

**CHILDREN AND YOUNG PEOPLES SERVICE**  
**ATTENDANCE MANAGEMENT SERVICE**

**Penalty Notice Code of Conduct – October 2018**

**1. Legal Basis**

- 1.1 **The Anti-social Behaviour Act 2003** contains provision for the issue of **Penalty Notices** for cases of unauthorised absence from school. **Section 23** of that Act empowers designated Local Authority officers, Head Teachers (including Deputy and Assistant Head Teachers nominated by them) and the Police to issue the aforementioned Penalty Notices.

In consultation with and following agreement from schools, the administration of the Penalty Notice Process will be undertaken by the Local Authority (Newham Council), who will process Penalty Notice requests received from the school.

- 1.2 The Local Authority (LA) has primary responsibility for producing and overseeing the Penalty Notice Code of Conduct (“the Code of Conduct”) and ensuring consultation takes place with governing bodies, head teachers and the chief officer of police for the area in adopting the code.
- 1.3 The education-related provisions of the Anti-Social Behaviour Act 2003 apply to all parents who fall within the definition set out in Section 576 of the Education Act 1996. This defines ‘parent’ as:

1. All natural parents, whether they are married or not.
2. Any person who, although they are not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person.
3. Any person who, 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 the child, irrespective of what their relationship is with the child, is considered to be a parent in education law.

Throughout this document, references to ‘parent’ mean each and every person coming within the definition, whether acting jointly or separately, and should not be taken to mean that provisions only apply to ‘parent’ in the singular.

**2. Reasons for Introduction**

- 2.1 Research published by the Department for Education in February 2015 found that even short breaks from school can reduce a pupil’s chances of succeeding at school by as much as a quarter.
- 2.2 The research, based on extensive pupil absence figures and both GCSE and primary school test results, highlights the importance of clamping down on

pupil absence to ensure more pupils regularly attend school, and ultimately leave with the qualifications needed to succeed in modern Britain.

- 2.3 It shows 44% of pupils with no absence in key stage 4 (normally aged 16) achieve the English Baccalaureate - the gold standard package of GCSE qualifications that includes English, maths, science, history or geography and a language - opening doors to their future. But this figure falls by a quarter to just 31.7% for pupils who miss just 14 days of lessons over the 2 years that pupils study for their GCSEs, which equates to around 1 week per year, and to 16.4% for those who miss up to 28 days.
- 2.4 The same pattern is also seen at primary school level, where pupils missing up to just 14 days of school in key stage 2 (normally age 11) are a quarter less likely to achieve level 5 or above in reading, writing or maths tests than those with no absence.
- 2.5 Regular attendance at school is a legal requirement and **Section 444 (1) and 444 (1A) of the Education Act 1996 and Section 36 of the Children Act 1989** already exist to enforce attendance through the Courts in appropriate circumstances. The legal responsibility for compliance with these Acts rests with the parents and courts have the powers to fine, imprison or impose various orders.
- 2.4 Where difficulties arise with school attendance, support from schools is available to assist both family and school to resolve these difficulties. In addition, SEN support, mentoring, parenting support through a raft of voluntary agencies as well as support from Social Care exists to enable adults to parent effectively so that children can achieve to their full potential.
- 2.5 In the small minority of cases where parents are unwilling to ensure their children's regular attendance at school and to engage with support networks, sanctions are necessary. Such sanctions are not intended as punishment but rather as a means of persuading the parents to recognise their responsibilities, comply with the law and ensure their children's access to education.
- 2.6 In the Supreme Court case of *Isle of Wight Council (Appellant) v Platt (Respondant)* ([2017] WLR(D) 269, [2017] 2 Cr App R 13, [2017] ELR 413, [2017] 1 WLR 1441, [2017] 3 All ER 623, 181 JP 237, [2017] UKSC 28, (2017) 181 JP 237), the court defined "regular attendance" as "in accordance with the rules prescribed by the school". Newham Council also recognises and shares the Supreme Court's view that a sensible approach must be taken that doesn't result in prosecution for "a very minor or trivial breach of the law". This code of conduct therefore aims to ensure that penalty notices are issued appropriately to address minor to medium breaches of the law.

### 3. Use of Penalty Notices

- 3.1 Penalty Notices will only be issued for cases of **unauthorised** absence or in the case of pupils who have been **excluded** from school and are found in a public place without good reason. When a Penalty Notice is issued for cases of unauthorised absence, the defences in law against the offence remain the same as for the substantive offence under Section 444 (1) and 444 (1A) of the

Education Act 1996. Any defence against conviction on this charge is very limited and the matter is dealt with in a Magistrates' Court.

