



# Member Report

## Review of Arrangements Regarding Unauthorised Term Time Holidays

**Report to:** Cabinet  
**Report from:** Clare Mahoney  
**Portfolio:** Education and Skills  
**Report Date:** 27.02.24  
**Decision Type:** For information

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### HEADLINE POSITION

#### 1.0 Summary of report

This report provides Cabinet with details of work undertaken to review the Council's arrangements for the issuing of fixed penalty notices in respect of unauthorised holidays taken during term time.

#### 2.0 Recommendation

That Cabinet notes that:

- The legal position in relation to the current arrangements means there is very limited scope for change;
- Since the motion was approved, the Government has announced a new national framework covering these arrangements, anticipated for September, which would override any changes to policy made locally.
- A review of the policy will need to take place once full details of the new arrangements are received so that any changes which might arise from a review are compliant with the latest guidance and regulations.

### DETAILED PROPOSALS

#### 3.0 What are the objectives of the report and how do they link to the Council's priorities

3.1 A meeting of the Borough Council previously considered and supported a motion, proposed by Cllr Carrie Richardson and seconded by Cllr Alec Brown, which resolved that the Council should:

- (a) Review the criteria for issuing fines to parents solely for taking their children on term-time holidays; and

- (b) Investigate whether issuing these fines is still in the public interest, or if other solutions can be found to allow pupils and their families to afford to take a holiday at a time that suits their needs and circumstances.

### **3.3 Difficulties with Current Arrangements**

During the debate on the motion, a number of issues were raised with regard to the current situation. A non-exhaustive summary of some of the main points raised by those speaking against the current system is as follows:

- The cost of holidays outside of term time is prohibitively expensive for some families, meaning they could not otherwise go away on holiday as family if they did not go during term time;
- Family holidays can also be educational and valuable in terms of life experience and exposure to different cultures;
- There is great inconsistency with the current system, with some schools said to be issuing fines and others not;
- The system does not work as those who feel it is not appropriate to take children on holiday during term time do not do so, but others who do not hold that view continue to take their children on holiday because a fine is cheaper than going away at other times.

### **3.4 The Position Nationally**

In order to assess the position in other areas, available national data was collated and analysed. Initial analysis suggested that there were some areas where no fines at all were being issued in respect of unauthorised absence. However, whilst it is possible that this might have occurred in a very small number of locations, random sampling of areas with zero fines being reported generally suggested that this was due to anomalies within the data, with other sources such as press reports, revealing that the areas sampled had in fact issued fines and, in some cases, very substantial numbers of them. It was not, therefore, possible to identify any Council who had specifically adopted a formal policy not to issue fines of this nature.

- 3.5 That being the case and there being no obvious points of reference, it was also felt appropriate to establish the legal limits within which any changes to current policy might be constrained and, accordingly, legal advice was sought from external counsel on this issue.

### **3.6 The Legal Position**

Although the legal advice was quite lengthy in nature, given the relevance of various pieces of legislation, statutory guidance and case law, in summary, the main conclusion of that advice relevant to the Council motion was that, regardless of any view on the effectiveness of the current arrangements, any blanket decision/policy to (a) either direct or advise Head Teachers to authorise term time holidays or (b) to cease or suspend the issuing of penalty notices to parents for taking their children on term-time holidays, would be unlawful/ultra vires.

- 3.7 The advice was very clear that, due to a combination of legislation and statutory guidance, an extant policy of not issuing fines for unauthorised holidays would be legally unacceptable.

- 3.8 Accordingly, Counsel specifically advised against this course of action being taken, but suggested, alternatively, that there may be other practical steps to assist parents which might be considered – for example, moving school holidays so they are not in alignment with school holidays generally, in other areas.
- 3.9 Given the robust nature of the legal advice received, it seems clear that, whilst there may be some limited scope to make amendments to existing policy, it is not possible to adopt a position in terms of penalty notices which is wholly at odds with the current legislation and national policy/guidance. To do so would be unlawful.

### **3.10 Practical Options**

In light of this position, an obvious practical step to be considered was the possibility of term times to be adjusted, so that school holidays across the Borough occurred at a time which was slightly out of line with schools in other areas, thereby leading to cheaper prices during those weeks and potentially helping, to some degree, with the issue of families feeling compelled to take holidays during school time because of their financial circumstances.

