

**NON-SCHOOL ATTENDANCE**

**EDUCATION PENALTY NOTICES**

**LOCAL CODE OF CONDUCT**

July 2016

Queries about this document should be addressed to:

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This code will be reviewed in August 2017.

**Legal Basis**

**The Anti-social Behaviour Act 2003** contains provision for the issue of Penalty **Notices** for cases of unauthorised absence from school. **Section 23** of that Act empowers designated Local Authority officers, Head Teachers (including Deputy and Assistant Head Teachers nominated by them) and the Police to issue the aforementioned Penalty Notices.

In consultation with and following agreement from schools, the administration of the Penalty Notice Process will be undertaken by the Local Authority (Lambeth Council), who will process Penalty Notice requests received from the school.

The Local Authority (LA) has primary responsibility for producing and overseeing the Penalty Notice Code of Conduct and ensuring consultation takes place with governing bodies, head teachers and the chief officer of police for the area in adopting the code.

The education-related provisions of the Anti-Social Behaviour Act 2003 apply to all parents who fall within the definition set out in Section 576 of the Education Act 1996. This defines ‘parent’ as:

1. All natural parents, whether they are married or not.
2. Any person who, although they are not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person.
3. Any person who, although not a natural parent, has care of a child or young person. Having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law.

Throughout this document, references to ‘parent’ mean each and every person coming within the definition, whether acting jointly or separately, and should not be taken to mean that provisions only apply to ‘parent’ in the singular.

There is a legal duty under **section 7** of the **Education Act 1996** for a parent to ensure their child receives full time education suitable to his age, ability and aptitude. The offence under **section 444** relates to a child who is a registered pupil at a school and fails to attend there regularly.

**Section 23** of the **Anti-Social Behaviour Act 2003** provides for the use of Penalty Notices by inserting **section 444A** into the **Education Act 1996**. This allows for Penalty Notices to be issued where it appears that an offence under **s444** of the Act (which relates to a child who is a registered pupil at a school and fails to attend there regularly) has been committed. **Section 444B** also provides for further regulations to be made related to the use of Penalty Notices. The current regulations are the **Education (Penalty Notices) (England) Regulations 2007**. The **Education Act 2005** inserted **s444ZA** into the **Education Act 1996** extends the use of Education Penalty Notices to circumstances where a parent fails to ensure that a child, for whom he or she is responsible, attends the alternative provision that has been made for the child. The term “school” should therefore within the code include alternative provision within the definition contained in these regulations

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**Section 103** of the **Education and Inspections Act 2006** places a legal duty on a parent in relation to excluded pupils. A parent is guilty of an offence under this Act where a child has been excluded from school (fixed-term or permanent) and is found in a public place during school hours, without reasonable justification, within the first five days of the exclusion period. In some circumstances it may be necessary for a child to be in a public place **during** school hours on a school day e.g. pre-arranged medical appointment or emergency. Also a parent may need medical help and may consider it inappropriate for a child to be left at home alone if they are unable to make alternative arrangements.

This Code takes into account the change in legislation in accordance with The Education Pupil Registration England Amendment Regulations which came into force on 1 September 2013 and amend **Regulation 7 of the 2006 Regulations as follows:**

(1A) **leave of absence shall not be granted unless**

1. **an application has been made in advance to the proprietor by a parent with whom the pupil normally resides; and**
2. **The proprietor or a person authorised by the proprietor in accordance with paragraph (1) considers that leave of absence should be granted due to the exceptional circumstances relating to that application.**

## RATIONALE

A criminal offence occurs if a parent fails to secure a child’s regular attendance at school at which they are registered. An Education Penalty Notice (EPN) may provide a more proportionate response to non-attendance than a prosecution and one which can often be taken sooner and for less serious non-attendance. Further benefits of the Education Penalty Notices are that they offer the Local Authority the opportunity to save time and money expended in prosecuting parents, where this may not be appropriate, and they offer the parent a chance to avoid a criminal record where they may otherwise have obtained one.

