



Barnsley Metropolitan Borough Council

Education Services

Education Welfare Service

September 2013

CODE OF CONDUCT ON THE ISSUE OF PENALTY NOTICES IN REGARD TO POOR SCHOOL ATTENDERS AND EXCLUDED PUPILS

1. Legal Basis:

- 1.1 Section 23 of the Anti Social Behaviour Act 2003 empowers designated LA officers, Head Teachers (& Deputy and Assistant Head Teachers authorised by them) and the Police to issue Penalty Notices in cases of unauthorised absence from school and The Education (Pupil Registration) Regulations 2006 and Amendments 2012 and September 2013 empowers the same regarding Leave of Absence in term time
- 1.2 The Education (Penalty Notices) (England) Regulations 2004 and 2007 came into force on 27 February 2004 and 1 September 2007 respectively.
- 1.3 Section 103 of the Education and Inspection Act 2006 empowers designated LA officers, Head Teachers (& Deputy and Assistant Head Teachers authorised by them) and the Police to issue Penalty notices in relation to the whereabouts of excluded pupils.
- 1.4 Consideration must be given to Section 447 of the Education Act in relation to the issue of an Education Supervision Order
- 1.5 The issuing of Penalty Notices must conform to all requirements of the Human Rights Act and Race Equality and Disability Legislation.
- 1.6 The LA has the prime responsibility for developing the protocol within which all partners named in the Act will operate. The Education Welfare Service (EWS) delivers this LA responsibility
- 1.7 The LA procedures apply to parents of children of compulsory school age who are registered at a maintained school, an Academy or Trust school, Pupil referral unit or at any registered alternative provision

2. **Rationale:**

Section 7 Education Act 1996 ~ parents are responsible for making sure that their children of compulsory school age receive efficient full time education that is suitable to the child's age ability and aptitude and to any special educational needs the child may have

- 2.1 Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities.
- 2.2 In law an offence occurs if a parent/carer or person with parental responsibility fails to secure a child's attendance at a school at which they are a registered pupil and that absence is not authorised by the school.
Also in law an offence occurs if a parent/carer or person with parental responsibility fails to ensure that their child is not present in a public place during school hours without reasonable justification during the first 5 days of each and every fixed period of exclusion and for permanent exclusion.
- 2.3 Penalty notices supplement the existing sanctions currently available under Sec 444, Education Act 1996 or Sec 36, the Children's Act 1989 to enforce attendance at school where appropriate subject to statutory defences.
- 2.4 The Education Welfare Service (EWS) delivers this LA responsibility.
- 2.5 Parents and pupils are supported at school and LA level to overcome barriers to regular attendance through a wide continuum of assessment and intervention strategies. Sanctions of any nature are for use only where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem.
- 2.6 Sanctions are never used as a punishment, only as a means of enforcing attendance where there is a reasonable expectation that their use will secure an improvement.

3. **Circumstances where a Penalty Notice may be issued:**

- 3.1 A Penalty Notice can only be issued in cases of **unauthorised** absence and to a child who is of compulsory school age when the unauthorised absence is recorded .
- 3.2 Use of Penalty Notices will be restricted to one per pupil per academic term. In cases where families contain more than one poor-attending pupil multiple issues may occur but this will be the subject of careful consideration and co-ordination.

3.3 There will be no restriction on the number of times a parent/carer may receive a formal warning of a possible issue of a Penalty Notice. Where there is more than one person liable for the absence a separate warning may be issued

3.4 The issuing of a Penalty Notice is considered appropriate in the following circumstances:

- overt truancy (including pupils caught on truancy sweeps)
- parentally-condoned absences
- leave of absence in term-time
- unexplained i.e. no reason given for absence .
- persistent late arrival at school (after the Register has closed)
- excluded pupil present in a public place during the school hours of the school where the pupil is on roll

3.5 To ensure consistent delivery of Penalty Notices at least 10 sessions (5 school days in total) lost to unauthorised absence by the pupil during the current term the following criteria will apply: ~

- other than in specific circumstances* the liable parent/carer will receive a formal warning of the possibility of a Penalty Notice being issued and given a maximum of 15 school days to effect an improvement.
* If a parent is capable of securing regular attendance but not willing to take responsibility or failure to engage with strategies and agencies then a penalty notice may be issued without notification
* No formal warning is given in the case of leave of absence
- the deliberate taking of leave of absence in term time without or against school permission (where it can be clearly demonstrated that the parent/carer understood that permission had not / would not be given) and where this has created a period of unauthorised absence in the current term of at least 10 sessions.
- excluded pupil present in a public place during the school hours of the school where the pupil is on roll without justification during the first five days of each and every fixed period or permanent exclusion and other than in specific circumstances the liable parent/carer will receive a formal warning of the possibility of a Penalty Notice being issued after the first time a pupil is present in a public place.
- if a parent/ carer of an excluded child fails to ensure the attendance of the child at the alternative provision provided by the school or LA from the sixth day of fixed period exclusion or permanent exclusion that the parent will be liable under the truancy provisions.
- The LA will not issue a Penalty Notice if no substantiating documentation is provided by the school

3.6 Schools must consider every aspect of a pupil's case before considering whether a Penalty Notice would be appropriate. This must include strategic discussions with the EWS and any other attendance-support staff who have involvement with or knowledge of the pupil/family.

