Response to Dfes and Home Office Consultation

ANTI-SOCIAL BEHAVIOUR ACT 2003

Tackling truancy through fixed penalty notice enforcement

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northgate
INFORMATION SOLUTIONS

Penalty enforcement: tackling truancy

Education and enforcement

If children are to be safe and secure in the future we need to promote community justice and well-being. A safe and secure community promotes social cohesion and economic progress as the guarantors of sustainable success.

The foundation of community well-being is community justice in its broadest sense. Community justice promotes social inclusion and enforces the administration of civil and criminal justice. It ensures that everyone, regardless of their experiences and circumstance, can achieve their potential in life.

In our response to the green paper *Every Child Matters* we outlined the need to ensure that co-ordinated public services help every child to fulfill their potential. Truancy affects the life chances of some of the most vulnerable children, particularly those living in deprived areas. Its links with crime are indisputable.

Tackling truancy requires education first and enforcement later. Encouraging collaboration between parent, child and a range of public services available at a local level is vital. So too is educating parents on how ignoring their responsibilities may restrict their child's opportunities and life chances. But where parents know and fail in their responsibilities, the penalty notice system provides an additional enforcement tool which avoids the stigma of criminal conviction.

The penalty notice system is only appropriate for minor and lesser offences. It gives authorities with limited resources an additional means of dealing efficiently with minor offences. And it is only as effective as it is fairly and proportionately used. Used appropriately, it can deal with infringements which are currently ignored or processed through the courts in a costly fashion.

Comments on draft guidance

We welcome the guidance as part of the process of ensuring that enforcement systems are fairly and equitably implemented. Before addressing the specific questions raised in the consultation, we make some comments on both contents and omissions within the draft guidance.

Content of guidance

Measuring adverse impact

The guidance refers to the *Human Rights Act 1998* and the *Race Relations Amendment Act 2000,* and recommends that LEAs, schools and police should monitor the impact of their policies in relation to ethnicity. Good practice and the Human Rights Act itself would suggest that LEAs should also ensure that policies should be tested to ensure that there is no underlying bias that would lead to disproportionate, unequal or unfair treatment on account of such factors as gender, disability, special needs and religion.

Involving children and multi-agency working

We welcome the draft guidance comments on the involvement of children and the need for multi-agency working. However, we believe that the draft guidance should be more directive to local authorities.

Children and their communities are let down by the fact that local service providers do not share intelligence and information in a timely and cost effective manner, and fail to connect with their communities in delivering permanent change. Partnership, prediction and prevention are crucial to improving children's services. The real core to prevention is ensuring timely information, accurate analysis and improved problem solving and investigation to ensure that speedy action can be taken by the relevant agency.

Northgate believes that the priority for children's services must be to improve front-line delivery and children-centred services through

enhancing communications, improving risk management systems, joining up services and encouraging collaboration at a local and regional level through the development of incremental partnerships.

Every Child Matters proposes the development of local information sharing systems – through a local information hub based on national data standards. It is clear that data on children missing school should be flagged up under such systems. Northgate considers that the government should encourage local services to adopt a modular approach to information sharing and identification, referral and tracking systems, with each element being viewed as a distinct part. This will give local agencies greater flexibility, allowing them to employ a "plug & play" approach.

Circumstances in which a penalty notice might be issued

The guidance suggests that there may be instances where no warning is required to issue a penalty notice such as where children are taken on holiday or in the course of a truancy sweep. If the system is not to be perceived by the public as arbitrary, every effort must be made to ensure that the public knows and understands the law on attendance and LEA policy. Citizens should be fully prepared for new changes in law so that they understand the implications of continuing their actions.

For example, in the Australian state of Queensland a moratorium of two months preceded the introduction of penalty notices for new offences relating to environmental nuisance, giving the public a chance to understand the new system and make any modifications to their behaviour. Although the guidance says that at the outset of casework the parent should be sent written notification of the consequences of their actions, we think that it should stress the importance of public education programmes.

