

## **Southampton City Council Directorate of People**

### **Code of Conduct for the use of Penalty Notices in Cases of Non-Attendance at School 2017/2018**

THIS CODE OF CONDUCT IS INFORMED BY THE EDUCATION (PENALTY NOTICES) (ENGLAND) REGULATIONS 2007/1068, AND AMENDMENTS 2012/1046 AND 2013/757 AND SHOULD BE READ IN CONJUNCTION WITH THE GUIDANCE TO SCHOOLS DOCUMENT PRODUCED BY SOUTHAMPTON EDUCATION WELFARE SERVICE.

#### **1. Introduction and Rationale**

- 1.1 The Anti-Social Behaviour Act 2003 introduced guidance and legislation to supplement existing sanctions, under Section 444 of the Education Act 1996 and Section 36 of the Children Act 1989 (Education Supervision Orders), to aid schools and Local Authorities to enforce attendance at school. This includes additional powers in the form of Penalty Notices for non-attendance, where appropriate.
- 1.2 Southampton City Council is committed to raising attendance in order to maximise the educational possibilities available to pupils.
- 1.3 Many cases of non-attendance can be resolved through effective partnership working with parents, individual pupils, schools and other agencies. However, if non-attendance cannot be resolved, or parents actively prevent, or fail to ensure that their children access education; legal sanctions may need to be considered.
- 1.4 Penalty Notices are an opportunity for the Local Authority to highlight a level of expectation in pupils' attendance and reinforce that continued parental failure to ensure children attend school will not be tolerated. As a sanction, they are used to promote better school attendance and are an alternative to the prosecution of the parents for failing to ensure their child regularly attends school.
- 1.5 Penalty Notices offer a swift intervention, which may be used to combat unauthorised absence before it becomes entrenched. A key consideration should be whether it would be effective in helping to return the pupil back into school.
- 1.6 The purpose of this Code of Conduct is to ensure that powers are applied consistently and fairly across the Local Authority taking into consideration any social, mental health, special educational needs and/or anti-discriminatory issues. The issuing of Penalty Notices must conform with all requirements of the Human Rights Act and all Equal Opportunities legislation.

## 2 Legal Basis

- 2.1 The Education (Penalty Notices) (England) Regulations 2007 came into force on 1 September 2007 with the latest amendment coming into force on 1 September 2013. Section 23 of the Anti Social Behaviour Act 2003 empowers designated Local Authority officers, Head Teachers (plus Deputy/ Assistant Head Teachers authorised by their Head Teachers) and the Police to issue Penalty Notices in cases of unauthorised absence from school. In Southampton, the Issuing Officer will be an officer within Southampton City Council's Legal and Governance department and all such officers will be duly authorised by Southampton City Council to issue penalty notices.
- 2.2 The Education (Penalty Notices) (England) Regulations 2007 require the Local Authority to consult with all of the above, to develop a Code of Conduct when issuing Penalty Notices. Any person issuing a Penalty Notice must do so within the terms of this Code of Conduct.
- 2.3 An offence occurs if a parent/carer fails to secure a child's regular attendance at the school at which they are a registered pupil, of compulsory school age and that absence is not authorised by the school.
- 2.4 Within this Code of Conduct a parent is defined as per Section 576 of the Education Act 1996:
- All natural parents, whether married or not.
  - Any person who, although not a natural parent, has parental responsibility/care for a child/young person as defined in the Children's Act 1989 through a Court Order, formal agreement, Residency Order, adoption or the child's legal guardian
  - Any person who, although not a natural parent, has care of a child/young person and considered to be a parent in education law.
- 2.5 A Penalty Notice will normally be issued per child to each parent liable for the offence or offences, unless the Council considers there are exceptional circumstances to reduce the number of penalty notices
- 2.6 A Penalty Notice offers an alternative to prosecution, enabling parents to discharge potential liability for a criminal conviction by paying a penalty.

## 3. Circumstances where a Penalty Notice May be Issued

- 3.1 A Penalty Notice can only be issued in cases of **unauthorised** absence and careful consideration should be given as to whether issue is likely to secure an improvement in attendance of the child.
- 3.2 Use of Penalty Notices will normally only be issued for 2 separate periods of non-attendance **pupil** in any twelve month period.

