

# CODE OF CONDUCT

## Penalty Notices

For Parents of Pupils Absent from School

Education Act 1996 and Education and Inspection Act 2006



### 1. INTRODUCTION

- 1.1 The purpose of this Local Code of Conduct is to ensure that statutory powers are applied consistently and fairly across the Local Authority area and that suitable arrangements are in place for the administration of the issuing of Penalty Notices.
- 1.2 The Government requires Local Authorities to issue a Code of Conduct to all schools.
- 1.3 This Code of Conduct has been written in light of 'Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices' - Revised Edition 2007, and Education (Pupil Registration) (England) Regulations 2006 (Amended 2013).
- 1.4 The London Borough of Sutton Code has been agreed following consultation with:
- Sutton Local Authority – School Attendance Service;
  - Representatives from Governing Bodies and Headteachers of Sutton Schools;
  - The Sutton division of the Metropolitan Police Service;
  - South London Legal Partnership (SLLP) Legal Services.
- This is in accordance with the Education (Penalty Notices) Regulations 2004 and Anti-Social Behaviour Act 2003 Section 23 Subsection (1).
- 1.5 Anyone issuing a Penalty Notice to a parent<sup>1</sup> of a child of statutory school age on roll at a Sutton school, must do so within the terms of this Code.
- 1.6 The key consideration in deciding whether to issue a Penalty Notice will be whether it can be effective in helping to improve the pupil's

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<sup>1</sup> All those defined as a parent under Section 576 Education Act 1996 are parents for the purpose of these provisions. This means that all natural parents, whether they are married or not; any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person; and 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. 'Parent' means each and every parent 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.

As with prosecutions under Section 444 Education Act 1996 a Penalty Notice may be issued to each parent liable for the offence.

attendance. The School Attendance Service will also consider whether the Local Authority is likely to be willing and able to prosecute, should the parent fail to pay the penalty.

## **2. LEGISLATION**

2.1 The Anti-Social Behaviour Act 2003 inserts into the Education Act 1996 Section 444A and Section 444B enabling authorised personnel to issue Penalty Notices as an alternative to prosecution under Section 444, and enable parents to discharge potential liability for conviction for that offence by paying a penalty.

### **2.2 What is a Penalty Notice?**

Penalty Notices are fines that can be issued by a Local Authority or a school to parents for their child's unauthorised absence from school.

### **2.3 When is a Penalty Notice appropriate?**

- Parents of a registered pupil whose child fails to attend school regularly, without reasonable justification, are committing an offence under Section 444 of the Education Act 1996. A Penalty Notice for irregular attendance can be issued where the parent is capable of, but unwilling to secure an improvement in their child's school attendance.
- Where a parent fails, without a reasonable excuse, to ensure that their excluded child is not present in a public place during school hours in the first five days of any exclusion, then she or he is committing an offence under Section 103 of the Education and Inspections Act 2006.

2.4 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 1996. This defines 'parent' as:

- (i) all natural parents, whether they are married or not;
- (ii) 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;
- (iii) 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.

### **2.5 Specific Conditions**

**Children Looked After:** The London Borough of Sutton does not include Children Looked After in the Penalty Notice process. Where there are concerns over attendance with a child within the London Borough of Sutton 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 Educational Needs (SEN):** For pupils with an Education Health & Care Plan, 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.

### **3. RATIONALE**

- 3.1 Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities. In law an offence occurs if a parent fails to secure a child's attendance at school at which they are a registered pupil and that absence is not authorised by the school. Parents are supported at school and Local Authority level to overcome barriers to regular attendance.

### **4. AUTHORISATION TO ISSUE PENALTY NOTICES**

- 4.1 Primary responsibility for issuing Penalty Notices rests with the Local Authority through the School Attendance Service.
- 4.2 In Sutton it has been agreed that the Police will not issue Penalty Notices to parents of truants, and neither will schools. If Headteachers feel it appropriate that a Penalty Notice is served, they therefore must consult with and refer to the School Attendance Service.
- 4.3 This will avoid a Penalty Notice being issued when the Attendance Service may already be instigating legal proceedings for unauthorised absence from school.
- 4.4 It has been agreed that the School Attendance Service, on behalf of Sutton Local Authority, will therefore issue Penalty Notices. The Service will administer the scheme from any funds obtained as a result of issuing Penalty Notices.
- 4.5 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 **two** Penalty Notices for each parent for each individual child (with no restriction on the number of Warnings issued), although more than one Penalty Notice can be issued in a 12-month period in circumstances relating to multiple leave of absence (i.e., unauthorised holidays during term time).

Should the issue of a Penalty Notice fail to improve attendance, consideration will be given to a prosecution.

**NB** It is not a defence for the parent to say that she/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 Local Authority to advise them of their child's absence.

## **5. CIRCUMSTANCES IN WHICH A PENALTY NOTICE MAY BE ISSUED**

5.1 Penalty Notices apply to pupils of statutory school age, which finishes on the last Friday in June of Year 11.

Within Sutton it has been agreed to use Penalty Notices in the following circumstances:

### **5.2 Penalty Notices for Unauthorised Absence from School**

London Borough of Sutton uses Penalty Notices to safeguard the education of children, and to influence the improvement of identified cases of poor attendance patterns at school.

The School Attendance Service will consider the issue of Penalty Notices to parents. This will be where:

- there has been a Referral to School Attendance Service from the school as part of the school's processes to address poor attendance patterns;
- 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 Education Act 1996;
- where overall absence, within the previous six months, has fallen to 85% or below (15% or more absence);
- at least 50% of that absence remaining unauthorised;
- or, where there have been at least 10 sessions of unauthorised absence within the previous six weeks.