3.2 Penalty notices are more effective with less entrenched cases and will not be used for cases meeting the local authority statutory intervention criteria of 80% or less attendance in the last 12 school weeks.

3.3 The local authority is required to set out the maximum number of penalty notices which may be issued to each parent in any 12 month period. For these purposes the local authority has set the maximum at one penalty notice for each parent with no restriction on the number of warnings issued, **although more than one penalty notice can be issued in a 12 month period in instances relating to multiple occasions of unauthorised leave taken during term time.** Should the issue of a Penalty Notice fail to improve attendance, consideration will be given to a prosecution.

**N.B.** It is not a defence for the parent to say that s/he was unaware of the absences or the pupil being out unsupervised during an exclusion from school. Parents are expected to know where their children are on a daily basis and there is no duty, in law, on the school or the LA to advise them of their child's absence.

### 3.4 Specific Conditions

**Children Looked After:** Newham Council does not include Children Looked After in the Penalty Notice process. Where there are concerns over attendance with a child in Newham Council or other Local Authority care, a review should be held to determine that appropriate provision is in place and whether changes need to be made to better engage the young person with their education.

**Special Education Needs (SEN):** For pupils in receipt of an Education, Health and Care Plan or High Needs SEN funding, an early review should be held before considering a Penalty Notice or other legal action. This is to determine that appropriate provision is in place and whether changes need to be made to better engage the young person with their education.

## 4. Key considerations prior to the issue of a Penalty Notice

4.1 In the case of absence from school, a penalty notice should be considered if the parent is judged capable of securing better attendance but is not willing to accept that responsibility and it is considered likely to improve the pupil's attendance.

4.2 This judgment is based on the parental response to warnings issued by the LA and the school regarding their child's poor attendance and their engagement with the school and/or attempts to improve attendance.

4.3 Parents who do not heed warnings or respond to efforts to deal with their child's absences may be adjudged to have failed in their duty and will receive a Penalty Notice for each individual parent and for each child with unauthorised absence.

- 4.4 This Code of Conduct gives due regard to the Human Rights Act and DfE Regulations and Guidance.
- 4.5 LA's, schools and the police must demonstrate regard to the Human Rights Act and ensure they apply their powers fairly and consistently and in the case of penalty notices, the local code of conduct must be seen to fully comply with the Human Rights Act.
- 4.6 The purpose of the local Code of Conduct is to ensure that the powers are applied consistently and fairly and therefore the LA will only issue penalty notices on behalf of schools in the circumstances detailed in **Section 5**.
- 4.7 Under the Education (Pupil Registration) (Amendment) Regulations 2013 Headteachers may not grant any leave of absence during term time unless there are exceptional circumstances. Headteachers should determine the number of school days a child can be away from school if the leave is granted.
- 4.8 It is for Headteachers to determine if the request is Exceptional. Legislation requires that each request is judged on a case by case basis.**
- 4.9 The DfE expects that head teachers will use their discretion sparingly. Head teachers should not fetter their discretion by applying policies (for example, blanket bans) which might suggest that each application has not been considered on its individual merits.
- 4.10 The LA must have regard to a parents' ability to pay any Penalty Notices issued and, in situations where there is more than one non-attending child and/or parent in a family, the impact of multiple notices must receive careful consideration. However, financial circumstances alone will not prevent the issue of a Notice. **The decision to issue a fine to both parents will take into account the considerations set out in section 6 below.**
- 4.11 Before a Penalty Notice is issued it must be evident that the matter is capable of proof in the Magistrates' Court so that in the event of non-payment of the charge the parent/carer can be prosecuted.

## **5. Cases where issuing a Penalty Notice may be considered:**

### **5.1 Poor School Attendance: (Also see Paragraph 6.1)**

The pupil has 6 or more sessions of unauthorised absence in the 6 weeks (60 Sessions) prior to a notice being requested

**and**

Their attendance has not been below 80% (24 sessions of absence) in the last 12 weeks (120 Sessions) prior to a notice being requested.

The pupil has been stopped on a School Attendance and Exclusion Sweep (also known as Truancy Patrol) on more than one occasion, with no justified reason for absence. (See Section 6.3)

### **5.2 Unauthorised Leave of Absence during term time: (Also see Paragraph 6.2).**

A leave of absence of three days (6 sessions) or more was taken during term time without the school's consent in the 6 weeks prior to a notice being requested.

### **5.3 In case of an Excluded Pupil (Also see Paragraph 8.4)**

The pupil is found unsupervised in a public place during school hours during the first 5 days of exclusion without good reason.

