



## **Code of Conduct under the Provision of The Education (Penalty Notices) Regulation 2004 and Subsection (1) Section 23 Anti-Social Behaviour Act 2003**

**This code of conduct relates to Penalty Notices for absences.**

### **RATIONALE**

- 1 Regular and punctual attendance of pupils at schools is, under section 7 of the Education Act 1996, a legal requirement, parents being responsible for ensuring that any child of compulsory school age receives efficient full-time education that is suitable to the child's age, ability and aptitude and to any special educational needs the child may have. Compulsory school age is defined as: Commencing at the start of term on or after a child's fifth birthday and concluding on the last Friday in June of the school year in which the pupil becomes 16. It is also essential for pupils to attend school regularly in order to maximise the opportunities available to them. The Educational Inclusion & Partnership (EIPT) investigates cases of irregular attendance and instigates statutory intervention where appropriate.
- 2 Under the provisions of subsection (1) of section 23 of the Anti-Social Behaviour Act 2003, in certain cases of unauthorised absence a penalty notice may be issued to the parent(s)/carer(s) responsible. Under these provisions the penalty is £60 if paid within 21 days of receipt of the notice, rising to £120 if paid after 21 days but within 28 days of receipt.
- 3 The EIPT will ensure the administration of justice of the necessary process and in order to fully comply with Article 6 and 8 of The Human Rights Act 1998 and ensure the consistent, fair and transparent application of penalty notices throughout the county. This Code of Conduct will govern the issuing of penalty notices across the county.

### **GUIDANCE AND LEGISLATION**

- 4 The EIPT is authorised to operate this code and must have regard to the following legislation and guidance: -
  - The Race Relations (Amendment) Act 2000
  - The Race Relations (Statutory Duties) Order 2001
  - Disability Discrimination Act 1995
  - Data Protection Act 1998
  - Children Act 1989
  - Crime and Disorder Act 1998
  - Human Rights Act 1998
  - Special Needs Code of Practice 2003
  - Ensuring School Attendance: Guidance on the Legal Measures to Secure Regular School Attendance 2003
  - Education Act 1996

## **Section 576 Education Act 1996: Definition of a Parent**

The education-related provisions of the Anti-Social Behaviour Act 2003 apply to all parents who fall within the definition set out in this section of the Education Act 1996. This defines 'parent' as:

- All natural parents, whether they are married or not.
- 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.
- 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 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.

## **PROCEDURE FOR THE ISSUE OF PENALTY NOTICES**

- 5 The issue of penalty notices will be strictly administered by the EIPT to ensure independence of judicial intervention, proportionality and that the provisions of this code do not have a negative impact on the current forms of statutory intervention pursued by the EIPT. No penalty notice may be issued without prior written warning in the form a written notification by a standard service warning notice unless written notification has been made by the school, which would constitute "written warning".
- 6 The key considerations are:
  - Whether, given the facts of the case the investigating officer believes that the issuing of a penalty notice will be effective in helping to ensure that the parent secures the regular attendance of the child at a place of education.
  - The parent is judged capable of securing their child's regular attendance at school but is not taking responsibility for doing so, for example failing to engage in voluntary or supportive measures.
  - That the notice has been issued only for an offence that the local authority is willing and able to prosecute.
  - The action is proportionate to the level of absence and the six month rule
- 7 Where a standard service notice has been issued at any time within a school year and a further complaint has been received it will only be necessary to issue a reminder notice along with the penalty notice at the point of or prior to issue. This will also apply where parents take a child out of school during term time.
- 8 The EIPT will always issue penalty notices by first class post, as there may be considerable health and safety implications involved in

the operation of a hand/ face-to-face delivery mechanism, but may be delivered by hand where an officer determines the risk appropriate.

- 9 The responsibility of the issue of penalty notice is within the statutory duties of the EIPT. EIPT, via revenue collection mechanisms, will ensure that the issue of penalty notices is closely monitored with the relevant financial penalty being imposed and collected.
- 10 In the case where the penalty has not been paid within 28 days of issue, the EIPT may instigate proceedings under section 444 (1) of the Education Act 1996. The Local Authority, therefore, will have the means to avoid the issue of duplicate notices, to ensure that any action taken is compliant with relevant legislation and that no conflict arises with other statutory interventions applied by the Local Authority in respect of high levels of unauthorised absence.
- 11 No one parent may receive more than two separate penalty notices resulting from the unauthorised absence of an individual child. Penalty notices will be issued to each parent of the child exhibiting the relevant patterns of unauthorised absence and, where appropriate, in respect of more than one child action will be considered for other unauthorised absences.
- 12 The EIPT may receive contacts with regard to cases where the issue of penalty notices may be appropriate from education providers in Northamptonshire, the Police and other agencies as appropriate. The EIPT shall action these requests providing the relevant information is supplied in the specified manner and that the level of unauthorised absence is consistent with the provisions of the detail contained herein and that the evidence supports intervention.

