

## **APPENDIX 2: Fixed Penalty Notices Code of Conduct**

### ***Legislation***

1. Section 23 of the Anti-Social Behaviour Act 2003 introduced amendments to s444 Education Act 1996 to empower designated LA officers, Head Teachers (and Deputy or Assistant Head Teachers authorised by them) and the Police to issue Penalty Notices in cases of unauthorised absence from school. Section 105 of the Education and Inspections Act 2006 enables Penalty Notices to be issued to parents of excluded children who breach the duty to ensure that their child is not present in a public place during the first five days of exclusion. Revised regulations and guidance relating to Penalty Notices in cases of truancy and exclusions came into force on 1<sup>st</sup> September 2007. The Local Authority is responsible for drawing up a local Code of Conduct after consultation and in accordance with the Regulations.
2. According to the law, parental responsibility lies individually with each parent. This includes the legal obligation to ensure regular and punctual school attendance. When parents do not gain the school's permission this means that both parents have failed to ensure that their child attends school regularly and as a result a penalty notice will be sent separately to each parent for each child.

### ***Rationale***

3. 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/carer fails to secure a child's attendance at a school at which they are a registered pupil and that absence is not authorised by the school. Penalty notices supplement the existing sanctions currently available under Section 444 Education Act 1996 or Section 36 Children's Act 1989 to enforce attendance at school where appropriate.
4. Parents and pupils are supported at school at 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 problem. Sanctions are used as a means of enforcing attendance where it is likely that their use will secure an improvement.
5. Waltham Forest Behaviour, Attendance and Children Missing Education (BACME) service will support schools to investigate cases of irregular school attendance by following appropriate case work and instigate legal action if applicable. In order to comply with human rights legislation, it is essential that Penalty Notices are issued in a fair and consistent manner across the local authority area. This Code of Conduct will govern the issuing Penalty Notices in respect of unauthorised absence from school and failure to ensure an excluded child is not present in a public place without reasonable justification within the first five days of the exclusion period.
6. It is possible that certain cases of unauthorised absence (or the presence of an excluded child in a public place) can be dealt with by way of a Penalty Notice. Penalty Notices will involve the recipient paying a fine, currently set at £60.00 if paid within 21 days or £120.00 if paid within 28 days. These new charges commenced on 1<sup>st</sup> September 2012. Where an unauthorised absence has been dealt with by way of Penalty Notice and the Penalty Notice has been paid, it is not possible for a parent to be prosecuted for the same period of unauthorised absence under Section 444(1A) of the Education Act 1996 or for the same instance of an excluded child being present in a public place under Section 103 of the Education and Inspections Act 2006.

### ***Who May Issue A Penalty Notice?***

7. Waltham Forest's Behaviour, Attendance and Children Missing Education (BACME) will be responsible for the issuing of all Penalty Notices on behalf of the LA. Penalty Notices may be issued by authorised LA staff, which in Waltham Forest will be staff of the Council's Behaviour, Attendance and Children Missing Education (BACME) service. Head Teachers (and deputy and assistant heads authorised by them) and Police Officers during a truancy sweep or in respect of excluded pupils being in public places are enabled by law to issue Penalty Notices.
8. In accordance with this Code of Conduct, except in exceptional circumstances, within Waltham Forest only the Behaviour, Attendance and Children Missing Education (BACME) Service will issue such Notices, to avoid duplication and to ensure consistency across the borough. If a Head Teacher (or authorised Deputy/Assistant Head) feels there is an exceptional circumstance and wish to issue a Penalty Notice, they must present cases to the local authority.

### ***Circumstances Where A Penalty Notice May Be Issued***

9. The issuing of Penalty Notices may be appropriate in the following circumstances:
  - a. ***Absence from school***
    - In cases of overt truancy
    - Parental condoned absences
    - In cases of leave during term time, where the absence has not been authorised by the school.
    - In cases where an absence during term time has been agreed by the school, and a child fails to return by the deadline stipulated.
    - Where leave has not been sought but taken
  - b. ***Lateness***
    - In cases where a child persistently arrives at school after the register has closed.
  - c. ***Following a Truancy Patrol***
    - Penalty Notices will not be issued during a truancy patrol but enquiries will be undertaken with the school of any pupil stopped. In cases where the school has recorded an unauthorised absence and where the pupil has been stopped on a previous truancy patrol within the past twelve months, a Penalty Notice may be issued.
  - d. ***Excluded Children***
    - 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.
    - Reasonable justification will be assessed on the individual circumstances of each case and all relevant evidence provided will be taken into account. Reasonable justification may include medical emergency of the parent or child or pre-arranged medical appointment.

- Unreasonable justification would be regarded as such if no clear evidence has been provided by the parent/carer as to why the excluded child is found to be in a public area within the first five days of the exclusion period.

### ***Procedures for issuing Penalty Notices***

10. Primary responsibility for issuing Penalty Notices rests with the Behaviour, Attendance and Children Missing Education (BACME) service. The Behaviour, Attendance and Children Missing Education (BACME) service will receive requests from schools to serve Penalty Notices and will do so in partnership with the schools, when the circumstances of the pupil's absence or exclusion meet the relevant criteria.
11. The Behaviour, Attendance and Children Missing Education (BACME) Service will maintain a record of all notifications.
12. To avoid the issue of duplicate Notices, in exceptional circumstances where a school or Police Officer intend to issue a Notice, a check must first be made with the BACME Service. This will avoid the possibility of parents receiving Penalty Notices from more than one source in respect of the same period of unauthorised absence.
13. The LA policy is that a parent is not issued more than two penalty notices in a twelve-month period and that after the issue of two penalty notices the school will liaise with the LA to instigate court proceedings.
14. In the case of excluded children being in a public place, there is no limit to the number of Penalty Notices that may be issued within a twelve-month period.
15. Requests from schools to issue Notices must be accompanied by full relevant information concerning the circumstances of the unauthorised absence and all other information necessary to assess whether the request falls within the parameters of the Code of Conduct.

### ***Thresholds for Issuing Penalty Notices***

16. A Penalty Notice will normally only be issued where a pupil has failed to attend school regularly. This may comprise a series of single or half-day unauthorised absences or a block of unauthorised absence such as an unauthorised term time holiday. The LA will not issue a penalty notice for less than 3 days of school absence as in law this does not constitute irregular absence;
17. **and** the LA is satisfied that there is evidence sufficient to show that an offence under Section 444 of the Education Act 1996 has been committed;
18. **or** the LA is satisfied that there is sufficient evidence to show an offence has been committed under Section 103 of the Education and Inspections Act 2006.

### ***Warnings***

19. A formal warning of the possibility of a Penalty Notice being issued will normally be served before issue of a Notice. This warning may take the form of a general warning letter sent out as part of the school's documentation and policies: a specific warning contained in the exclusion letter sent to the parents of a child permanently excluded from school: or a specific warning contained in a letter refusing to authorise term time holiday absence.

### ***Payment***

20. Arrangements for paying penalties will be set out on the invoice attached to penalty Notices.

### ***Procedures for withdrawing Penalty Notices***

21. Once a Penalty Notice has been issued, it may only be withdrawn by the Local Authority (Behaviour, Attendance and Children Missing Education Service) in the following circumstances:
- The Notice has been issued to the wrong person.
  - The Notice should not to have been issued (issued outside of the Local Code of Conduct or no offence committed as absence authorised).
  - Where the Notice contains material errors.
  - In the circumstances of permanent exclusion, reasonable justification has been made out by the parent.