If two penalty notices have been issued and paid in relation to a particular child and poor attendance is an ongoing problem, except in exceptional circumstances, information will then be gathered to support a prosecution under Section 444 of

the Education Act 1996 rather than a further Penalty Notice being issued. The Council though reserve the right in appropriate circumstances not to issue a penalty notice for any period of non-attendance and instead commence criminal proceedings.

- 3.3 In cases where families contain more than one child who fails to attend School regularly, Penalty Notices may be issued for more than one child. This may not necessarily be simultaneously but the procedural timescales may overlap. Careful consideration will always be given to multiple issues within the same family.
- 3.4 The issuing of a Penalty Notice may be considered appropriate in the following circumstances:
- Pupils identified on more than one **external Truancy Sweep in a Public Place** in an academic year, without the absence being authorised by the school and the absence being parentally condoned or pupils returned to school by the Police, having been caught truanting. By definition, an external truancy sweep is held in a public place and carried out by a member of Hampshire Constabulary and a Local Authority Officer. The school must ensure that the parent/s are fully notified regarding the exclusion
  - Failure by a parent to ensure the child is not in a public place whilst being excluded from school on more than one occasion.
  - **Unauthorised Absence of 10 or more sessions (5 school days) a singular or combination of the following codes O, U and G during any 80 possible school sessions (8 school weeks).** These do not need to be consecutive days (**please note no request will be accepted if a young person's attendance is under 80%**). Southampton City Council will review each penalty notice request but will use its discretion for each case.
  - **Unauthorised Leave of Absence 10 or more consecutive school sessions (G code only) within the academic year.** In addition where a parent with whom the pupil normally resides has not made a prior application for a leave of absence and there are no exceptional circumstances that warrant the granting of a leave of absence in those particular circumstances. A Penalty Notice will not be issued unless the unauthorised leave of absence is at least 10 sessions (5 school days) consecutively. The Council will ignore any half term school holiday and any end of term school holiday in the calculation of consecutiveness so that if the unauthorised absence occurs before and after a half term or end of term, this will be regarded as consecutive. With the request the School should please include the Leave of Absence form completed and signed by the parent/s and the response from the school declining the leave of absence application.
  - **Late arrival**, after the close of registration, on **10 occasions or more during any 80 possible school sessions (8 school weeks).** School registers will be closed after the registration period in accordance with the School Attendance Policy. A **“U” code** will then be used which denotes an unauthorised absence.

- 3.5 It is important that schools ensure accurate completion of registers and comply with the registration codes as detailed in the new guidance issued from June 2013.

#### 4. Procedure for Issuing Penalty Notices

- 4.1 The Council's Legal and Governance department will receive all requests for consideration of the issue of Penalty Notices. This will ensure consistent and equitable delivery, avoid duplication, retain school-home relationships and allow cohesion with other enforcement sanctions. Requests will be received from schools (approved by Head Teachers or designated officers) and Police and action considered, provided that:
- All relevant information is accurate and supplied in the specified manner on the form and supporting evidence attached. If the form or supporting evidence is inadequate, it will be returned to the School for further consideration, without any further action being taken by the Council.
    - **The registration certificate accompanying the request needs to be accurate, it is a legal document, and as such it should portray the pupil's actual attendance/non-attendance.** (Parents will be advised to contact the school direct if they have a dispute over the accuracy of the registration certificate.) **There is an expectation that school will provide a statement of evidence and may have to attend court if a Penalty Notice is not paid and the case proceeds to court.**
  - The completed request must be submitted to the Council's Legal and Governance department no later than two weeks after the last date of the regular non-attendance which meets the criteria as stated in paragraph 3.4. Failure to do this may mean that the Penalty Notice Request cannot be processed and dealt with in a timely manner.
  - For requests made for absence towards the end of an academic year (for leave of absence only) these must be submitted no later than September 30<sup>th</sup> (in the following academic year). If they are submitted after this date they will not be processed unless there are exceptional circumstances for the late submission of the request.
  - 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 (for example Education Welfare Officer or Social Care involvement) in place or other enforcement sanctions already being processed.
  - The request for consideration for Penalty Notices for Unauthorised Absence (not Leave of Absence) must be received by the Council's Legal and Governance department 20 days before the end of the academic year. In the case of a Year 11 pupil, requests for

consideration for PN must be received 20 days before the last Friday in June.

- 4.2 In cases where a Request for Issue of a Penalty Notice indicates there are other agencies involved with the family, further investigations concerning the agencies involvement will take place by the school before a decision is made.

