

WEST BERKSHIRE COUNCIL

CODE OF CONDUCT

FOR ISSUING PENALTY NOTICES IN RESPECT OF UNAUTHORISED ABSENCE FROM SCHOOL, UNATHORISED LEAVE OF ABSENCE FROM SCHOOL AND THE PRESENCE IN PUBLIC OF EXCLUDED PUPILS DURING THE FIRST FIVE DAYS OF EXCLUSION

1. General

- 1.1 Section 23 of the Anti-Social Behaviour Act 2003 amends the Education Act 1996 to empower authorised officers of the local authority, head teachers (on duty and assistant head teachers if authorised by them) and the police (including community support officers and accredited persons) to issue penalty notices in cases of unauthorised absence from school. Section 105 of the Education and Inspections Act 2006 also allows penalty notices to be given to a parent guilty of the offence of failing to ensure that their child is not present in a public place within the first five days of an exclusion. Reference in this Code of Conduct to the “Authorised Person” applies to all persons authorised to issue Penalty Notices.
- 1.2 The Education (Penalty Notices)(England) Regulations 2007 require the local authority in consultation with all 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 (“the Code of Conduct”).
- 1.3 The [Education \(Pupil Registration\) \(England\) Regulations 2006](#) previously allowed headteachers to grant leave of absence for the purpose of a family holiday during term time in “special circumstances” of up to ten school days leave per year. The Education (Pupil Registration) (England) (Amendment) Regulations 2013 which comes in to effect on 1st September 2013 removes references to family holiday and extended leave as well as the statutory threshold of ten school days. The amendments make 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.
- 1.4 The Education (Penalty Notices) (England) (Amendment) Regulations 2013 also amends the 2007 Regulations to reduce the timescales for paying a penalty notice. Parents must, from 1 September 2013, pay £60 within 21 days or £120 within 28 days.
- 1.5 The above legislation applies to all parents who fall within the definition of a “parent” as set out in Section 576 of the Education Act 1996. This (the Education Act 1996) defines “parent” as: All natural parents, whether they are married or not; any person who has parental responsibility for a child; and any person who, although not a natural parent, has care of a child. Having care of a child means that a person with whom a child lives and who looks after a child, irrespective of what their relationship is with that child, is considered to be a parent in education law.

- 1.6 The purpose of this Code is to ensure that these powers are applied consistently and fairly across the area of West Berkshire Local Authority and that suitable arrangements are in place for the administration of the scheme
- 1.7 In West Berkshire the Police will not be issuing Penalty Notices. The Police can refer concerns about a pupil's absence from school or presence in a public place to the Education Welfare Service without having to recommend a Penalty Notice. The Police should however inform the pupil's parents of the concern and the referral.

2. Rationale for issuing penalty notices

- 2.1 Present in a public place: During the first five days of each and every fixed period or permanent exclusion, a pupil is not allowed to be present in a public place during school hours without reasonable justification. In law parents are committing an offence if they fail to ensure this. Penalty Notices will combat child welfare issues by ensuring children are safeguarded during the initial five day period of an exclusion during which the child will have set work from the school to complete rather than structured teaching.
- 2.2 Unauthorised Absence/Unauthorised Planned Leave of Absence: Making a punctual attendance at school is both a legal requirement and essential if pupils are to maximize their educational opportunities. In law parents are committing an offence if they fail to ensure the regular and punctual attendance of their child at the school at which the child is registered unless the absence has been authorised by the school. The introduction of Penalty Notices is aimed at offering a swift intervention which may be used to combat cases of unauthorised absence before the problem becomes too entrenched and to protect the child's welfare.
- 2.3 General: Authorised persons are allowed to issue Penalty Notices. The Education Welfare Service will automatically consider the use of Penalty Notices in all cases of unauthorised absence at the level defined below and when a child is found to be present in a public place within the first five days of exclusion contrary to Section 103 of the Education and Inspections Act 2006. Schools already refer cases of unsatisfactory school attendance to the Education Welfare Service. Penalty Notices are to be used as an additional resource to raise school attendance.

