



**BOROUGH OF POOLE  
EDUCATION PENALTY NOTICE – CODE OF CONDUCT**

**Issued following consultation December 2015**

**Revised April 2017**

## **1 The Local Authority**

The Anti-Social Behaviour Act 2003 came into effect on 27 February 2004. Under Section 23 of this Act, the Education Act 1996 was amended with the introduction of 2 new subsections under Section 444 (subsections 444A & 444B) which made it possible for Penalty Notices to be issued for truancy offences. They are subject to the Education (Penalty Notices) (England) Regulations 2007 as amended (“the Regulations”).

The Regulations require each Local Authority to draw up a local Code of Conduct which sets out measures to ensure consistency in the issuing of Penalty Notices and that suitable arrangements are in place to administer the scheme.

The definition of “parent” under Section 576 of the Education Act 1996 includes all biological parents, whether they are married or not and includes any person who, although not a biological parent, has the parental responsibility and/or any person who, although not a biological 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 the child, irrespective of what their relationship is with the child, is considered to be a parent.

***NB: Throughout this document, references to parent mean each and every parent coming within the definition, whether acting jointly or separately.***

## **2 Before issuing Penalty Notices**

The welfare of the child is paramount. Schools should take all reasonable steps to ensure good attendance without the use of Penalty Notices and attempts must always be made to contact the parent/carer in order to try and resolve any difficulties. If a warning and offer of support does not result in significant improvement in attendance, the school and the Local Authority will work together to consider every aspect of a pupil’s circumstances before deciding whether to issue a Penalty Notice.

## **3 Issuing Penalty Notices**

Under this policy, Penalty Notices may be requested by Head Teachers and will be issued by the Local Authority. The Local Authority is responsible for this administration and it is for them to make such arrangements for the operation of the scheme (not provided for in the government guidance or associated Regulations) as it sees fit, in consultation with its

partners. Any person issuing a Penalty Notice in Poole must have regard to this Code of Conduct

The Local Authority can only issue notices in respect of a pupil registered at a school in the area of the authority or for whom the authority has made arrangements for alternative educational provision (whether or not in the area of the authority) or who is not, at the time the notice is given, a registered pupil at any school but resides in the area of the authority.. They may be issued to one or both parents regarding each of their children.

Fines issued are payable to the Local Authority:

“Money received by a Local Authority under this process may be used by the authority for the purposes of any of their functions which may be specified in regulations namely issuing or enforcing Penalty Notices and prosecuting recipients who do not pay but, to the extent that they are not so used, must be paid in accordance with the regulations, to the Secretary of State for Education”.

#### **4 Criteria for issuing a Penalty Notice**

The purpose of the Code of Conduct is to ensure that Penalty Notices are issued consistently and fairly by the Borough of Poole. The issuing of Penalty Notices must conform to all requirements of the Human Rights Act 1998 and all equalities legislation.

Penalty Notices are an alternative to the prosecution of parents for failing to ensure that their child of compulsory school age attends the school where they are registered or at a place where alternative educational provision is provided. The purpose is to offer swift intervention for cases of unauthorised absence before the problem becomes too entrenched.

A Penalty Notice can only be issued in cases of unauthorised absence or in certain cases where a child or young person is subject to an exclusion from their education provision. It is important to note that it is the Head Teacher’s responsibility to decide whether or not to authorise an absence.

The circumstances in which a Penalty Notice can be issued are listed below. In these cases, Save for clause 4.4 the parent must receive a formal warning of the possibility of a Penalty Notice being issued and given 25 school days to effect an improvement.

#### 4.1 General Non-School attendance (repeated absences)

All unauthorised absence should be addressed by the school with the parent. Schools should request a meeting with parents where there are concerns over attendance whether the absences are consecutive or there are 'broken weeks'. A Penalty Notice may be issued when a pupil has at least 10% unauthorised absence over a minimum of 5 weeks. The absences do not need to be consecutive.

#### 4.2 Lateness after the register has closed

Persistent late arrival at school after registration (persistent is defined as a minimum of 5 late arrivals within 5 weeks). The absences do not need to be consecutive.

Schools must have a clear policy about the time that the registers will close. DFE guidance suggests that this should be approximately 30 minutes after the start of the day but schools may vary this.

#### 4.3 Alternative Provision

Where a pupil is required to attend alternative education provision at a named site, school or pupil referral unit, the criteria outlined in 4.1 apply. A Penalty Notice may be issued when a pupil has at least 10% unauthorised absence over a minimum of 5 weeks. The absences do not need to be consecutive. If a pupil transfers directly from school to alternative provision, the absences in both places of education will be taken into account when deciding whether to issue a Penalty Notice.

In addition, in the following circumstances, a Penalty Notice may be issued without formal written notification (warning) to the parent depending on the individual circumstances:

#### 4.4 Leave of Absence taken in term time

Regulation 7 of the Education (Pupil Registration, England) 2006 Regulations was amended to prohibit a Head Teacher granting leave of absence to a pupil except where an application has been made in advance and the proprietor considers that there are exceptional circumstances relating to the application.

Under the amended regulations, a Head Teacher can agree to a leave of absence in term time only where there are 'exceptional circumstances'. No leave of absence should be

agreed unless the Head Teacher is satisfied that there are such exceptional circumstances. The school should make the parents aware of this possibility as far as possible and this possibility should also clearly be stated in the school's attendance policy and in other information the school provides for parents such as the school's handbook provided to parents, student planners, school website, newsletters, open day and new starter information packs.