Good reason might include attendance at a medical appointment, YOT appointment or other appointment with a statutory or voluntary agency.

### **5.4 In the case of a Non-Court Disposal**

A penalty notice may be issued as an alternative to legal action through the magistrates court in the following circumstances:

- Evidence of intervention has been supplied by the pupil's school and/or the Local Authority;
- The Local Authority is satisfied that an offence has been committed under Section 444(1) Education Act 1996;
- There are no "aggravating" factors which would suggest that a Penalty Notice is not appropriate, including the parent having previous school attendance related convictions.
- There is evidence that the child's attendance has improved, but that unauthorised absence is still occurring "infrequently" (Less than 6 sessions in the last 6 weeks).

## **6. To assist Head teachers in applying their powers fairly and consistently the LA expect the following check list be applied**

### **6.1 Poor attendance**

Although the LA does not condone any unauthorised absence, the criteria for issuing a penalty notice have been set to take into account the level of unauthorised absence that justifies the instituting of Magistrate Court proceedings in the event that the Penalty Notice remains unpaid.

#### **Consider**

- Has the parent been regularly contacted by the school to establish the reasons for absence or is there established parental non-engagement in response to phone calls, letters or invitations to school based meetings.
- Could there be underlying issues which need to be explored with the parents at a school based meeting to identify if any support is required.
- When parents are separated and do not live at the same address, establish how much involvement each parent has in caring for the child/ren. If one parent has little involvement, consider whether it is in the public or family's interest to issue a fine to both parents.

- **Parents/Adults over the age of 18 who live at the same address as the pupil will be equally responsible for the pupil's attendance and consideration should be given for requesting penalty notices for each individual adult.**

## 6.2 Leave of Absence

### *Consider*

The family's circumstances and the likely benefits to the child and family, taking into account social, emotional and cultural reasons;

The likely detrimental impact on the child's social, emotional and intellectual development, attainment level and any SEN.

Meeting parents to explore exceptional circumstances such as bereavement, funerals abroad, unavoidable cause (illness/flight delays) to determine the reasonableness of delay to return and allow parents the opportunity to provide appropriate evidence. This is to reduce the need for subsequent Local Authority Penalty Notice withdrawals based on retrospective evidence;

Siblings in other Newham schools. Liaise with other schools in individual cases to agree a consistent approach in considering term-time holiday request and penalty notice;

The child's previous attendance record;

Consider exceptional circumstances put forward by the parent, explicitly setting out considerations taken by the school in a letter to the parent confirming when requests are unauthorised.

The Local Authority advises schools that no leave of absence should be authorised for children unless exceptional circumstances apply.

**Notices can be issued without warning where schools can show that a leave of absence was taken during term time without the consent of the Head Teacher and the parent was made aware in writing of the decision to unauthorise the period of absence, the reasons why (including details of any evidence), and the possible consequences, including the issuing of a fixed penalty notice.**

## 6.3 For pupils stopped during a School Exclusion and Attendance Sweep (Truancy Patrol)

### *Consider*

- Ensuring that there are no genuine reasons for the absence and any underlying issues which may need school based support.
- Arranging a parent meeting on the first occurrence of established unauthorised absence and warn of the risk of receiving a penalty notice. Penalty notices for pupils stopped twice during a sweep will act as a trigger to consider a penalty notice.

## 6.4 Non-Court Disposal

A penalty notice may be used in circumstances where it is it may be more appropriate to make use of a non-court disposal than to seek legal proceedings via the magistrates court,

In such instances, the expectation is that a request for legal action, together with supporting evidence, would have been submitted to the Local Authority in order to establish that an offence has been committed.

No warning letter will be issued in this circumstance, as the parent would have already have been informed that may be committing an offence, and that legal action may be sought.

The Local Authority may only make use of the PN as a non-court disposal, according to Section 447 of the Education Act 1996.

## 7. School action prior to requesting the issuing of a Penalty Notice

- 7.1 The School's Governing Body has endorsed the operation of the penalty notice scheme;
- 7.2 The School's Attendance Policy clearly explains the criteria and process for addressing poor attendance, and the expectation is that all children should attend every day that the school is open except for sickness, unavoidable causes, religious holidays, absences authorised by the school, local authorities' failure to make statutory travel arrangements, or, where the child has no fixed abode, the parent's need to travel for business (subject to certain conditions). **Ultimately, no sessions of unauthorised absence are acceptable, and where an exception may apply, the parent will be asked for evidence to collaborate this.**
- 7.3 The School has fully considered any extenuating circumstances and has established there are no justified causes for the absences;
- 7.4 A written notice has been sent to parents informing them of the consideration to refer to the Local Authority to issue a penalty notice;
- 7.5 While the Head teacher can delegate the authority to a member of staff to make penalty notice referrals on their behalf, all referrals must be authorised by a member of the Senior Leadership Team to ensure that referrals are made in line with the protocol.
- 7.6 It is good practice to ensure that parents are reminded on an annual basis of the school's policy on attendance, including the existence of Penalty Notices.

