

**Attendance (statutory functions), Child Employment/Entertainment & Elective Home Education/Children Missing Education & Permanent Exclusions - (ACE)**

**Penalty Notice Code of Conduct**

**1. LEGAL BASIS**

**1.1** The Anti-Social Behaviour Act 2003 s23 empowers designated Local Authority (LA) officers, head teachers (and deputy and assistant head teachers authorised by them), and the Police to issue penalty notices in cases of unauthorised absence from school.

**1.2** The Education (Penalty Notices) (England) Regulations 2004 came into force on 27th February 2004. The regulations were updated with amendments in 2007, 2012 and 2013. Statutory guidance has been further amended, August 2024.

**1.3** The issuing of penalty notices must conform to all requirements of the Human Rights Act 2000 and all equal opportunities legislation.

**1.4** London Borough of Hammersmith & Fulham (LBHF), have the prime responsibility for developing the Code of Conduct within which all partners named in the Act will operate.

**1.5** In LBHF, the ACE team is responsible for coordinating legal action in relation to school attendance.

**2. RATIONALE**

**2.1** Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities.

**2.2** In law an offence occurs if a parent or carer fails to secure a child's regular attendance at a school at which he or she is a registered pupil. (N.B.) A parent includes any person who is not a parent but who has parental responsibility for the child or who has care of the child, as set out in section 576 of the Education Act 1996.

**2.3** Penalty notices supplement the existing sanctions to enforce attendance at school. These are to prosecute parents/carers (Education Act 1996 s444(1) & 444 (1a)) or to apply for an Education Supervision Order, under the Children Act 1989 s36.

**2.4** Parent/carers and pupils are supported at school and Local Authority level to overcome barriers to regular attendance through a range of assessment and intervention strategies. Sanctions of any nature are for use only where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem.

**2.5** Sanctions are used only as a means of enforcing attendance, where there is a reasonable expectation that their use will secure an improvement, and to emphasise the importance of parental responsibility.

### **3. CONSIDERATIONS OF SUPPORT/ACTIONS PRIOR TO INITIATING A PENALTY NOTICE**

**3.1** In cases where the national threshold is met and support is appropriate, that support should be continued or provided straightaway. In most cases this support is provided at school level and should start early when absence issues are first detected.

**3.2** In deciding whether support is appropriate or not, the school and local authority (and police, if involved) should consider whether the cause of the absence is something for which support could be provided. If support could be provided, the school and the local authority should then consider what suitable forms of support are currently available in school and where necessary, by other services and agencies in the local area. They should then decide whether any or all of those things are appropriate in the individual case and for those that are appropriate, whether they have been provided previously or could be provided or continued now instead of taking legal action.

**3.3** Support can be any activity intended to improve the child's attendance not including issuing a penalty notice or prosecution. Examples of support include action taken in school such as written communications to parents and meetings with parents and pupils to understand barriers and plan targeted support together. The form of support will be specific to the pupil and family and could include a range of actions including additional learning support, moving tutor group or school uniform provision. Some support would involve the local authority or other community services such as an early help assessment and support, a parenting contract, transport provision or housing support.

**3.4** An example of where support would not be appropriate is in cases where the absence is clearly condoned by the parent with no mitigating factors, such as a holiday taken in term time.

**3.5** If the threshold is met and offers of support have not been engaged with by the parent(s) or have not worked then a Notice to Improve should usually be sent. This is to make clear that without improvement or engagement in support, legal action is likely to be taken. This can be sent by either the school or local authority or co-signed by both. The arrangements for who issues the Notice to Improve should be set out clearly in the local code of conduct.

**3.6** The Notice to Improve may include:

- a. The pupil's attendance record and details of the offence(s)
- b. The benefits of regular attendance and parents' duty under section 7 of the Education Act 1996
- c. Support/opportunities for support provided so far
- d. Opportunities for further support and the option to access previously provided support that was not engaged with if appropriate
- e. Risk of a penalty notice being issued or prosecution considered if improvement is not secured within the improvement period
- f. A clear timeframe for the improvement period of between 3 and 6 weeks
- g. Details of what sufficient improvement within that timeframe will look like in the case (e.g. no further offences within a certain timeframe or attendance improved within a certain timeframe)
- h. The grounds on which a penalty notice may be issued before the end of the improvement period

**3.7** The length of the improvement period should be between 3 and 6 weeks. It is good practice to monitor improvement throughout this time period and adapt the approach where necessary. The local authority can amend the length of time in individual cases up to a maximum limit of 6 weeks.

**3.8** What sufficient improvement looks like should be decided on a case by case basis. For some families, no further unauthorised absence should be tolerated, and in other cases some can be tolerated if the family is showing engagement and progress. This should be made clear to the parent in the Notice to Improve letter.