3. Circumstances when a penalty notice may be issued

- 3.1 Penalty Notices can only be issued in cases of unauthorised absence or in relation to the first five days of a pupil's exclusion.
- 3.1.1 Present in a public place:
A pupil of compulsory school age is excluded on disciplinary grounds from a relevant school in West Berkshire for either a fixed period or permanently and the parent of the pupil has been notified (within the meaning of Section 104 of the Education Inspection Act 2006) and the pupil is found to be present without reasonable justification in a public place at any time during the school hours on a day which is one of the first five days to which the exclusion relates. (School hours means a school session or a break between session on the same school day. A public

place means any highway or any place to which the public has access. A school is not a public place for this purpose.)

3.1.2 Unauthorised Absence:

The level of absence which is necessary before a Penalty Notice can be issued is 20 or more unauthorised sessions in a 10 week school week period (i.e. 10 school days) and is applicable where no prior leave has been sought by the parent. (Where pupils arrive persistently late after Register has been closed, the school will record as Unauthorised Absence) The unauthorised sessions of absence may or may not be on a consecutive basis.

Prior to the issuing of a Penalty Notice for unauthorised absence the following criteria must be satisfied:

- that the Headteacher and/or school staff genuinely believe this will be an effective measure in helping the pupil return to school and/or ensure their future regular attendance
- that it is reasonable to expect that the parent is capable of ensuring the pupil's regular attendance
- that there is evidence of a lack of parental co-operation in making use of the advice/support offered
- that this is an appropriate sanction

3.2 Penalty Notices for unauthorised absence are intended to be used in tackling absence condoned by parents where it is reasonable to expect that the parent can ensure that the child's regular attendance but he/she is not willing to take responsibility for doing so, e.g. where a parent is not co-operating with advice or support offered to help improve his/her child's attendance. They are also intended to be used in circumstances where the parent is judged capable of securing the child's whereabouts but is not willing to take responsibility for doing so. Furthermore, in accordance with the Government guidance, they should be used only when they are likely to secure an improvement in the child's future attendance and/or ensure parents engage with measures proposed to make adequate arrangements for the whereabouts of their child.

3.3 When considering whether a Penalty Notice is appropriate the following should be borne in mind that if the parent were to fail to pay the penalty:

- the parent could not be prosecuted for the non-payment of the penalty and would have to be prosecuted for the original offence to which the penalty notice relates; and
- prosecution proceedings for the particular offence for which the Penalty Notice was issued could not be started until after the final deadlines for payment has passed i.e. 28 days after receipt of the notice.

3.1.3 Unauthorised Planned Leave of Absence

The level of absence which is necessary before a Penalty Notice can be issued is 10 or more half day unauthorised sessions in a 10 school week period. (i.e. 5 school days) This is applicable where the parent has taken the child out of school for a planned leave of absence e.g. holiday but this has not been authorised by the school. The unauthorised sessions of absence may or may not be on a consecutive basis.

4. Steps to be taken before authorised persons can issue Penalty Notices

- 4.1 In cases of unauthorised absence steps must be taken by the school to ascertain if other services and/or agencies are working with the family and if so their views sought in writing as to whether a Penalty Notice would be detrimental.
- 4.2 Government guidance advises that head teachers wishing to issue or authorise staff to issue any penalty notice must first gain the agreement of their Governing Body. Consequently all school attendance policies must include information about the use of Penalty Notices to include leave of absence, unauthorised absence and exclusions. This information must be drawn to the attention of all parents.

5. Procedure for issuing a penalty notice

- 5.1 Who can issue penalty notices?
Any Authorised Person may issue a Penalty Notice. In doing so the Authorised Person must comply with this Code of Conduct. In West Berkshire this is the head teacher or the Education Welfare Service. It is recommended that penalty notices be issued by first class post.

5.2 When can penalty notices be issued?

5.2.1 A penalty notice can be issued:

- when a pupil is found to be present in a public place during the first five days of exclusion without reasonable justification
OR
- when a pupil has 10 or more half day sessions i.e. five school days of unauthorised absence during any ten school week period and it is a known planned leave of absence e.g. a holiday (either consecutively or non-consecutively)
- when a pupil has 20 or more half day sessions, i.e. ten school days of unauthorised absence during any ten school week period (either consecutively or non-consecutively)
AND
- when the circumstance for issuing a penalty notice meets all the requirements and criteria in this Code of Conduct
AND
- when the issue of the Penalty Notice does not conflict with other interventions strategies in place or other sanctions already being processed.