## 8. Procedure for the issuing of Penalty Notices by the Local Authority

- 8.1 Schools considering referring cases to the Local Authority for Penalty Notices to be issued for unauthorised absences will need to follow the process below.

### 8.2 Required documentation

### **If Penalty Notice is in relation to unauthorised absence:**

- **A fully completed penalty notice request e-form;**
- **A copy of a general absence letter**, making parent aware of absences and consequences of continued unauthorised absence
- **A copy of a penalty notice warning letter**, making parent aware of the continued unauthorised absences, that a penalty notice may be requested from, and issued by, LB Newham should any further unauthorised absence occur. **NB** This letter must be dated during the absence period this referral relates to.
- **Attendance certificate** covering the "offence period" only. This certificate must be signed and dated by the head teacher.
- **Attendance certificate** covering the last 12 months.
- **Any additional evidence** in relation to the absence i.e. letter from parent etc.

### **8.3 If Penalty Notice is in relation to an unauthorised leave of absence:**

- **A fully completed penalty notice request form;**
- **Term-time leave request** submitted by Parent;
- **A refusal of leave letter** from the school should be sent outlining:
  - a. the exceptional circumstances the school has considered;
  - b. setting out the reasons for refusal;
  - c. Including a statement regarding the consequences of taking an unauthorised holiday, including the issuing of a penalty notice if a pupil continues to be absent during this period.
- **Attendance certificate** covering the unauthorised leave period only. This should be signed and dated by the head teacher;
- **Attendance certificate** covering the last 12 months
- **Any additional evidence** in relation to the absence i.e. letter from parent etc.

#### **OR**

If the parent has not applied for a leave of absence, but the school ascertains after a period of absence that this should have been unauthorised, a refusal of leave letter explaining how the school came to this decision together the points a) to c) listed above.

### **8.4 If a Penalty Notice is in relation to an Excluded Pupil found unsupervised in a public place during school hours in the first 5 days of exclusion without good reason**

- **A copy of exclusion letter** sent to the parent in relation to the child. The letter must include a statement notifying the parent of their responsibilities during the first 5 days of the exclusion together with the consequences of non-compliance, including the issuing of a penalty notice if the child is seen in a public place during the first 5 days of an exclusion.
- **Attendance certificate** demonstrating that the child was absent due to an exclusion during the day in question.
- **A written statement(s)** from the witness(es) documenting their



account in relation to seeing the child in public. The statement must include details of the location, date and time that the child was seen, and how the witness knew / recognised the child. Statement must also state that the witness is happy to appear in court if necessary to provide their account in front of the Magistrates.

- **Supporting evidence**, including any photographic / video footage of the child present in a public place.

If a penalty notice remains unpaid, a witness statement **must** be provided by a member of staff from with the School or Attendance Management Service and/or a Police Officer/Community Support Officer who stopped the excluded pupil in a public place during school hours.

8.5 The above will be used as evidence in court should the penalty fine remain unpaid. The Parent(s) will be then be prosecuted for an offence under Section 444(1) Education Act 1996 (Poor Attendance) **or** Section 103(3) Education and Inspections Act 2006 (Excluded Pupil stopped in public place).

### **8.6 Local Authority action on receipt of referral – Poor Attendance**

The LA will produce a Warning Letter within 5 working days of receiving a referral for distribution to the parents/carers of pupils who have been identified as meeting the criteria. This letter will clearly set out the circumstances whereby a Penalty Notice can be issued and the consequences for failure to pay within the required time scale.

8.7 Warnings will be recorded on a database, potential duplication checked and cases monitored for actions to take place within the prescribed timescales.

8.8 Parents of Pupils, who at the point of referral have had 6 or more unauthorised absences over the previous six weeks for poor attendance or lateness, will be sent a warning letter, outlining that their attendance will be monitored for 30 Sessions (15 school days). No more than one session of unauthorised absence should occur following this warning during the monitoring period.

8.9 Should 2 or more unauthorised absence occur during the monitoring period, the decision whether to issue a Penalty Notice will be authorised by a member of the AMS Management Team or an authorised person in their absence following consultation with the school.