**3.9** Where it is clear that improvement is not being made, a penalty notice can be issued before the improvement period has ended (e.g. if the Notice to Improve stated that there should be no further unauthorised absences in a 6 week period but the pupil is absent for an unauthorised absence in the first week there is no need to wait the full 6 weeks before issuing). The Notice to Improve should make clear on what grounds it will be considered to proceed to a penalty notice before the end of the improvement period,

**3.10** The local authority will make a judgement about whether sufficient support has been provided before issuing a penalty notice (3.3) this will differ from case to case.

**3.11** A Notice to Improve should only be used in cases where support is appropriate. They do not need to be issued in most cases of term time holiday where a simple warning by the school that a penalty could be issued if unauthorised holiday is taken will suffice.

**3.12** A Notice to Improve does not need to be issued in every case where support is appropriate. The authorised officer can choose not to use one, for example where they believe it would not have any behavioural impact (such as in a case where the parent has recently had one for a similar offence).

#### **4. CURCUMSTACES WHERE A PENALTY NOTICE MAY BE ISSUED**

**4.1** The issue of a Penalty Notice may be considered in cases where a pupil is absent from school and the absence is unauthorised. Penalty Notices can be used by schools as an alternative to a referral to Early Help in LBHF, in cases of persistent non-attendance. The issue of a Penalty Notice may be considered appropriate in any of the following circumstances:

- cases of overt truancy
- cases of parentally condoned absence, where this can be demonstrated.
- instances where parents take children out of school for holidays/leave in term time, without the head teacher's approval.
- instances of excessive delayed return from holidays/leave in term-time, without prior school agreement.
- Persistent lateness (unauthorised)
- Where a child has been excluded from school and is found in a public place during school hours without reasonable justification within the first five days of the exclusion period.

**4.2** To ensure consistent and fair delivery of Penalty Notices, they will be considered in cases of unauthorised absence where:

- In cases where support is not appropriate (e.g. a term time holiday) has not worked or has not been engaged with
- They are likely to be effective in improving attendance rates; and
- The pupil concerned has failed to attend school regularly over a six-week period (when his/her attendance has fallen below 90%) and/or
- Holiday/leave is deliberately taken in term time despite permission not being granted by school staff and holiday/leave amounted to 10 or more sessions. or
- Holiday/leave in term-time has been agreed by school staff but pupil arrives back 10 or more sessions after the period agreed. or
- A holiday/leave in term-time was taken, no permission had been sought and the period of absences amounted to 10 or more sessions.
- The threshold is 10 sessions of unauthorised absence. This can be made up of a combination of any type of unauthorised absence, such as 4 sessions of holiday taken in term time plus 6 sessions of arriving late after the register closes, all taken within any 10 school week period. The unauthorised absence sessions can be consecutive (e.g. 10 sessions of holiday in one week) or not (e.g. 6 sessions of unauthorised absence in 1 week and 1 per week for the next 4 weeks)
- The 10 school week period may span different terms or school years (e.g. 2 sessions of unauthorised absence in the Summer Term and a further 8 within the Autumn Term).

**4.3** Where families include more than one pupil with poor attendance, multiple penalty notices may be issued, but this should be subject to careful consideration and co-ordination.

For excluded pupils found in a public place during school hours, individual circumstances of each case must be carefully considered before a decision to issue a Notice. Reasons may include medical emergencies of parent or child, or prearranged medical appointment.

## **5. PROCEDURE FOR ISSUING PENALTY NOTICES**

**5.1** The ACE team will implement the issuing of penalty notices on behalf of LBHF under the authority of the Director of Children's Services to whom responsibility is delegated by law.

**5.2** A national limit of 2 penalty notices that can be issued to a parent for the same child within a rolling 3 year period, so at the 3rd (or subsequent) offence(s) another tool will need to be considered (such as prosecution or one of the other attendance legal interventions).

**5.3** If unauthorised absence persists after the issue of first Penalty Notice, it will usually be appropriate to prosecute.

**5.4** The ACE team will receive a fully completed referral form, with accompanying documentation, and consider written requests to issue penalty notices.

This will ensure that there is;

- no duplication of notices being served
- a notice is not issued when legal proceedings are being contemplated under Education Act s444 or an application for an ESO is planned/being made

**5.5** Schools, the Metropolitan Police and neighbouring Local Authorities must consider every aspect of a pupil's case before judging whether or not to request the ACE to issue a penalty notice. A Penalty Notice would not be considered if Early Help or Social Care are involved.

**5.6** ACE will check that:

- All relevant information has been provided.
- the circumstances of the pupil's absence meet all the requirements of this Code of Conduct
- the issue of a penalty notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.
- other support services are appropriately consulted.