5.3 How will Penalty Notices be issued?

5.3.1 Present in a Public Place:

In all cases where an Authorised Person suspects a pupil has been present in a public place at any time during school hours on a day which is one of the first five days to which the exclusion relates without reasonable justification, they will make contact with the parent in order to find out whether the defence of reasonable justification may be applicable. If there seems to be no reasonable justification then the Authorised Person may issue a Penalty Notice.

5.3.2 Unauthorised Absence:

In all cases where an Authorised Person has concerns about a pupil's attendance, s/he would normally make contact with the parent in order to try to resolve any difficulties. Where the minimum defined period of unauthorised absence has occurred, an Authorised Person may consider the issue of a Penalty Notice.

When school staff begin to consider the issue of a Penalty Notice they should inform the Assistant Education Welfare Officer and keep him/her copied into all paperwork as the matter progresses.

Before sending the Penalty Notice Warning Letter the school should take the following action:-

- Contact the parent to ascertain reason for absences
- Check the educational records to ascertain if any other agencies are working with the family and confirm with parents that information is correct and whether the parent has any further information they would like to be considered. The school may contact other agencies about the appropriateness of issuing a Penalty Notice
- Check the parents full names are known and addresses are correct
- Check the schools records are accurate and the attendance register is up to date
- Offer to meet with parent/s to avoid the same situation arising in the future.
- Explain that a Penalty Notice is to be requested.
- Write to the parent confirming intentions.
- Make written record of details above.

Where the Authorised Person is considering issuing a Penalty Notice s/he should bear in mind that the normal response to a first offence should be a formal warning rather than a Penalty Notice. Therefore, the Authorised Person must write to the parent and include the following:

- details of the pupil's absence

- an offer to meet with the parent to discuss the concerns and to provide advice and support in an attempt to resolve any difficulties
- a statement of the legal responsibilities of the parent regarding attendance
- the consequences of the parent failing to ensure his/her child's regular attendance, in particular warning that further unauthorised absences could result in a Penalty and/or a prosecution
- contact details for the West Berkshire Education Welfare Service who may also be able to offer their support and advice
- an expectation that within a specified 15 school day period, there will be no unauthorised absence. (The 15 school day period will start 3 days after the date that this letter was posted)

If this warning and offer of support does not effect an improvement in attendance within the 15 school day timescale, the Authorised Person should consider every aspect of a pupil's circumstances before deciding whether to issue a Penalty Notice. S/he must make a record of his/her considerations and decision when issuing a Penalty Notice. This information is to be supplied with the Penalty Notice Application form if requesting that the Education Welfare Service issue a Penalty Notice.

Whilst the repeated issuing of warning letters should be very carefully considered, there is no limit to the number of warning letters that can be issued to one parent.

5.3.3 Unauthorised Planned Leave of Absence

A Penalty Notice can be issued for a first offence for unauthorised planned Leave of Absence e.g. holiday and the school is not obliged to follow the steps as for Unauthorised Absence as above. The Authorised Person may therefore issue a Penalty Notice, without first writing to the parent as would otherwise be required. However s/he should still be satisfied that the parent was informed beforehand that absence was not authorised and that proceeding to take unauthorised leave of absence could lead to a Penalty Notice being issued without further warning.

If siblings attend other schools or Pupil Referral Units then Headteachers **must** consult with each other prior to issuing Penalty Notices for unauthorised, planned leave of absence

5.4 A Penalty Notice may be issued to each parent liable for the offence or offences for each child.

5.4.1 An Authorised Person may issue to any parent a maximum of two Penalty Notices per child within any twelve month period. In families where more than one child is not attending regularly, multiple issue should be the subject of careful consideration by the Authorised Person. The Education Welfare Service will keep a record of the Penalty Notices issued to parents.

5.4.2 It is important to avoid the issuing of duplicate Penalty Notices and to

ensure that a Penalty Notice is not issued when a prosecution is being planned or has been commenced for the offence relating to the specific period of unauthorised absence. Therefore, before issuing a Penalty Notice all Authorised Persons must liaise with:

- the schools named Education Welfare Officer; and
- any other local authority which is involved with the child. This would include a local authority who has responsibility for a Looked After Child and a local authority in whose area the pupil lives.