In the event of non-payment, partial payment or late payment of the Penalty Notice, the Council's Legal and Governance department will consider each individual case and if the legal threshold and public interest test are met a prosecution will be considered.

In cases where school-aged siblings attend a school which is different from the one requesting issue of a Penalty Notice, there is an expectation that further enquiries should be made by the school to ensure that the LA, schools & Academies meet the responsibilities in terms of consistency and fairness.

In cases where there is Education Welfare Officer involvement with the pupil or family, before a decision is made, the school must consult with the EWO case holder who has specific knowledge of the family's circumstances. This consultation must be evidenced and provided with the request for a penalty notice.

- 4.3 Where the criteria for issuing a warning letter or Penalty Notice are met and all up to date information is received, Legal and Governance will process the request.

Schools can request that a warning letter is sent prior to or instead of a Penalty Notice being issued.

- 4.4 If a warning letter is sent for unauthorised absence, then the school must determine what the relevant monitoring period will be (this should be no less than 15 days). The school will then be responsible for monitoring the pupil's attendance. If the school then consider that the attendance does not improve, they can contact Legal and Governance to request that the matter is reviewed. If there has been any change in circumstances or a substantial period of time has elapsed since the warning letter was sent, a new Penalty Notice request form will be required.

- 4.5 Penalty Notices will only be issued by first class post and will not be served personally. Service by post is preferred for evidential reasons and to ensure the Council and Schools meet Health and Safety requirements.

- 4.6 **Alternative action should be discussed with the Education Welfare Service** and all relevant professionals involved with the individual family when Penalty Notices have been issued to a parent/s on 2 occasions in the same academic year.

## 5. **Procedure for Withdrawing Penalty Notices**

Once issued, a Penalty Notice may only be withdrawn by the Local Authority in the following circumstances:

- The Local Authority determines that the Penalty Notice ought not have been issued or
- The Penalty Notice ought not to have been issued to person named as the recipient or
- It appears to the local authority that the Penalty Notice contains material errors.

A Penalty Notice may be withdrawn whether or not the period for payment has expired or not, and whether the Penalty Notice has been paid. Any payment made will be refunded to the person/s who paid it.

A Penalty Notice must also be withdrawn where the Notice has not been paid in full before the expiry of the payment period and the local authority has not instituted or contemplating proceedings for the offence of non-attendance at school for the period of the Notice.

## 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 the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Penalty Notice.

6.3 Payment of a Penalty Notice within **21** calendar days of issue is **£60** and payment after this time but within **22 to 28 calendar days is £120**. The Local Authority have no discretion to allow payment

6.4 The LA retains any revenue from Penalty Notices to cover the issue and enforcement costs, and prosecuting recipients who do not pay in compliance with section 23 of the 2007 Regulations

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

7.1 Non-payment of a Penalty Notice will trigger the prosecution process under the provisions of Section 444(1) (Education Act 1996) unless the local authority does not consider proceedings appropriate in the circumstances and the Penalty Notice is subsequently withdrawn.

7.2 The parent is not prosecuted for the non-payment of the Penalty Notice but for the offence of regular non-attendance at school to which the Penalty Notice related.

## **8. Policy and Publicity**

- 8.1 Deployment of Penalty Notices as a sanction will be included in the Authority's Attendance Policy. All school Attendance Policies should include information on the deployment of Penalty Notices. Steps should be taken to provide parents with clear, accurate information about the new measures as well as their rights and responsibilities under the Section 7 of the Education Act 1996 which:

“places a duty upon parents of a child of compulsory school age to cause that child to receive full-time education and failure to do so may lead to legal action being taken.”

(Reference 2.4.2)

- 8.2 The Council's Education Services within the People Directorate will include information on the use of Penalty Notices and other attendance enforcement sanctions in relevant promotional/public information material.

## **9. Reporting and Review**

- 9.1 The Education Welfare Service will report to the Statutory Director of Children's services on the deployment and outcomes of Penalty Notices.
- 9.2 The Local Authority will formally review Penalty Notice use at the end of each academic year and amend the general enforcement strategy if appropriate.
- 9.3 The LA will continually review and monitor the process, in conjunction with schools, to ensure that the Code of Conduct and the processes adopted successfully meet the needs of all concerned.

## **10. Cross Boundary Issues**

- 10.1 Legal intervention and issue of the Penalty Notice is undertaken by the Local Authority where the pupil attends school.

## **11 Right of Appeal**

- 11.1 There is no statutory right of appeal against the issue of a Penalty Notice.