**5.7** ACE will consider whether the issuing of a Penalty Notice is likely to improve attendance.

**5.8** ACE will consult neighbouring boroughs if a Penalty Notice is being considered for a parent/carer whose child attends a school in LBHF but resides in another borough. This will ensure consistent and equitable delivery, retain school home relationships and allow cohesion with other enforcement sanctions.

**5.9** Penalty notices will only be issued by post or email. Penalty notices will not be issued "on the spot" as this does not allow for the collation of evidence.

**5.10** ACE will respond to all requests within ten school days of receipt of a referral. If ACE decides that the threshold has been met for a Penalty Notice to be issued, it will:

- Issue a Penalty Notice without warning from the Local Authority if a holiday/leave is taken without the school's permission, during term-time.
- issue a formal Notice to Improve to the parent or carer of the possibility of a penalty notice being issued where the occurrence of absence is regular or persistent.
- in the same letter set a period of 15 school days within which the pupil must have no more than 4 sessions of unauthorised absence.
- issue a penalty notice at the end of the 15-day period if the required level of improvement has not been achieved.
- Consider the option of using a Notice to Improve where support is appropriate but not working or being engaged with, to give a parent a final opportunity to engage in support before they are issued with a penalty notice if it is appropriate in the individual case.

## **6. WITHDRAWAL OF PENALTY NOTICES**

Please note: The local authority as an independent prosecutor would be responsible for deciding whether to prosecute for the original case in cases of non-payment.

ACE *will* withdraw penalty notices in the following limited circumstances:

**6.1** 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.

**6.2** Where it has been issued to the wrong person.

ACE *may* withdraw in the following circumstances:

- A significant and sustained improvement in the child's attendance
- If parents/carers accept support to improve attendance from Early Help
- If a child becomes subject of CP/CIN plan
- If it is not in the public interest to proceed to prosecution e.g. not an effective use of public resources, unlikely to secure a positive outcome, a significant change in circumstances has occurred.

**6.3** Whatever action is taken after the threshold has been met, schools, and local authorities where appropriate, should continue to monitor the impact of the action, and if it does not lead to improvement, they should review the decision and take alternative action. Where needed, cases can be discussed during Targeting Support Meetings

## **7. PAYMENT OF PENALTY NOTICES**

**7.1** Arrangements for payment will be detailed on the penalty notice.

**7.2** Payment of a Penalty Notice discharges the parents' or carers' liability for the period in question. This means that parents or carers cannot subsequently be prosecuted for their failure to ensure that their children are attending school regularly and punctually under other enforcement powers for the period covered by the penalty notice.

**7.3** Payment of a Penalty Notice within 21 days is £80 and payment after this time but within 28 days is £160. Failure to pay the fine after 28 days will result in consideration being given to prosecution in the Magistrate's Court.

- An additional rung to the ladder of escalation, with any second penalty notice issued to the same parent for the same child within a rolling 3 year period being charged at a higher rate of £160 with no option for this second offence to be discharged at the lower rate of £80.
- Where it is deemed appropriate to issue a second penalty notice to the same parent for the same pupil within 3 years of the first notice, the second notice is charged at a flat rate of £160 if paid within 28 days
- A third penalty notice must not be issued within a 3 year period. Therefore, in cases where the threshold is met for a third (or subsequent) times within those 3 years, a penalty notice cannot be issued and alternative action should be taken instead. This will often include considering prosecution, but may include other tools such as one of the other attendance legal interventions. In these cases, once 3 years has elapsed since the first penalty notice was issued to the parent a further penalty notice can be issued if appropriate, but in most cases it will not be the most effective tool for changing what may have now become an entrenched pattern of behaviour.
- The three-year period begins from the date of the first penalty notice issued on or after 19 August 2024. For example, if the first penalty notice is issued on 18th September 2024, a second penalty notice issued to that parent in respect of that child on or before the 17th September 2027 would be charged at £160. A third penalty notice could not be issued within that timeframe and so in cases where the national threshold is met for a third or subsequent time another action should be taken instead.

**7.4** The purposes for which the revenue from penalty notices can be used has been widened; local authorities can spend any surplus on attendance support as well as administering the system and prosecution.

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

**8.1** Cases of non-payment of a Penalty Notice, may trigger consideration of prosecution of parents/carers in the Magistrate's Court (Education Act 1996 s.444(1) & 444 (1a)).

**8.2** Non-payment of a Penalty Notice does not automatically result in a prosecution by the Local Authority. The Local Authority must decide whether there is sufficient evidence to provide a realistic prospect of a conviction against each defendant.

**8.3** ACE team will also consult with the borough's Legal Services, if a prosecution is to be considered, to ensure that it is in the public interest/or in the best interests of the child to initiate a prosecution.

## **9.0 OUTCOME OF PENALTY NOTICE REFERRALS**

**9.1** Schools will be advised on the outcome of all penalty notices referred.