- 3.11 This suggestion was discussed at Tees Valley Attendance Alliance, but the views of the Multi Academy Trusts present was that this would not be possible as they span many Local Authorities, not just within the Tees Valley and, therefore, would not be able to manage staff holidays who work centrally for the Trusts. Ultimately, therefore, it is not possible to progress with this option as there is no possibility of reaching any agreement with all schools, the vast majority of which, of course, are academies and not owned or controlled by the Council.

- 3.12 In terms of other practical options, the following steps can be pursued without changes to the current policy:

- Headteachers can be reminded about having a consistent approach within their schools and across the borough to issuing fines;
- Parents can be reminded that they should request the leave and speak to the Headteacher if they feel there are exceptional circumstances to be considered.
- Publication of dates for two years of term times at a time, so that there is information available when parents are booking holidays well in advance, enabling them to avoid inadvertently booking holidays during term time;

- 3.13 Ultimately, however, whatever practical steps we take, it is clear that local arrangements are driven by the current national legislation and guidance which places significant constraints on any measures that the Council might take in terms of its policies on these issues.

### **3.14 Recent Developments**

Whilst Cabinet may still wish to consider whether lobbying at a national level may be appropriate to influence policy, the DfE has just made some additional announcements about actions it intends to take in order to improve the attendance system, as set out in the Schools White Paper. A copy of a letter from the Minister from Schools dated 29 February 2024 is attached at Appendix 1. The Government have indicated that they will be:

- 1) Publishing a revised version of *Working together to improve school attendance* as statutory guidance from 19<sup>th</sup> August 2024.
- 2) Laying regulations to mandate attendance data sharing by all schools so schools, local authorities and DfE have access to near-live data from all state-funded schools from the beginning of next school year.
- 3) Laying regulations to modernise school attendance and admission registers (including updating attendance codes, rules on granting leaves of absence and on who can access registers) to improve the accuracy of attendance data to help schools and local authorities put better, more targeted support in place as early as possible; and
- 4) Publishing details of the new National Framework for Penalty Notices for absence and laying regulations to improve consistency of attendance enforcement across the country.

3.15 In terms of point 4, which is the action most relevant in terms of this report, the Department is laying regulations to amend the Education (Penalty Notices) (England) Regulations 2007 to introduce a National Framework for Penalty Notices, stating that:

“Officials have worked closely with schools and local authorities to design the new framework which further embeds the Government’s ‘support first’ approach whilst strengthening the deterrent for parents where pupils are absent without good reason, by:

- Introducing a standard national threshold at which penalty notices will be considered of 10 unauthorised sessions within 10 school weeks in place of existing local authority by local authority thresholds.
- Expecting support to be considered before any penalty notice and allowing a Notice to Improve to be issued in cases where support would be more appropriate but has not been engaged with.
- Increasing the amount of the penalty from £120 to £160 if paid within 28 days, reduced to £80 (instead of £60) when paid within 21 days.
- Limiting penalty notices to two per parent in respect of an individual child within three years and charging the second notice at the flat rate of £160 to prevent repeat offences. If the threshold is met a third, or subsequent times, another attendance intervention including prosecution should be used instead.”

3.16 In light of this new information, we will now need to update the Council’s policies and consult on any proposed changes with schools (as required under the relevant regulations) before any final documents are approved. In that regard, a further report will be brought back for Cabinet’s consideration in due course.

#### **4.0 What options have been considered**

The options available are constrained significantly by national legislation and guidance as outlined above. The options considered are contained within the preceding section of this report, the overriding issue at this point being the

imminent introduction of new guidance and legislation which will clearly need to be taken into account in any review of current arrangements if they are to be legally compliant..

## **5.0 Impact Assessment**

**5.1 Climate Emergency-N/A**

**5.2 Health and Safety-N/A**

**5.3 Social Value-** families will be able to take up to 9 sessions off school without being fined within a 10 week cycle. (4.5 days)

**5.4 Legal –** the relevant legal issues and advice are set out within the body of the report. Any changes to current arrangements will be constrained by legislation and statutory guidance. New guidance and legislation has been issued which will instigate the need for a review of current policies and need to be taken into account in order for the Council's arrangements to be legally compliant.

**5.5 Financial-N/A**

**5.6 Human Resources- N/A**

**5.7 Equalities and Diversity- N/A**

## **6.0 Consultation and Engagement**

This report has been produced after engagement with councillors, education providers and legal advisers.

## **7.0 Appendices and Background Papers**

Appendix 1 – Letter from Minister for Schools

## **8.0 Contact Officer**

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