5.4.3 When issuing a Penalty Notice the School has three options when considering which Authorised Person will carry out the steps described above:

- The school can complete the process up to the warning letter and the EWS issue the Fixed Penalty Fine Warning Letter and the Fixed Penalty Fine.

OR

- The school can complete the process up to and including the Fixed Penalty Fine Warning Letter and the EWS issue the Fixed Penalty Fine. Applications to the Local Authority to issue a Fixed Penalty Notice must be signed by the Headteacher and a School Governor.

OR

- The School can complete the process up to and including the issuing of the Fixed Penalty Fine Warning Letter and the Fixed Penalty Fine. If this option is chosen the school must obtain a unique reference number from the EWS for the Fixed Penalty Fine.

Usually, evidence in support of court proceedings for non payment of a Penalty Notice will be in the form of a statement from school staff, with support from the Education Welfare Service. This is because the offence relates to the school absence and not the non-payment of the Fixed Penalty Fine. All witnesses will need to make themselves available for the court hearing if necessary.

5.4.5 If the Authorised Person decides not to issue a Penalty Notice and unauthorised absence is continuing, they should liaise with the Education Welfare Service to consider how to proceed.

6. Payment of Penalty Notices

6.1 Arrangements for the payment will be detailed on the Penalty Notices themselves. Penalties are to be paid to West Berkshire Council.

6.2 If paid within 21 days of receipt of the Penalty Notice, the Penalty is £60. If not paid within 21 days the Penalty is automatically increased to £120 if paid within 28 days.

6.3 Any revenue resulting from payment of Penalties will be retained by the Local Authority to help cover the costs of issuing and enforcing Penalty Notices.

6.4 Payment of a Penalty discharges a parent's liability for the period in question

and means that they cannot subsequently be prosecuted under any other enforcement powers for the period covered by the Penalty Notice.

7. Non-payment of Penalty Notices

7.1 Unauthorised Absence and Unauthorised planned Leave of Absence

The non-payment of a Penalty regarding unauthorised absence within the prescribed period of time will automatically lead to a prosecution under section 444, Education Act 1996 (unless the Penalty Notice must be withdrawn for either of the reasons given in section 8 below). The prosecution cannot be for the non-payment of the Penalty.

7.2 Present in a public place:

The non-payment of a Penalty regarding presence in a public place within the first five days of an exclusion without reasonable justification will automatically lead to a prosecution under s103 of the Education and Inspections Act 2006. The prosecution cannot be for the non-payment of the Penalty.

8. Withdrawal of a Penalty Notice

8.1 There is no statutory right of appeal against the issuing of a Penalty Notice. Furthermore, once issued, a Penalty Notice cannot be withdrawn unless it is established that it ought not to have been issued (i.e. where it has been issued outside the terms of the Code of Conduct or where no offence has been committed) or where it has been issued to the wrong person.

8.2 Where an authorised person withdraws a Penalty Notice, she/he must notify the Education Welfare Service of the withdrawal explaining the reasons for the withdrawal

8.3 In exceptional circumstances, the Council's Legal Services may decide that it is not in the public interest to proceed in line with the Crown Prosecution Guide for Prosecutors. If this is the case, the decision will be shared with the Education Welfare Service and the relevant school. The parent will also be informed of the reason for not proceeding and a warning letter may be issued.

9. Arrangements for co-ordination between the Local Authority, other Local Education Authorities (where appropriate), the police and authorised officers

9.1 The Education Welfare Service will monitor the use of Penalty Notices. This will ensure consistent and equitable delivery and allow cohesion with other enforcement sanctions.

9.2 The Education Welfare Service will provide regular feedback to headteachers and the police (and neighbouring LAs where appropriate) on the use of Penalty Notices and resulting outcomes.

9.3 Where it appears to the Local Authority that this Code of Conduct requires substantive amendment, the Education Welfare Service will consult headteachers, the police, and any other person or body it deems appropriate,

regarding the proposed changes.

- 9.4 The Headteacher should report to the governors on an annual basis, giving details of the Penalty Notices issued on parents of pupils within their school.

June 2013