### **5.3 Required Documentation for Each Child**

#### **If a Penalty Notice is in relation to Unauthorised Absence:**

- A fully completed Penalty Notice Referral form.
- A Registration Certificate – to include previous 12 months.
- A Certificate of Attendance.
- A copy of the school's Warning letter to the parents, warning that a referral may be made to the Local Authority to issue a Penalty Notice.

### **5.4 Excluded pupils identified in a public place during specified days of exclusion:**

When a pupil is excluded from school, either for a fixed period exclusion or a permanent exclusion, the parent is responsible for

ensuring that their child is not found in a public place during normal school hours on the specified days of the exclusion. Truancy Patrols take place regularly in Sutton, carried out by Attendance Officers in partnership with the Police.

If an excluded pupil is stopped in a public place by the Truancy Patrol during the specified days of their exclusion, the School Attendance Officer on patrol can refer for a Penalty Notice to be issued under Section 103 of the Education and Inspections Act 2006.

Pupils on roll at a school outside Sutton will be referred to the attendance service in the Local Authority where they are on roll.

#### 5.5 **Holidays in term time without permission**

The Education (Pupil Registration) (England) Regulations 2006, amended in September 2013, removes references to family holiday and extended leave as well as the previous statutory threshold of ten school days. The amendments make it clear that 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. It is at the Headteacher's discretion to authorise such leave of absence.

5.6 It is for each school, with their Governing Body, to decide whether they wish to issue Penalty Notices for unauthorised leave of absence in term time. Where Penalty Notices will be issued, schools must ensure that all relevant literature is provided to parents, such as the school Prospectus, Attendance and Behaviour Policies, Home School Agreements, Newsletters; and website information includes the warning that parents may be issued with a Penalty Notice if leave of absence is taken without permission.

5.7 If a Headteacher does not authorise a request for leave of absence, s/he will send a letter to the parent confirming this decision, which includes a warning that a Penalty Notice may be issued.

5.8 If leave of absence is then taken without authorisation, school may choose to complete a Penalty Notice Referral. Penalty Notice Referrals must be agreed and signed by the Headteacher. Referral forms should be sent to the Penalty Notice Officer at the School Attendance Service, for receipt within 2 weeks of the holiday being completed. All Referrals will be considered for Penalty Notice issue.

5.9 Penalty Notices for any unauthorised leave of absence in term-time can be requested by the Headteacher. The Headteacher should act in accordance with the school's Policy and must take

Into account all considerations recommended in the National Guidance<sup>2</sup>. The School Attendance Service Court Officer / Penalty Notice Officer may decline to issue a Notice where such considerations have not been made.

The Local Authority will consider the following case disposals :

- Penalty Notice
- Warning
- Formal Caution
- Court Proceedings
- NFA

## **6. ISSUING OF PENALTY NOTICES**

6.1 The issue of a Penalty Notice for unauthorised absence must be preceded by a formal letter to the parent. This letter will:

- Raise concerns regarding the level of unauthorised absence, and giving advice regarding contact with the school / School Attendance Officer.
- Remind the parent of their responsibility for ensuring their child maintains full and regular attendance at school, in accordance with Section 444 of The Education Act 1996, and that failure to do so could result in legal action being taken.
- Advise the parent of the powers of the Local Authority to issue Penalty Notices.
- State the specific absences which will give rise to the formal warning.
- Notify the parent that continued unauthorised absence may lead to the issue of a Penalty Notice or other legal action.

6.2 It for Headteachers to determine if the request is Exceptional. Legislation requires that each request is judged on a case by case basis.

6.3 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.

## **7. NUMBER OF PENALTY NOTICES TO BE ISSUED FOR TRUANCY OR UNAUTHORISED ABSENCE**

7.1 Sutton will issue no more than **two** penalty notices per pupil with high levels of unauthorised absences in a 12-month period.

If the law continues to be broken around school attendance, the School Attendance Service legal intervention process will be considered.

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<sup>2</sup> 'Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices' DfES 2007, p39

## **8. PAYMENT OF PENALTY NOTICES**

- 8.1 The penalty for each parent is £60 for each child if paid within 21 days of receipt of the notice, rising to £120 if paid after 21 days but within 28 days of receipt of the notice. (Service by post is deemed to have been effected, on the second working day after posting the Notice by first class post, unless the contrary is proved.)
- 8.2 All penalties are paid to the Local Authority to cover the administration costs of issuing and enforcing penalties and the prosecution of recipients who do not pay their penalty.
- 8.3 The arrangements for the paying of penalties will be detailed on the Penalty Notices.
- 8.4 If the penalty is not paid in full by the end of the 28-day period the School Attendance Service will consider prosecution for the offence to which the Notice applies. The prosecution is not for non-payment of the Notice but is a prosecution for irregular school attendance – Education Act 1996 Section 444.
- 8.5 There is no statutory right of appeal against the issuing of a Penalty Notice.
- 8.6 A Penalty Notice need not be served before any prosecution can take place.

## **9. WITHDRAWAL OF PENALTY NOTICES**

- 9.1 A Penalty Notice can only be withdrawn in the following circumstances:
- where it ought not to have been issued, i.e. where it has been issued outside the terms of the local Code of Conduct or where no offence has been committed;
  - where it has been issued to the wrong person;
  - where it contains factual errors;
  - where new evidence or information has come to light after the initial application, that warrants the withdrawal of the Penalty Notice.