3.7 In the case of an excluded pupil, in order for a parent/ carer to incur either form of legal responsibility the school must give them notice informing them of their duty to ensure their child is not present in a public place, the days when their duty applies, and, as appropriate, of the arrangements for alternative provision. Ordinarily these notices will be combined with the notice the school must issue when a child is excluded.

3.8 Before a Penalty Notice is issued to the parent/ carer of an excluded pupil consideration must be given to every aspect of the case, such as:

- number of occasions the child has been present in a public place,
- the parent's actions (or inactions) which led to the child being in a public place at a proscribed time,
- the parent's justification if any,
- the parent's attitude to having failed to meet their statutory responsibility.

3.9 It will be for a parent to prove reasonable justification. A justification that is capable of being reasonable will depend on points of fact and proof: it is unlikely that any justification would be reasonable unless it stood up on facts.

3.10 We would not conclude that some justifications are automatically unreasonable. Some, such as a medical emergency are probably more straightforward: hospital records, doctor's certificates etc. will help in the consideration of the individual case. Other justifications, such as the pupil shopping for food or clothes, are without more evidence unlikely to be reasonable, for these activities could readily be carried out at the weekend, after school hours or after the first few days on which the duty applied. However, every case should be considered on its merits and all relevant evidence provided taken into account.

4. Procedure for issuing Penalty Notices:

4.1 The EWS will issue Penalty Notices in Barnsley. This will ensure consistent and equitable delivery, retain school-home relationships and allow cohesion with other enforcement sanctions.

4.2 Penalty Notices will only be issued by post and never as an on the spot action, this to satisfy that all evidential requirements are in place and to meet Health and Safety requirements.

- 4.3 The EWS will receive requests to issue Penalty Notices from schools, South Yorkshire Police and neighbouring LEAs. These requests will be considered by the Penalty Notice Panel chaired by the EWS and including representation from the Legal Service:

These requests will be considered provided that:: ~

- all relevant information supporting documentation and correspondence with the parent/carer is required and supplied in the specified manner as consideration needs to be given to whether there are mitigating circumstances
- If there are any significant concerns with regard to the welfare or safeguarding of the child the matter be referred for further consideration as to whether it would be appropriate to consider applying for an Education Supervision Order rather than the issuing of a Fixed Penalty Notice
- the circumstances of the pupil's absence meets all the requirements of this Protocol,
- family circumstances/ability to pay is set against the likelihood of securing an improved attendance by issuing a Penalty Notice (this to include any cases of possible multiple issue to any one family).
- the issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.

- 4.4. The EWS will respond to all requests within 10 school days of receipt and where all criteria are met will:

- issue a formal written warning to the parent/carer of the possibility of a Penalty Notice being issued *
- in the same letter set a period of 15 school days within which the pupil must have no unauthorised absence*.
- issue a Penalty Notice through the post at the end of the 15 day period of the required level of improvement has not been achieved.

* this would not be issued in the case of leave of absence. See 3.5 and Guidance in relation to leave of absence in term time

- 4.5 In the case of requests to issue Penalty Notices where the excluded pupil is found in a public place during the hours where the pupil is on roll the liable parent/ carer will receive a formal warning of the possibility of a Penalty notice being issued if the pupil is present once again in a public place during the remaining days of the exclusion in the initial 5 days period.

5. Procedure for withdrawing Penalty Notices:

5.1 Once issued, a Penalty Notice will only be withdrawn in the following circumstances:

- proof has been established that the Penalty Notice was issued to the wrong person
- the use of the Penalty Notice did not conform to the terms of this Protocol or otherwise ought not to have been issued.
- if it contains material errors i.e. wrong address
- where after 28 days the penalty is unpaid and the LA does not wish to bring legal proceedings under S444

6. Payment of Penalty Notices:

6.1 Arrangements for payment will be detailed on the Penalty Notice.

6.2 Payment of a Penalty Notice discharges the parent/carer liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Penalty Notice.

6.3 Full payment of a Penalty Notice within 21 days is £60 and payment after this time but within 28 days is £120.

6.4 The LA retains any revenue from Penalty Notices to cover enforcement costs.

7. Non-payment of Penalty Notices:

7.1 Non-payment of a Penalty notice will result in the withdrawal of the Notice and will trigger the fast-track prosecution process under the provisions of Sec 444, 1996 Education Act.

8. Policy and Publicity:

8.1 Deployment of Penalty Notices as a sanction is included in the Authority's Attendance Policy.

8.2 All school Attendance Policies will include information on the deployment of Penalty Notices and this will be brought to the attention of all parents.

8.3 The LA will include information on the use of penalty Notices and other attendance enforcement sanctions in promotional/public information material.

9. Reporting and Review:

- 9.1 The Education Welfare Service will review Penalty Notice use at regular intervals amend the general enforcement strategy as appropriate and produce reports on this area of activity as required.