



## **Barnsley Metropolitan Borough Council**

### **People Directorate**

# **CODE OF CONDUCT ON THE ISSUE OF PENALTY NOTICES FOR SCHOOLS AND ACADEMIES.**

**Revised by the**

**Education Welfare Service and Legal Services**

**September 2020**

# **PENALTY NOTICE CODE OF CONDUCT**

This Code of Conduct has been drawn up in line with The Education (Penalty Notice) (England) (Amendment) Regulations 2007. The purpose of the Code of Conduct is to ensure that Penalty Notices are applied consistently and fairly across Barnsley and that arrangements for their issue and administration are suitable.

## **1. Legal Basis**

- 1.1 Section 23 of the Anti-Social Behaviour Act 2003 empowers designated Local Authority (LA) officers, Head Teachers (and Deputy and Assistant Head Teachers authorised by them) and the Police to issue Penalty Notices in cases of unauthorised absence from school.
- 1.2 The Education (Pupil Registration) Regulations 2006 as amended by The Education (Pupil Registration) Regulations 2013 sets out requirements in respect of leave of absence in term time.
- 1.3 Section 105 of the Education and Inspection Act 2006 empowers designated LA officers, Head Teachers (and Deputy and Assistant Head Teachers authorised by them) and the Police to issue Penalty Notices in relation to excluded pupils found in public place during first five days of exclusion.
- 1.4 Consideration must be given to Section 447 of the Education Act in relation to the issue of an Education Supervision Order, before issuing a Penalty Notice or initiating proceedings for irregular school attendance.
- 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 places a duty on parents to secure the education of their child(ren) of compulsory school age. The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable to his age, ability and aptitude, and to any special educational needs he may have, either by regular attendance at school or otherwise.

2.1 Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities.

2.2 A parent/carer or person with parental responsibility commits an offence if they fail 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, (s.444 Education Act 1996).

A parent/carer or person with parental responsibility commits an offence if they fail 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, (s.103 of the Education and Inspection Act 2006).

2.3 Penalty Notices supplement the existing sanctions currently available under Section 444 and 447 Education Act 1996, subject to statutory defences, to promote and enforce attendance at school where appropriate.

2.4 The EWS delivers this LA responsibility.

2.5 Parents and pupils are supported by school and the LA to overcome any 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 be issued in cases of unauthorised absence and to a parent of a child who is of compulsory school age at the time 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 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 for unauthorised absence. 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
  - Unauthorised leave of absence in term-time
  - Unexplained absence 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 the process and the issuing of Penalty Notices, there will be at least 10 sessions (5 school days in total) lost by the pupil due to unauthorised absence during the current term. In which case, the following criteria will apply;

### **Unauthorised absence**

- If due to sporadic absences, then, 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 there are further absences within the 15 day monitoring period then a penalty notice may be issued.
- Schools must consider every aspect of a pupil's case before considering whether a Penalty Notice would be appropriate. This, in appropriate circumstances, should include strategic discussions with the EWS and any other attendance support staff who have involvement with or knowledge of the pupil/family.
- Schools must not routinely ask parents to obtain Doctors' notes. There is no legal requirement for parents to provide a Doctors' note, (Government Guidance 2006). However, there is nothing in the regulations to prevent schools from challenging parent statements or seeking additional evidence if they have any concerns regarding the levels of absence. This evidence could be a prescription or an appointment card rather than a Doctors' note.
- If a parent continues to fail to secure a child's regular attendance following the above mentioned 15 day monitoring period, then

consideration will be given to issuing a Penalty Notice without further warning, having already received a warning previously.

### **Leave of absence (Holidays in term time)**

- Penalty Notices may be issued if due to the deliberate taking of leave of absence in term time without or against school permission, (where it can be demonstrated that the parent/carer understood that permission had not or would not be given), and where this has created a period of unauthorised absence in the current term of at least 10 sessions.

### **Exclusions**

- A Penalty Notice may be issued if an excluded pupil is present in a public place during the school hours of the school day 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.
- In the case of an excluded pupil, in order for a parent/ carer to incur a legal sanction, 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.

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

**Please note every case should have been considered on its merits and all relevant evidence taken into account. The LA cannot issue a Penalty Notice if no substantiating documentation is provided by the school.**

#### **4. Procedure for issuing Penalty Notices:**

- 4.1 The EWS, on behalf of the LA, 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 before issue.
- 4.3 The EWS will receive requests to issue Penalty Notices from schools. These requests will be considered provided that:
  - all required relevant information, supporting documentation and correspondence with the parent/carer is supplied in the specified manner, to ensure that there is sufficient evidence to prosecute the parent(s) for the period of unauthorised absence, should they fail to pay the penalty notice
  - the circumstances of the pupil's absence meets all the requirements of this code of conduct
  - the issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.

#### **5. Procedure for withdrawing Penalty Notices:**

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 code of conduct 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 it is no longer appropriate to bring legal proceedings under s.444 Education Act 1996.

## **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 prosecution for the period in question. 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 ordinarily trigger the prosecution process under the provisions of s.444 Education Act 1996.
- 7.2 Unlike other Penalty Notice schemes, legal proceedings would not be for non-payment of the Penalty Notice but would be for the non-school attendance under section 444 of the Education Act 1996.
- 7.3 If a penalty is not paid, the LA will use the fact that a Penalty Notice was issued and not paid as evidence in subsequent legal proceedings. The Penalty Notice request form, certified by Head Teachers as an accurate record of the unauthorised absence may be used as evidence to support legal proceedings.

## **8. Policy and Publicity:**

- 8.1 Use of Penalty Notices as a sanction is included in the Local Authority's Attendance Policy.
- 8.2 All school attendance policies will include information on the use and issue of Penalty Notices and this will be brought to the attention of all parents and Governing Bodies.
- 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 EWS and Legal Services will review and amend the code of conduct accordingly. Penalty Notices may also vary to those published in this code of conduct, depending on any future update by statute, guidance or order.