

# Code of Conduct

## Penalty Notices to Address Absences and Poor Attendance at School or Alternative Provision

### Rationale

1. The purpose of this Code of Conduct is to ensure that the associated powers are applied consistently and fairly across the Local Authority area and that suitable arrangements are in place for the administration of Penalty Notices.
2. Regular and punctual attendance at school, or alternative provision, is both a legal requirement and essential for children and young people to maximise their educational opportunities. Penalty Notices offer a swift intervention which West Sussex County Council (WSCC) will use to deal with issues of unauthorised absence before they become entrenched.
3. An offence occurs if a parent/carer fails to secure a child's regular attendance at school, or alternative provision, at which they are a registered pupil and that absence is not authorised by the school, or alternative provision.
4. In addition a Penalty Notice can be used to help ensure parents fulfil their responsibilities to ensure their child is not out in a public place without reasonable justification during the first five days of every exclusion from school.

### Authorisation

1. The primary responsibility for the issuing of Penalty Notices rests with the Local Authority. Pupil Entitlement: Investigation (PEI) of WSCC will therefore issue Penalty Notices in West Sussex. This ensures consistency and will prevent conflict with other enforcement sanctions
2. Although professionals other than those with the Local Authority (e.g. Head Teachers, the Police etc.) are accredited persons within the legislation, able to issue Penalty Notices, there is no requirement for them to do so. In West Sussex it has been agreed that the Police will not issue Penalty Notices. If a Head Teacher feels it is appropriate for a Penalty Notice to be issued they must refer to the PEI. This will avoid a Penalty Notice being issued when the PEI is instigating legal intervention proceedings for irregular school attendance or where a Penalty Notice is not deemed an appropriate form of intervention.
3. Penalty Notices will be issued by First Class post to satisfy evidential requirements.
4. PEI will act upon requests to issue Penalty Notices from schools, academies, or alternative education providers and Sussex Police, provided that;
  - a) All relevant information is supplied in the specified manner;
  - b) The circumstances of the pupil's absence meets the requirements of this Code of Conduct; and

- c) The issuing of a Penalty Notice does not conflict with other interventions strategies in place or other enforcement sanctions already in process.

## Criteria for Issuing Penalty Notices

1. Penalty Notices are issued to parents as defined under Section 576 of the Education Act 1996, in relation to children of compulsory school age. Under the Act the term “parent” includes;
  - All natural parents, whether they are married or not;
  - Any person who, although not a natural parent, has parental responsibility for a child or young person;
  - Any person although not a natural parent has care of a child or young person. Having care of a child or young person means that a person with whom the child lives and who looks after a child, irrespective of what their relationship is with a child.
2. They may be issued for children at maintained schools, academies, free school and alternative provision providers in West Sussex.
3. In accordance with the definition of parent, and thereby parental responsibility for non-school attendance, more than one person may be liable for the offence. In such circumstances, separate notices will be issued to each person.
4. A minimum of 10 sessions of unauthorised absence in a 10 school week period will usually have occurred. However, a shorter period of time may be considered appropriate in some circumstances.
5. Where an authorised officer has reason to believe that a person has committed an offence under S.444(1) Education Act 1996, they may give that person a Penalty Notice.

Penalty Notices may be issued when:

- There has been an unacceptable level of unauthorised absence from an educational establishment and enforcement is necessary to improve attendance. Unauthorised absence is absence not authorised by the school. This includes all unexplained or unjustified absences. The categories of authorised and unauthorised absence are explained in the Guidance to the Education (Pupil Registration) (England) Regulations 2006 and further clarified in “School Attendance. Guidance for maintained schools, Academies and Independent schools and Local Authorities”.
- In the case of a unauthorised holiday taken during term time, if;
  - Parents have not sought permission from the Head Teacher before taking their child out of school for a holiday in term time.
  - The Head Teacher has refused the request but the absence occurs anyway; or
  - A pupil has not returned to school by the agreed date with no satisfactory explanation.

- And there have been 10 sessions of unauthorised absence in a 10 school week period.
- A pupil is persistently late to school, i.e. arrives after the register has closed;
- Under truancy sweeps carried out under Crime and Disorder Act 1998 powers, a minimum of 5 sessions of unauthorised absence may generate a Penalty Notice, if these unauthorised absences occur in the 10 school weeks (maximum) after the child was stopped on a the truancy sweep; and
- When an excluded child is present in a public place during school hours on a day which is one of the first 5 school days to which the exclusion relates or, where that exclusion is for a fixed period of 5 days or less, any of the days to which the exclusion relates, under the protocol for Section 103 of the Education and Inspections Act 2006.