8.10 An offence is committed by an individual parent for each individual child's unauthorised absence. To ensure each parent is aware of their legal duty, each parent will be written to individually and will receive a separate Warning Letter and Penalty Notice for each child they are responsible for.

8.11 Where a Penalty Notice is issued, it will be sent by the Attendance Management Service (AMS) via **First Class** post to the parent's last known address. The database will be checked before the issue of the Notice in order to avoid duplication.

### **8.12 Local Authority action on receipt of referral - Unauthorised Leave of Absence**

Penalty Notices for unauthorised leave of absence during term-time will be issued without a Warning Letter. The school's letter confirming the refusal of the request will have acted as a warning and raised parental awareness of the unauthorised holiday and the risk of receiving a penalty notice.

- 8.13 Where a Penalty Notice is issued, it will be sent by the AMS within 5 working days of the referral being received via **First Class** post to the parent's last known address. The database will be checked before the issue of the Notice in order to avoid duplication.
- 8.14 Penalty Notices will be issued to the parents of pupils registered at Newham schools, irrespective of their actual home address. This also means that follow-up prosecutions where parents fail to pay the Notice or to improve their children's attendance will extend to families resident outside the Borough. Newham AMS will notify the 'home' authority of all pupils resident outside of Newham if a prosecution is undertaken. Penalty Notices will not be issued to parents whose children are not on roll of a Newham school.

## **9. Withdrawal of a Penalty Notice**

- 9.1 The LA will withdraw any Notice issued if one or more of these conditions exist:
- (a) that authority determines that—
    - (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
  - (b) it appears to the authority that the notice contains material errors

Where any of the above occurs, written notice of the withdrawal shall be given to the recipient and any monies paid over shall be fully refunded.

## **9.2 The Decision to Prosecute will be taken in line with the Code for Crown Prosecutors**

The Code is issued by the Attorney General which states that the decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order and therefore careful consideration will be given before agreeing to institute court proceedings under Section 444 of the Education Act 1996

## **9.3 General Principles:**

Each case is unique and must be considered on its own.

The right person is prosecuted for the right offence which underlines the importance of having up to date information on school records of all those with parental responsibility as well as day-to-day care and supervision. It is essential that schools regularly up-date their contact details.

There is sufficient evidence to provide a realistic prospect of conviction and consideration must be given to what the defence case may be and how that is likely to affect the prosecution case.

Is the evidence reliable? It is therefore essential that schools ensure that they are satisfied with the accuracy of the register and registration codes used.

#### **9.4 There are also Public Interest factors against prosecution which must be considered:**

The offence was committed as a result of a genuine mistake or misunderstanding;

A prosecution is likely to have a detrimental effect on the victim's physical or mental health;

The defendant is suffering from mental or physical ill-health;

It is considered that there is insufficient evidence to provide a realistic prospect of conviction;

At the point of considering issuing a penalty notice the above principles should be taken into account. However should these issues only come to the notice of the school or LA once the notice has been issued, a withdrawal will be considered in discussion with the school's Attendance Lead

9.5 When a Notice is withdrawn, no proceedings under Section 444 of the Education Act 1996 shall be instituted against the recipient in respect of the period covered by the original Penalty Notice.

#### **10. Payment**

10.1 Arrangements for payment will be detailed on the invoice attached to the Penalty Notice.

10.2 A Penalty Notice shall be for the sum of **£60** if paid within 21 days rising to **£120** thereafter until the final deadline of 28 days.

10.3 Part Payments or Payment plans are not acceptable and fines must be paid in full within 21/28 days.

10.4 Payment in full of the Penalty Notice discharges the parent's legal responsibility for the period of unauthorised absence outlined in the Notice and the parent cannot be subsequently prosecuted for that period.

10.5 Any revenue arising from the issue of Penalty Notices will be retained by the LA to offset the costs involved in their issue or any subsequent prosecutions arising from non-payment.

10.6 Payment after the deadline may be accepted in exceptional circumstances. In this situation the higher amount of £120 is usually payable and part payment or payment plans continue to not be acceptable.

#### **11. Non Payment**

11.1 The offence detailed in the Penalty Notice must be capable of proof in the Magistrates' Court so that in the event of non-payment of the charge the parent/carer can be prosecuted. Non-payment of Penalty Notices within the prescribed time limits will result in the initiation of a criminal investigation and possible prosecution under Section 444(1) of the Education Act 1996 for the original offence detailed in the penalty notice.

**For more information and guidance consult the DfE Guidance available for download from:**

<https://www.gov.uk/government/publications/parental-responsibility-measures-for-behaviour-and-attendance>

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