service:

Version / date of sign off by Head of Service: 14 November 2023

Assessment carried out by (job title): Service Lead for Inclusion and other services for vulnerable children

## 1. Description of project / service / activity / policy under review

To review, agree and approve the School Penalty Notice Code of Conduct for unauthorised irregular attendance at school or exclusion from school following recent revision and amendments in line with guidance from the Department for Education

## 2. Proposal, aims and objectives, and reason for change or review

It is a legal requirement under section 7 of the Education Act 1996 that parents (carers?) of children of compulsory school age ensure that their children receive full-time education that is suitable to their age, ability and aptitude and to any special educational needs that they may have.

Where all voluntary support options are unsuccessful or are not appropriate, the Local Authority should liaise with the school and the early help lead practitioner or social worker (?) to take forward attendance legal intervention. All LAs are expected to issue fixed penalty notices in line with local codes of conduct where absence was unauthorised and support has been provided but has not worked or been engaged with, or would not have been appropriate in the circumstances of the offence.

Fixed penalty notices are served on 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 or at a place where alternative provision is provided. Fixed penalty notices can be used by all schools (with the exception of independent schools) where the pupil's absence has not been authorised by the school and the absence constitutes an offence.

Fixed penalty notices are intended to prevent the need for court action and should only be

used where a fixed penalty notice is deemed likely to change parental behaviour and 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).

Fixed penalty notices must be issued in line with the Education (Penalty Notices) (England) Regulations 2007 and can only be issued by a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police.

Fixed penalty notices may also be issued where parents allow their child to be present in a public place during school hours without reasonable justification during the first 5 days of a fixed period or permanent exclusion. The parents must have been notified by the school at the time of the exclusion the days that the child must not be present in a public place.

Every local authority must draw up and is expected to publish on their website a Code of Conduct for issuing fixed penalty notices which must be adhered to by all schools, the police and any local authority officer issuing a penalty notice. In producing or amending the Code of Conduct the local authority consult with schools and the police.

The purpose of a Code of Conduct is to ensure that Penalty Notices are applied consistently and fairly across the local authority area and that arrangements for their issue and administration are suitable.

### 3. Risk assessment, limitations and options explored (summary)

The code of conduct describes the process by which the local authority will issue a fixed penalty notice. The decision to do this lies with the school and headteacher and will be covered by their own attendance and equalities policies.

### 4. People affected, diversity profile and analysis of needs

Children and families in Devon

All schools – maintained and academies: Senior Leadership Team and Governors

Alternative Provision providers

Police

### 5. Stakeholders, their interest and potential impacts

Supporting schools – school attendance

Pupils

Police

## 6. Additional relevant research used to inform this assessment

DfE Guidance 'Working Together to Improve Attendance'  
The Education (Penalty Notices) (England) Regulations 2007  
The Education Act 1996  
The Education (Penalty Notices) (England) (Amendment) Regulations 2021  
The Education (Pupil Registration) (England) Regulations 2013

## 7. Description of consultation process and outcomes

Following consultation with the DfE Attendance Advisor in February 2023 an amendment to the Code of Conduct has been recommended.

These changes were sent out to the police and headteachers for consultation.

The consultation was sent to the Police on the 16 August 2023 and closed on 5 September 2023 with no questions or responses. The consultation was shared with Headteachers on the 5 September 2023 with a closing date of 25 September 2023.

We received three responses to the headteacher consultation with queries about the Code of Conduct. Some queries were raised about parts of the document which had not been part of the material change, others were outside the scope of the consultation process and were questions around regulation. All questions were responded to and addressed the concerns raised.

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## Background information

### 8. Equality analysis

Under the Equality Act 2010, the local authority must consider how people will be affected by a service, policy or practice. In so doing we must give due regard to the need to: eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity and foster good relations across protected characteristics of age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership (for work), sex, sexual orientation, race, and religion and belief. The Equality Act 2010 and other relevant legislation does not prevent the Council from taking difficult decisions which result in service reductions or closures for example, it does however require the Council to ensure that such decisions are: informed and properly considered with a rigorous, conscious approach and open mind, taking due regard of the effects on the protected characteristics and the general duty to eliminate discrimination, advance equality and foster good relations; proportionate (negative impacts are proportionate to the aims of the

policy decision); fair, necessary, reasonable, and those affected have been adequately consulted.

- a) Is this group negatively or potentially negatively impacted, and in what way?
- b) What could be done or has been done to remove the potential for direct or indirect discrimination, harassment or disadvantage and inequalities?
- c) In what way do you consider any negative consequences to be reasonable and proportionate in order to achieve a legitimate aim?
- d) What can be done to advance equality further? This could include meeting specific needs, ensuring equality of opportunity and access, encouraging participation, empowering people, making adjustments for disabled people and action to reduce disparities and inequalities.
- e) Is there a need to foster good relations between groups (tackled prejudice and promote understanding) and help people to be safe and protected from harm? What can be done?

[Answer the questions above for each of the characteristics below. Use the data, consultation and research sections 4 and 5 as evidence. If carrying out an options appraisal, explore the pros and cons of each option for each characteristic. Delete this note]

### **All residents by geographic area**

Affects parents/carers and children/young people in Devon.