Roles and responsibilities of schools and police

Where head teachers gain the agreement of their governing body to issue penalty notices, it is recommended that they notify the LEA of the individuals authorised and that they issue a school's code of conduct.

Retention of receipts

The regulations appear to be at odds with the spirit of Section 23 of the *Anti-Social Behaviour Act 2003* which states that:

- "(6) Sums received by a local education authority under this section may be used by the authority for the purposes of any of its functions which may be specified in regulations."

The regulations provide that the LEA can retain the revenue from their penalty notice scheme to cover the cost of issuing or enforcing notices. This is unduly restrictive.

Under Section 119 of the *Local Government Act 2003* local authorities are allowed to keep their receipts for dog fouling and litter for functions which are qualifying functions. So for example, local authorities are allowed to use the receipts for litter abatement measures.

We recommend that local education authorities are allowed to retain receipts for fulfilling their duties under section 13 of the *Education Act 1996.* This states:

- **"13.** - (1) A local education authority shall (so far as their powers enable them to do so) contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary education, secondary education and further education are available to meet the needs of the population of their area."

Omissions from the guidance

Training of staff

Whilst penalty notices may provide an efficient and cost-effective means of dealing with minor offences, the penalty notice system is only as fair as it is operated. This means that particular attention should be paid to the training of staff who will operate the system.

Staff should be adequately equipped to understand how human rights and diversity issues impact on service delivery and be able to deal with the public in a courteous, fair, equitable, respectful and consistent fashion. Enforcement systems must be responsive, transparent, accountable, equitable and audited.

Ability to pay

Although the code of conduct will ensure that the local education authority specifies a maximum number of penalty notices that may be issued to one parent in any twelve month period, there is nothing within the draft guidelines which recognises the increasing and extended use of penalty notices by local authorities and the police for a wide range of criminal offences. Our concern is that penalty notices are not related to the ability to pay. This means that problems can occur if individuals and households are allowed to accrue large amounts of unpaid fines, and enforcement systems should monitor their use across the board. There are strong arguments that local agencies should have systems in place for analysing and monitoring the penalty notice system as a whole.

The Draft regulations

Gambling on the penalty notice lottery

One of the fundamental problems with the proposed system is that local authorities have two options if the individual ignores the penalty notice system – to withdraw the fixed penalty notice or to prosecute. This allows individuals to gamble on the fact that the LEA will take no action at the end of the prescribed payment period. If no action is taken this will undermine the enforcement aspects of the fixed penalty notice regime.

If the LEA adopts a policy whereby prosecution will take place in all cases where payment is not paid within the prescribed period, this undermines the basis for issuing penalty notices. And local authorities may find that they are prosecuting cases where they considered that prosecution would

have been too heavy-handed for the original circumstances of the case. This may bring the penalty notice system into disrepute within the public arena because it is likely that such prosecutions will attract high profile publicity.

Where no payment or any representation has been made we recommend that a further option should be available to local authorities to have the non-payment registered as a fine with a further escalation of 50%. This is the system which applies to penalty notices under the *Criminal Justice and Police Act 2001:*

> (5) If, by the end of the suspended enforcement period-
>
> (a) the penalty has not been paid in accordance with this Chapter, and
>
> (b) A has not made a request to be tried,
>
> a sum equal to one and a half times the amount of the penalty may be registered under section 8 for enforcement against A as a fine.

This would allow local authorities an option which lies midway between withdrawal and prosecution ensuring that they simply do not give up on enforcement and that the individual is faced with certainty regarding punishment.

Form and content of the penalty notice

Clause 2(k) provides parents with an opportunity to acknowledge that the child's absence from school was unauthorised and parents who acknowledge this fact incur a lower financial penalty. Given that section 444 of the *Education Act 1996* is a strict liability offence, there appears to be no logical reason why parents should be required to acknowledge that the absence was unauthorised. The courts have made it clear that whilst there is no inconsistency between section 444 and the *Human Rights Act 1998*, they cannot impute a defence which does not exist for the parent. So even if the local authority was prepared to use this information in a further court case it would be unnecessary, whether or not the use of such

information breached Article 6 of the *European Convention on Human Rights* in terms of self-incrimination.

