

West Berkshire Council
7th Draft
Code of Conduct
For issuing Penalty Notices in respect of Unauthorised Absence from
School

1. Legal Background

- 1.1. Section 23 of the Anti-Social Behaviour Act 2003 empowers authorised officers of the Local Authority, headteachers (and deputy and assistant headteachers 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. 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 2004 require the Local Authority, in consultation with all of 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-relation provisions of the Anti-Social Behaviour Act 2003 apply 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.

2. Rationale For Issuing Penalty Notices

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

- 2.2. In law, parents/carers 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.

- 2.3. Although current sanctions to enforce regular school attendance exist under section 444 of the Education Act 1996 and section 36 of the Children

Act1989, 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.

- 2.4. The purpose of the Code of Conduct is to ensure that these new powers are applied consistently and fairly across the area of West Berkshire LA (“the LA”) and that suitable arrangements are in place for the administration of the scheme.
- 2.5. Authorised Persons are not obliged 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.
- 2.6. 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.
- 2.7. In West Berkshire the Police will not be issuing Penalty Notice. The police can refer concerns about a pupil’s absence from school to the Education Welfare Service without having to recommend a Penalty Notice. The police should however inform the pupil’s parent of the concerns and the referral.

3. Circumstances When A Penalty Notice May Be Issued

- 3.1. Penalty Notices can only be issued in cases where a pupil of compulsory school age has been absent and the absence has not been authorised by the school or where the pupil has persistently arrived late after the register has been closed. The level of absence that is necessary before a Penalty Notice can be issued is 20 or more half day sessions i.e. 10 school days, of unauthorised absence during any 10 school week period. In the case of unauthorised absence due to Holiday a Penalty Notice can be issued if there are 10 or more half day sessions of unauthorised absence in a 10 school week period.
- 3.2. Penalty Notices are intended to be used in tackling parentally condoned absence where it is reasonable to expect that the parent can ensure the child’s regular attendance but s/he is not willing to take responsibility for doing so e.g. where a parent is not cooperating with advice or support offered to help improve his or her child’s attendance. Furthermore, in accordance with Department for Education and Skills (DfES) guidance, they should be used only when they are likely to secure an improvement in the child’s future attendance.
- 3.3. Prior to the issuing of Penalty Notices, the following criteria must therefore be satisfied:
 - Will this be an effective measure in helping the pupil return to school and/or ensure their future regular attendance?

- Is it reasonable to expect that the parent is capable of ensuring the pupil's regular attendance?
 - Is there evidence of a lack of parental cooperation in making use of the advice/support offered?
- 3.4. 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 deadline for payment has passed, i.e. 42 days after receipt of the Notice.

4. Steps to be taken before Authorised Persons can issue Penalty Notices

- 4.1 Steps must be taken 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 DfES Guidance advises that Headteachers wishing to issue, or authorise their staff to issue, Penalty Notices must first gain the agreement of their governing body. Consequently all school attendance policies should be revised to include information about the use of Penalty Notices. This information should 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 the Code of Conduct. In West Berkshire this is a Headteacher or the Education Welfare Service. It is recommended that Penalty Notices be issued by recorded delivery post.

5.2 When can Penalty Notices be issued?

- 5.2.1. A Penalty Notice can be issued:

- when a pupil has had 20 or more half day sessions ie 10 school days, of unauthorised absence during any 10 school week period,
- when the reason for absence has been given as holiday and the pupil has had 10 or more half day sessions ie 5 school days, of unauthorised absence during any 10 school week period
- when the circumstances of the pupil's absence meets all the requirements and criteria in the Code of Conduct; and
- when the issue of a Penalty Notice does not conflict with other intervention strategies in place or other sanctions already being processed.

5.2.2. A Penalty Notice will never be issued as an 'on the spot' response. This is to ensure that the criteria and requirements of the code of conduct have been met.

5.3 **How will Penalty Notices be issued?**

5.3.1 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.

Before sending (or requesting the EWS send) the Penalty Notice Warning Letter the school should take the following action-

- Contact the parent to ascertain reason for absences
- Ask parent/s for information about other agencies that may be working with the family and ask for permission to contact them about the appropriateness of issuing a Penalty Notice.
- 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

5.3.2 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 include the following:

- details of the pupils' 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)

**However, the DfES guidance indicates that a Penalty Notice can be issued for a first offence in exceptional circumstances, and gives as an example the circumstances where a parent takes a child on holiday during term time without the school authorising the absence. In such circumstances, the Authorised Person may 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 not authorised by the school in some exceptional circumstances e.g. term time holiday, could lead to a Penalty Notice being issued without further warning.*

- 5.3.3 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 when requesting that the Education Welfare Service issue a Penalty Notice.
- 5.3.4 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.
- 5.3.5 A Penalty Notice may be issued to each parent liable for the offence or offences.
- 5.3.6 An authorised person may issue to any parent a maximum of two Penalty Notices 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.
- 5.3.7 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.

5.3.8 An Authorised Person must promptly provide the Education Welfare Service with a copy of any Penalty Notice issued, to include a copy of the paperwork relating to the decision (e.g. the warning letter sent, the record of considerations and decision etc).

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

5.4 Where an Authorised Person recommends that the LA issues a Penalty Notice

5.4.1 Although the Education Welfare Service will be responsible for issuing Penalty Notices on behalf of the LA, any Authorised Person may refer a case to the Education Welfare Service where s/he recommends a Penalty Notice to be issued.

5.4.2 Applications made to the LA must be signed by the Head teacher and a School Governor.

5.4.3 Prior to making a recommendation for a Penalty Notice, the Authorised Person must send the parent a warning letter including the information set out in Paragraph 5.3.1 above. The Authorised Person should then monitor the pupil's attendance. If there has been any unauthorised absence in the 15 day period specified, the Authorised Person should send the relevant paperwork to the Education Welfare Service. This would include an LA Penalty Notice Application Form a copy of the warning letter and the reasons why the Authorised Person recommends that the Education Welfare Service issue a Penalty Notice and in particular, why s/he believes that a Penalty Notice would be likely to secure an improvement in the pupil's future attendance. This recommendation can be made before the expiration of the 15 school day timescale provided for in the warning letter.

5.4.4 The LA will accept applications on completed Penalty Notice Application Form. All other relevant paperwork should be attached.

5.4.5 The Education Welfare Service will consider the recommendation alongside any alternative means of intervention which it may take. This would include parental prosecution, the offer of family support, a parenting contract and/or a referral to another agency.

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 28 days of receipt of the Penalty Notice, the Penalty is £50. If not paid within 28 days the Penalty is automatically increased to £100 if paid within 42 days.
- 6.3 Any revenue resulting from payment of Penalties will be retained by the LA to help cover the costs of issuing and enforcing Penalty Notices, or the cost of prosecuting recipients who do not pay.
- 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 The non-payment of a Penalty within the prescribed period of time will automatically LAd to a prosecution under section 444, Education Act 1996 (unless the Penalty Notice must be withdrawn for either of the reasons given below). 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.

9. Arrangements for co-ordination between the LA, 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 LA that the Code of Conduct requires 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.

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DRAFT completed taking information from Hampshire Code of Conduct