If a fixed penalty notice is issued this has a negative financial impact on the family. However, fixed penalty notices are intended to prevent the need for court action and should only be used where a fixed penalty notice is deemed likely to change parental behaviour and 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.

### **Age**

No age limit

### **Disability (includes sensory, mobility, mental health, learning disability, neurodiversity, long term ill health) and carers of disabled people**

Some pupils face greater barriers to attendance. This can include pupils with long term medical conditions or learners with special educational needs and disabilities. The attendance ambition should be the same as for any other pupil but schools should be mindful of the barriers these pupils can face and put in additional support where necessary to help them access full time education.

## **Race and culture: nationality/national origin, ethnic origin, skin colour, religion and belief, asylum seeker and refugee status, language needs**

The code of conduct describes the process by which the local authority will issue a fixed penalty notice. The decision to do this lies with the school and headteacher and will be covered by their own attendance and equalities policies.

## **Sex and gender identity and reassignment (including men, women, non-binary and transgender people), and pregnancy and maternity (including women's right to breastfeed)**

Education for children excluded, with additional health needs or 'otherwise' unable to attend school - Support for schools and settings (devon.gov.uk)

The code of conduct describes the process by which the local authority will issue a fixed penalty notice. The decision to do this lies with the school and headteacher and will be covered by their own attendance and equalities policies.

## **Sexual orientation, and marriage/civil partnership if work related**

The code of conduct describes the process by which the local authority will issue a fixed penalty notice. The decision to do this lies with the school and headteacher and will be covered by their own attendance and equalities policies.

## **Other relevant socio-economic factors and intersectionality**

This includes, where relevant: income, housing, education and skills, language and literacy skills, family background (size/single people/lone parents), sub-cultures, rural isolation, access to services and transport, access to ICT/Broadband, children in care and care experienced people, social connectivity and refugee status/no recourse to public funds. Also consider intersectionality with other characteristics.

For the most vulnerable pupils, regular attendance is also an important protective factor with education settings often the safest place for those children and the best opportunity for needs to be identified and support provided.

Research has shown associations between regular absence from school and a number of extra-familial harms for example:

- crime - 90% of young offenders had been persistently absent from school
- serious violence - 83% of knife possession offenders had been persistently absent from school

Irregular attendance at school is often an indicator of wider issues that could lead to an increase in suspensions, exclusions, crime, mental health difficulties, medical absences, and exploitation.

## 9. Human rights considerations:

We need to ensure that human rights are protected. In particular, that people have:

- A reasonable level of choice in where and how they live their life and interact with others (this is an aspect of the human right to 'private and family life').
- An appropriate level of care which results in dignity and respect (the protection to a private and family life, protection from torture and the freedom of thought, belief and religion within the Human Rights Act and elimination of discrimination and the promotion of good relations under the Equality Act 2010).
- A right to life (ensuring that nothing we do results in unlawful or unnecessary/avoidable death).

Every child has a right to access education. Regular attendance at school allows learners to make the most of their education, improving their life chances into adulthood. Attending an education setting is not just about learning, it is about developing positive relationships, being encouraged to take advantage of available opportunities and safe places where additional support can be accessed. For our most vulnerable learners, regular attendance is an important protective factor and education settings are often the safest place for those children. Education settings, where relational approaches are at the heart of their environment, provide the best opportunities to narrow the gap for our under-served learners and families.

## 10. Environmental analysis

An impact assessment should give due regard to the following activities in order to ensure we meet a range of environmental legal duties. The policy or practice does not require the identification of environmental impacts using this Impact Assessment process because it is subject to (please mark X in the relevant box below and proceed to the 11, otherwise complete the environmental analysis information below):

<b>Devon County Council's Environmental Review Process</b>	
<b>Planning Permission</b>	
<b>Environmental Impact Assessment</b>	
<b>Strategic Environmental Assessment</b>	

- a) Description of any actual or potential negative consequences and consider how to mitigate against these.
- b) Description of any actual or potential neutral or positive outcomes and consider how to improve as far as possible.

[If carrying out an options appraisal, explore the pros and cons of each option for each area]

**Reduce, reuse, recycle and compost**

Not applicable

**Conserve and enhance wildlife**

Not applicable

**Safeguard the distinctive characteristics, features and special qualities of Devon's landscape**

Not applicable

**Conserve and enhance Devon's cultural and historic heritage**

Not applicable

**Minimise greenhouse gas emissions**

Not applicable

**Minimise pollution (including air, land, water, light and noise)**

Not applicable

**Contribute to reducing water consumption**

Not applicable

**Ensure resilience to the future effects of climate change (warmer, wetter winters; drier, hotter summers; more intense storms; and rising sea level)**

Not applicable

**Other (please state below)**

Not applicable

## 11. Economic analysis

- a) Description of any actual or potential negative consequences and consider how to mitigate against these.
- b) Description of any actual or potential neutral or positive outcomes and consider how to improve as far as possible.

[If carrying out an options appraisal, explore the pros and cons of each option for each area]

### **Impact on knowledge and skills**

No discernible impact

### **Impact on employment levels**

Not applicable

### **Impact on local business**

Not applicable