No more than 2 Penalty Notices, per child, may be issued to the same parent in a twelve-month period. Alternative action may need to be considered if school attendance offences re-occur, in the light of advice from Legal Services.

6. The Penalty Notice is a notice offering a person the opportunity of discharging any liability to conviction for the offence under S.444(1) Education Act 1996 to which the notice relates by payment of a penalty in accordance with the notice.

## **Withdrawal of Penalty Notices**

Once issued a Penalty Notice can only be withdrawn in the following circumstance;

- The Penalty Notice has not been issued in accordance with the Code of Conduct.
- Evidence has been established that the Penalty Notice was issued to the wrong person.
- There are material errors in the information leading to the issue of the Penalty Notice.
- The period for payment has expired and the Local Authority does not intend to institute legal proceedings for which the Penalty Notice relates.

## **Payment of Penalty Notices**

The arrangements for the paying of Penalty Notices will be detailed on the Penalty Notice.

Revenue generated from the Penalty Notices will be used to cover the costs of issuing and enforcing notices, or the cost of prosecuting recipients who do not pay.

## **Non-Payment of Penalty Notices**

The Penalty is £60 if paid within 21 days of receipt of the Penalty Notice (assumed as 2 working days following the Notice being sent by first class mail), or £120 if paid after 21 days but within 28 days of receipt of the Penalty Notice.

If the Penalty Notice is not paid in full by the end of the 28 day period, the Local Authority may prosecute for the offence to which the Notice applies. The prosecution relates to

irregular school attendance under Section 444 of the Education Act 1996. Where a prosecution is an appropriate course of action a Caution may be offered by the Local Authority as an alternative method of disposal.

There is no statutory right of appeal against the issuing of a Penalty Notice.

A record will be kept of all prosecutions relating to offence for which a Penalty Notice was issued.

## Legislation

1. Section 23 Anti Social Behaviour Act 2003 empowers authorised officers of a Local Authority, Head Teachers (and Deputy and Assistant Head Teachers authorised by the Head) and Police Officers (including Community Support Officers) to issue a Penalty Notice in cases of unauthorised absence from school, or alternative provision.
2. The Education (Penalty Notices) (England) Regulations 2004 came into force on 27<sup>th</sup> February 2004.
3. The Education (Penalty Notices) (England) Regulations 2004 require the Local Authority, in consultation with the above, to develop a code of conduct for issuing of Penalty Notices. Any person issue a Penalty Notice must do so within the terms of this code of conduct) the Code of Conduct”).
4. The Education (Penalty Notices) (England) Regulations 2005 extends the issuing of Penalty Notices to alternative provision.
5. The Education (Penalty Notices) (England) (Amendment) Regulations 2012 confirms the increase in the amount of penalty where the offence are alleged to have been wholly or partly committed after 1<sup>st</sup> September 2012.
6. Education (Penalty Notices) (England) (Amendment) Regulations 2013 confirm that the penalty of £60 must be paid within 21 days or after that period increase to £120 to be paid within 28 days.
7. The Education (Pupil Registration) (England) (Amendment) Regulations 2013 remove all reference to *family holiday* and extended leave as well as the statutory threshold of 10 school days. Amendments make clear that Head Teachers may not grant any leave of absence during term time unless there are exceptional circumstances. Head Teachers should determine the number of school days a child can be away from school *if* the leave is granted.
8. The education provisions of the Anti Social Behaviour Act 2003 apply to all parents who fall within the definition of parent as set out in Section 576 of the Education Act 1996.
9. Penalty Notices supplement existing sanctions currently available under Section 444 Education Act 1996 or Section 36 Children Act 1989 to enforce attendance at school or alternative provision.
10. Education and Inspections Act 2006; giving authorisation to Penalty Notices when a child has been excluded.

11. This Code of Conduct complies with the requirements set out in Sections 14-16 of the Education (Penalty Notices) (England) Regulations 2007.
12. The issuing of Penalty Notices must conform to all requirements of the Human Rights Act and Equal Opportunities legislation.