When a leave of absence is taken and the school has not authorised the absence, the school may request that the Local Authority issues a Penalty Notice. Before requesting this, the school must ensure that, as far as possible, the parent was aware that this may occur. Requests for Penalty Notices should be made by the school and signed by the Head Teacher or nominated Deputy as soon as possible after the holiday is taken. This should be no longer than 15 school days following the pupil's return.

Although parents will have been warned that a Notice may be issued if they chose to continue with the leave of absence, no caveat regarding 15 days to effect an improvement will be given.

A Penalty Notice may be issued:

- Where a parent has taken the pupil on a leave of absence during term-time without the school's authorisation and there are unauthorised absences of at least 10 sessions (5 school days).
- If a second leave of absence is taken during term-time within any 12 month period without the school's authorisation and there are unauthorised absences of at least 2 sessions (1 school day).
- Where the school has agreed to a specific number of sessions of leave during term-time due to exceptional circumstances, and any additional sessions of unauthorised leave have been taken outside of the agreed period.

#### 4.5 In the case of an excluded pupil

A Penalty Notice may be issued where a pupil is found by the school, Police or Local Authority service in a public place\*, in school hours\*\* without reasonable justification during the first 5 days of a fixed term or permanent exclusion. The Local Authority will carefully consider reasons given by the parent if a child is found in a public place, prior to issuing a Penalty Notice. A medical emergency, hospital appointments and other medical appointments may be considered reasonable but a pupil found shopping is unlikely to be.

\* *Public Place means any highway or any place to which the public has access*

\*\* *School hours is defined as 'a school session or a break between sessions on the same school day'*

## **5 Procedure for issuing Penalty Notices**

5.1 To avoid duplication of Penalty Notices and to ensure consistency, cost effectiveness and equality, the Local Authority will be solely responsible for issuing Penalty Notices in Poole and will process all requests from schools within the Borough of Poole. All requests will be considered in the context of the individual family concerned to ensure that their wider circumstances and the potential impact are taken into account. The Local Authority will not levy a charge to any schools or academies for this function.

Under Poole's Code of Conduct, although a parent/carer may receive a Penalty Notice for each child/young person for whom they are responsible, no parent will be issued with more than Penalty Notice per child/young person per term (or no more than 3 per child in a school year. If there are further absences, meaning that this limit is exceeded, then the parent/carer is liable for prosecution.[ja](#)

Requests will be considered provided that:

- all relevant information is supplied in the specified manner to the Local Authority ;
- the requirements of this Code of Conduct are met; and
- the issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already in process.

5.2 Provided the criteria above are met and a Penalty Notice is appropriate, the Local Authority will respond to the school's request within 10 school days and will Unless the absence falls within clause 4.4 herein (See clause 5.3 below):

- Issue a formal written warning to the parent of the possibility of a Penalty Notice being issued
- In the same letter give the parent 25 school days to improve the pupil's attendance. The expectation is there should be no unauthorised absences in this period.
- Issue a Penalty Notice by post at the end of the 25 day period if the required improvement has not been achieved.

5.3 For Penalty Notices related to leave of absence in term time or being found in a public place during the first 5 days of an exclusion:

- No warning letter will be issued
- Requests for Notices regarding leave of absence should be made to the school and signed by the Head Teacher or nominated Deputy as soon as possible after the leave of absence is taken. This should be no longer than 15 school days following the pupil's return.
- Requests for Notices regarding a pupil being found in a public place during the first 5 days of an exclusion should be made by the school and signed by the Head Teacher or nominated Deputy at the earliest opportunity.

## **6 Withdrawal of Penalty Notices**

The Regulations limit the circumstances in which a Local Authority can withdraw a Penalty Notice to the following:

- (i) it ought not to have been issued; or
- (ii) it ought not to have been issued to the person named as the recipient; or
- (iii) it appears to the authority that the notice contains material errors.

Where a Penalty Notice has been withdrawn in accordance with the above, notice of the withdrawal will be given to the recipient by the Local Authority. Except where the Penalty Notice is withdrawn under (iii) above, any amount paid by way of penalty in pursuance of that notice will be repaid to the person who paid it; and no proceedings will be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued.

## **7 Fines Payable**

The fine is £60 if paid within 21 days of receipt of the notice; rising to £120 if paid within 28 days. The payment must be made in full – part payments will not be accepted - details of how to pay are printed on the Penalty Notice (an invoice served by post is deemed to have been received on the second day after posting it by first class post).

## **8 Failure to pay (Penalty Notice for School Absence)**

If a parent/carer has not paid the Penalty Notice in full before the 28 days allowed, the local authority is required to commence legal proceedings in the Magistrates Court for the original offence of failing to ensure a child attends school regularly unless there are reasons for

withdrawal as stated in Section 6 above. Prosecutions will be brought by the Local Authority under section 444 of the Education Act 1996 which provides for two truancy offences. If found guilty of the basic truancy offence under Section 444(1), the parent could receive a fine of up to £1,000. If, however, a parent is found guilty of the aggravated truancy offence under Section 444(1A) they may face imprisonment for a period not exceeding three months, a fine of up to £2500 or both.

### **9 Failure to pay (Penalty Notice for Exclusion)**

If a parent/carer has not paid the Penalty Notice in full before the 28 days allowed, the local authority is required to commence legal proceedings in the Magistrates Court for the original offence of failing to ensure a child is not in a public place during the 'specified days of exclusion' unless there are reasons for withdrawal as stated in Section 6 above.

If found guilty under Section 103 of the Education and Inspections Act, the parent carer could receive a fine of up to £1,000

### **10 Right of Appeal**

Under the Regulations, parents have no right of appeal against the Penalty Notice but if they believe it to be wrongly issued or need further information and advice, they should immediately contact the Local Authority.