

## Penalty Notice

### Local Code of Practice General and Background

1. Legal basis
2. Rationale
3. Legal practicalities
4. Who may issue a penalty notice
5. Circumstances for issuing a penalty notice
6. Withdrawal of a penalty notice
7. Representation
8. Payment of penalty notice
9. Non-payment of penalty notice
10. Implementation
11. Truancy patrols
12. Review
13. Further information

#### 1. Legal basis

Section 23 of the Anti-Behaviour Act 2003 empowers designated Local Authority (LA) officers, Headteachers (deputy and assistant Headteachers authorised by them) and the police to issue penalty notices in cases of unauthorised absence from school.

The Education Penalty Notices (England) Regulations 2004 came into force on 27 February 2004.

The Education (Penalty Notices) (England) Regulations 2007.

Amendments were made to the 2007 Regulations in The Education (Penalty Notices) (England) (Amendment) Regulations 2013 and came into force on 1<sup>st</sup> September 2013.

The issuing of penalty notices must conform to all requirements of the Human Rights Act and equal opportunities legislation. The LA has the prime responsibility for developing the protocol within which all partners named in the Act will operate. 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 their child's regular attendance at school and that absence is not authorised by the school.

Penalty notices supplement and do not replace the existing sanctions currently available under s444 Education Act 1996 or s36 Children Act 1989

to enforce attendance at school where appropriate. Education Welfare has responsibility for delivering services to improve attendance and where necessary enforce the law in respect of school attendance for children of compulsory school age. The issuing of penalty notices will be based on clear threshold criteria which will need to be applied consistently and equitably across the borough's schools. Any person authorised to issue a notice in Hounslow must comply with the guidance set out in this code of conduct.

## **2. Rationale**

Parents and pupils are supported at school and within LA level to overcome barriers to regular attendance through a wide continuum 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. Sanctions are never used as a punishment, only as a means of enforcing attendance where there is a reasonable expectation that their use will secure an improvement.

## **3. Legal practicalities**

From 1<sup>st</sup> September 2013 the penalty of £60 is imposed, if paid within 21 days of receipt of the notice, rising to £120 if paid after 21 days but within 28 days of receipt. If the penalty is not paid in full by the end of the 28 days after the LA must either prosecute for the offence or withdraw the notice. Any prosecution is for the offence of failing to secure regular attendance at school not for non-payment of the fine. Prosecutions are brought under s444 Education Act 1996. In Hounslow the Assistant Director Education and Early Intervention and the Legal Service Department are responsible for deciding whether or not to prosecute a parent under this section.

Withdrawal of the notice can only take place in very limited circumstances as set out in this code of conduct.

## **4. Who may issue a penalty notice**

A penalty notice may only be issued by:

- Authorised LA staff. In Hounslow this will be members of the Education Welfare Service.
- Headteachers and school staff authorised by them may request Education Welfare to issue a notice.
- A police officer during a truancy sweep under the provision of Crime and Disorder Act 1998 may request Education Welfare to write a notice.

## **5. Circumstances for issuing a penalty notice**

A penalty notice can only be issued in cases of unauthorised absence. It would be considered appropriate to serve a notice in the following circumstances:

- A child has been referred to Education Welfare and casework is in progress but the parents are not supporting the school or engaging with Education Welfare activity to bring about improved attendance and no other legal sanctions are underway.
- Where parents persistently fail to ensure their children attend school and attendance is below 90% for an identified half term period with no acceptable reason and no other legal sanctions are underway.
- Where attendance falls below 90% for a given half term period without justification.
- Term time leave is taken without agreement with, or notification to the school following previous term time leave and the parents have been warned that a penalty notice will result.
- Term time leave taken during SATs and examination periods when parents have been notified in advance and warned that a penalty notice will result.
- Where a child regularly comes to the attention of the police during school hours for being absent from school without an acceptable reason or is involved in criminal activity while truanting from school.
- Pupils located more than twice on truancy sweep initiatives during a six month period unless there is a justifiable reason for the absence from school.
- The LA is satisfied that there is sufficient evidence to show the parent has committed an offence under s444(1) of the Education Act 1996.

## **6. Withdrawal of a penalty notice**

Once issued, a penalty notice may only be withdrawn by the LA in the following circumstances:

- Proof has been established that the Penalty Notice has been issued to the wrong person.
- The notice ought not to have been issued i.e. where it has been issued outside the terms of this code of conduct or no offence has been committed.

## **7. Representation**

There is no statutory right of appeal against the issuing of a penalty notice.

The parent will be advised, when they receive the warning that they may make representation to the Director, Children's and Adults' Services setting out reasons why they should not have been issued.

## **8. Payment of penalty notice**

Arrangements for payment will be detailed on the penalty notice. Generally arrangements will be in place to allow for payment by cheque or by telephone using a credit or debit card.

Payment of the notice discharges the parent's liability for the period in question and they cannot be subsequently prosecuted under other enforcement powers for the period covered by the notice.

The LA retains any revenue from any penalty notice to cover enforcement costs. It is unlikely that revenue will be greater than enforcement costs.

## **9. Non-payment of penalty notice**

Non-payment of a penalty notice may result in the withdrawal of the notice and will trigger the fast-track prosecution process under the provisions of s444 Education Act 1996.

## **10. Implementation**

- Education Welfare has developed a general leaflet for parents, carers and professionals advising them about the new sanctions and possible applications.

- Education Welfare will receive requests to serve notices and will only comply when the circumstances of the pupil's absence meets the criteria.
- Schools party to this code of practice, who wish to request the issue of penalty notices, will ensure their attendance policies are compliant with this code of practice.
- Education Welfare will maintain a record of all notifications
- Where unauthorised absence continues, a formal warning letter will be issued by the Education Welfare Officer which details the possibility of a notice being issued and stating that improvement must be seen within a specified time scale.
- School's will monitor all referred cases and in cases of continued unauthorised absence, where parents have not taken responsibility for ensuring attendance, a penalty notice will be served.

### **11. Truancy patrols**

Truancy Patrols will be re-instated on a termly basis. Where Education Welfare becomes aware of particular circumstances warranted special attention in this regard we will seek to cooperate with partners to address the concerns.

A penalty notice will only be issued after due consideration when all facts are known and the threshold for serving the notice has been met.

Information is given to anyone stopped on a patrol, pupil and/or parent about the possible support and sanctions used to address non-attendance.

### **12. Review**

This code of conduct will be reviewed on an annual basis and may be amended depending on the outcome of the previous year's operation. Any significant changes will be discussed with the EIP and elected members prior to implementation.

### **13. Further information**

Education Welfare  
Children's and Adult's Services  
London Borough of Hounslow  
Civic Centre  
Lampton Road  
Hounslow  
Middlesex  
TW3 4DN



**London Borough  
of Hounslow**

---

Tel: Education Welfare Service Duty: 020 8583 2622

Email: [educationwelfare@hounslow.gov.uk](mailto:educationwelfare@hounslow.gov.uk)