In Lambeth, Parents and pupils are supported at school and 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.

# **Use of Penalty Notices**

Penalty Notices will only be issued for cases of **unauthorised** absence or in the case of pupils been **excluded** from school and are found in a public place without good reason. When a Penalty Notice is issued for cases of unauthorised absence, the defences in law against the offence remain the same as for the substantive offence under Section 444 (1) and 444 (1A) of the Education Act 1996. Any defence against conviction on this charge is very limited and the matter is dealt with in a Magistrates’ Court.

Penalty notices are more effective with less entrenched cases and will not be used for cases where by a pupils attendance is 80% or less, which often require investigation to ensure complex issues are identified and support offered prior to legal action being considered.

The use of the Education Penalty Notice will be restricted to a maximum of two per parent in any twelve month period. The Head teacher will provide the EWS with a referral that clearly details the reasons why an Education Penalty Notice should be issued (please see referral form below).

## Specific Conditions

**Children Looked After:**

Lambeth Council does not include Children Looked After in the Penalty Notice process. Where there are concerns over attendance with a child in Lambeth Council or other Local Authority care, a review should be held to determine that appropriate provision is in place and whether changes need to be made to better engage the young person with their education.

**Special Education Needs (SEN):**

For pupils in receipt of a Statement of Educational Needs and/or additional needs funding, an early review should be held before considering a Penalty Notice or other legal action. This is to determine that appropriate provision is in place and whether changes need to be made to better engage the young person with their education.

# **Key considerations prior to the issue of a Penalty Notice**

In the case of absence from school, a penalty notice should be considered if the parent is judged capable of securing better attendance but is not willing to accept that responsibility and it is considered likely to improve the pupil’s attendance.

This judgment is based on the parental response to warnings issued by the school regarding their child’s poor attendance and their engagement with the school and/or the EWS in attempts to improve attendance.

Parents who do not heed warnings or respond to efforts to deal with their child’s absences may be adjudged to have failed in their duty and will receive a Penalty Notice for each individual parent and for each child with unauthorised absence.

In order for the Local Code of Conduct to reflect due regard to the Human Rights Act and DfE Regulations and Guidance, the LA ‘s Code of Conduct has been amended in order to meet its statutory obligations.

LA’s, schools and the police must demonstrate regard to the Human Rights Act and ensure they apply their powers fairly and consistently and in the case of penalty notices, the local code of conduct must be seen to fully comply with the Human Rights Act.

The purpose of the local Code of Conduct is to ensure that the powers are applied consistently and fairly and therefore the LA will only issue penalty notices on behalf of schools in the circumstances detailed below.

Under the **Education (Pupil Registration) (Amendment) Regulations 2013** 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

**It is for Headteachers to determine if the request is Exceptional.**

**Legislation requires that each request is judged on a case by case basis.**

The DfE expects that head teachers will use their discretion sparingly and that schools should not operate blankets bans.

The LA must have regard to a parents’ ability to pay any Penalty Notices issued and, in situations where there is more than one non-attending child and/or parent in a family, the impact of multiple notices must receive careful consideration. However, financial circumstances alone will not prevent the issue of a Notice.

**Leave of Absence**

## *Consider*

The family’s circumstances and the likely benefits to the child and family, taking into account social, emotional and cultural reasons; The likely detrimental impact on the child’s social, emotional and intellectual development, attainment level and any SEN.

* Meeting parents to explore exceptional circumstances such as bereavement, funerals abroad, unavoidable cause (illness/flight delays) to determine the reasonableness of delay to return and allow parents the opportunity to provide appropriate evidence. This is to reduce the need for subsequent Local Authority Penalty Notice withdrawals based on retrospective evidence;
* Siblings in other Lambeth schools. Liaise with other schools in individual cases to agree a consistent approach in considering term time holiday request and penalty notice;
* The child’s previous attendance record;
* Consider exceptional circumstances put forward by the parent, explicitly setting out considerations taken by the school in a letter to the parent confirming when requests are unauthorised**.**
* Request of Flight tickets, which state date of departure and return

The Local Authority advises schools that no leave of absence should be authorised for children with attendance below 96%; unless exceptional circumstances exist.