The provision for acknowledgement also appears to be somewhat at odds with section 23 of the *Anti Social Behaviour Act 2003* which states that:

- "(2) A penalty notice is a notice offering a person the opportunity of discharging any liability to conviction for the offence under section 444(1) to which the notice relates by payment of a penalty in accordance with the notice."

The emphasis on acknowledgement also means that the penalty notice pro forma does not adequately inform the individual that they are being given an opportunity to discharge their liability for conviction.

Amount and payment of penalty

For the penalty notice system to operate effectively it must be simple and clear. The provision for two separate rates of payment adds complexity. We would recommend one payment with a discount for early payment, followed by provisions to allow local authorities to register an amount, increased by 50%, as a fine.

However, we believe that there are strong arguments for minimising the use of the courts to pursue unpaid penalty notice payments and of developing mechanisms for clearly distinguishing between those who can't and those who won't pay.

There are two precedents which are worth considering. Firstly, under the Dog *Fouling (Scotland) Act 2003* local authorities and the police are able to issue fixed penalties to people who fail to clear up after a dog. Scottish local authorities retain all money received in respect of payment of fixed penalties. Where a fixed penalty is not paid a local authority can recover the amount through civil diligence without applying to the courts.

In addition, Schedule 5 of the *Courts Act 2003* states that the offender may apply for the payment terms to be varied, or volunteer for an attachment of

earnings order or deduction from benefit. Schedule 6 allows an offender to discharge their fine by unpaid work. Consideration could be given to allowing local authorities to set up local schemes similar to those provided under this legislation.

Liability for payment

Clause 11 provides that where there is more than one person liable for the offence a separate notice may be issued to each person. This appears to have the effect of penalising couples who are parents so that they may pay double the amount paid by a single parent household for a same or similar offence. We recommend its removal.

Information

Where police, community support officers and accredited community safety officers issue penalty notices it is recommended that they should also notify the school as well as the LEA.

Use of monies received

We recommend that the restrictive provisions relating to the use of receipts be relaxed (see above 'Retentions of Receipts').

Specific questions raised in the consultation

Should there be further guidance on what should be included in the guidance regarding the local codes of conduct?

We welcome the provision for codes of conduct relating to the operation of penalty notice enforcement. We recommend that further consideration be given to the content of the codes of conduct which could include: provisions for informing the public and parents of the penalty notice system; a requirement for schools codes of conduct when governing bodies have given approval for teachers to issue notices; information about human rights and discrimination; provisions for monitoring and reviewing

the operation of the system and its impact on the public; protocols for data information sharing.

Are the levels of penalty appropriate?

As we have indicated above, we do not think it is appropriate to have a two tier system based on acknowledgement. Consideration should also be given to allowing local authorities an option to register the non payment as a fine with a further escalated payment and longer-term consideration should be given to allowing local authorities greater flexibility to distinguish between those who can't and those who won't pay. Where two parents are liable for an offence, only one notice should be issued for that offence.

Is the pro-forma penalty notice fit for purpose?

As it currently stands, the pro-forma is not fit for purpose. It should clearly state that the individual is being given an opportunity to discharge their liability for the offence. It should also provide information about the statutory defences and provide more explanation about the stated offence i.e. give such particulars as are necessary to provide reasonable information.

Should the regulations/guidance set national and lower boundaries on the rate of unauthorised absence?

We favour local authorities retaining local discretion in this matter. However, our concerns are that households may be issued with multiple penalty notices for different offences for social and environmental nuisance, minor disorder and truancy. This would suggest that at a national level there is a need to ensure that information about the penalty notice system is available across the board and that its impact is capable of being measured.