## **CIRCUMSTANCES WHEN PENALTY NOTICES MIGHT BE ISSUED**

- 13 Penalty notices may be issued following assessment of unacceptable levels of unauthorised absence of 5 continuous days but also in the following circumstances: any 5 day unauthorised absence within a six week period. In addressing the issue of parentally condoned absence, penalty notices may offer a prompt and potentially effective deterrent to unauthorised absence at a point, which may not be as easily accessed through existing enforcement provisions.

### 14 Unauthorised leave during Term Time

Following amendments to the 2006 regulations in the Education (Pupil Registration Regulations) (England) (Amendment) Regulations 2013.

Amendments to the 2006 regulations remove reference to family holidays and extended leave as well as the statutory threshold of five school days. The amendments make clear that headteachers may not grant any leave of absence during term time unless there are exceptional circumstances (*no definition is given within legislation*). Headteachers should determine the number of days a child can be away from school if the leave is granted.

Head teachers should ensure that that the parents have advance notification of the schools policy on absence in term time and that where it is refused they may be subject to a penalty notice. This information should be within the schools behavior policy.

The issue of a penalty notice should be balanced proportionally against the option of a further warning notice dependant upon the amount of unauthorised absences. Where the volume of absences is low the EIPT may use their discretion as to which action is required but the issue of a penalty notice must be proportionate. Officers may only issue a penalty notice when there are 5 cumulative days of absence over a given period where the issue of the notice and the payment period fits within the six month rule for bringing proceedings should the notice remain unpaid.

The EIPT will notify the school/referrer of any actions taken.

#### 15 Following Truancy Sweeps

Parents interviewed during, or contacted following, a truancy sweep exercise, during which instances of parentally condoned absence are identified, will be advised in writing of their liability under this code. Each case will be assessed on an individual basis and full account will be taken of the pupil's levels of unauthorised absence.

If the levels of unauthorised absence are unacceptable, the EIPT may issue a penalty notice. In cases where a parent is contacted on more than one occasion during, or following, a truancy sweep exercise, the EIPT may issue a penalty notice without any further recourse.

#### 16 Contacts from Education Providers, Police, Neighbouring LAs and other Agencies.

The EIPT will assess any contacts received in this regard from other agencies/schools and where levels of unauthorised absence have reached the appropriate thresholds, may issue a penalty notice or a warning as an alternative to pursuing any other form of statutory intervention.

#### 17 As an Alternative to the Application of Formal Intervention via use of the Courts

The EIPT may employ penalty notices as an early use as a deterrent to escalating patterns of unauthorised absence and as such will supplement rather than replace current statutory interventions available under the Education Act 1996.

The EIPT, therefore, will have the potential to apply penalty notices in a range of attendance scenarios provided the absences are unauthorised, which may preclude the resort to court proceedings. If an Inclusion Officer feels the issue of a penalty notice may be appropriate, he/she may do so under the code but the decision will only be arrived after full assessment of the available evidence.

A large proportion of penalty fines can go unpaid; officers before issuing such a notice **shall assess the likelihood of securing a conviction if the notice is not paid.**

As in other cases, the necessary warning letters will precede the issue of a notice.

**NB** Under normal circumstances a penalty notice will not be issued in cases where a parent has received a previous conviction in respect of his/her child's absence from school without agreement from a line manager.

## **ADMINISTRATION OF THE PENALTY NOTICE SCHEME**

- 18 Penalty Notices shall be issued in a prescribed manner and revenue from such notices shall be collected by the EIPT via a payment collection provider allowing for various methods of payment. A penalty notice may not be issued unless a formal contact has been received and opened on the ONE database system. The officer issuing a penalty notice shall maintain accurate and up to date records.
- 19 A prosecution under s 444(1) (A) Education Act 1996 will be undertaken when sufficiency of evidence exists to warrant statutory intervention, the failure to pay a Penalty Notice will be used in evidence. There is no mechanism within the legislation or this code for the collection of non payment, neither is there an opportunity to pay in instalments and there is no right of appeal to the notice. Non payment of a Penalty Notice must result in prosecution to be **considered** of that person under the Education Act 1996.
- 20 For any person to be prosecuted the elements of s444 must be proven, the service cannot prosecute just because a notice has not been paid. The Rules of Evidence and Criminal Procedural Rules apply, any prosecution must meet the "evidential test" and the "public interest test" and must be proportionate otherwise a prosecution may not proceed.
- 21 There are only four exceptions when a notice may be withdrawn;
- a. when it is issued to the wrong person or
  - b. when issued outside the terms of the code of conduct
  - c. when an offence has not been committed
  - d. If a parent can prove it was delivered to the wrong address
- 22 The EIPT will review the annual statement of revenue collected from Penalty Notices. Such revenue may only be used to cover legal costs of administering the scheme or taking a prosecution as a result of non- payment in the interest of justice and training requirements.