**Unauthorised Leave of Absence during term time**

A fixed penalty notice can be issued without warning in whereby:

A leave of absence of 3 days (6 sessions) or more was taken during term time without the school’s consent.

If an unauthorised leave of absence has been taken and there have been instances of previous unauthorised absences in an 8 week period. This can be one day.

Where a parent has taken the pupil on holiday during term-time with the school’s authorisation and has failed to return the pupil to school on the date agreed.

**Circumstances for issuing a penalty notice for unauthorized absences**

A Fixed penalty notice can be issued if a formal warning has been and has been given and the parent has been given 15 school days to effect an improvement.

Pupils who have had 10 unauthorized sessions over a 8 week period and their attendance has not been below 80% (24 sessions of absence) in the last 12 weeks (120 Sessions) prior to a notice being requested.

Pupil’s stopped on a Truancy Patrol, with no justified reason for absence.

The criteria for issuing a penalty notice have been set to take into account the level of unauthorised absence that the LA can confidently institute Magistrate Court proceedings in the event that the Penalty Notice remains unpaid.

# **Consider**

Has the parent been regularly contacted by the school to establish the reasons for absence or is there established parental non-engagement in response to phone calls, letters or invitations to school based meetings.

Could there be underlying issues which need to be explored with the parents at a school based meeting to identify if any support is required.

When parents are separated and do not live at the same address, establish how much involvement each parent has in caring for the child/ren. If one parent has little involvement, consider whether it is in the public or family’s interest to issue a fine to both parents.

**Parents who live at the same address will be equally responsible for their child/ren’s attendance and will each receive a fine for each child.**

**Circumstances for issuing a penalty notice for authorized absences**

Where a child is excluded from school and is seen in a public place during normal school hours on the first five days of each and every fixed period or permanent exclusion where a child is excluded from school and is seen in a public place during normal school hours causing anti-social behaviour on the first five days of each and every fixed period of permanent exclusion;

**For pupils stopped during a School Exclusion and Attendance Sweep**

**(Truancy Patrol)**

# **Consider**

Ensuring that there are no genuine reasons for the absence and any underlying issues which may need school based support.

Arranging a parent meeting on the first occurrence of established unauthorised absence and warn of the risk of receiving a penalty notice. Penalty notices for pupils stopped twice during a sweep will act as a trigger to consider a penalty notice

## School action prior to referring to the EWS for the issuing of a Penalty Notice

The School’s Governing Body has endorsed the operation of the penalty notice scheme;

The School’s Attendance Policy clearly explains the criteria and process for addressing poor attendance;

The School has fully considered any extenuating circumstances and has established there are no justified causes for the absences;

A written notice has been sent to parents informing them of the consideration to refer to the Local Authority to issue a penalty notice;

While the Head teacher can delegate the authority to a member of staff to make penalty notice referrals on their behalf, all referrals must be signed by a member of the Senior Leadership Team to confirm authorisation to ensure that referrals are made in line with the protocol.

It is good practice to ensure that parents are reminded on an annual basis of the school’s policy on attendance, including the existence of Penalty Notices

Evidence of warning letters must be attached to the Fixed Penalty Notice referral

**The penalty notice must be raised within 12 weeks of the offence occuring**

**Withdrawal of PNs**

Under the Regulations, parents have no right of appeal against the issue of a PN.

The Regulations limit the circumstances in which an LA can withdraw a PN to the following:

Where the notice ought not to have been issued

Where the notice ought not to have been issued to the person named as the recipient

Where the penalty has not been paid in full before the expiry of the period for payment but it is not appropriate to prosecute the recipient for the offence in connection with which the notice was issued

Where a PN has been withdrawn in accordance with the above, notice of the withdrawal will be issued to the recipient by the Courts Manager. Except where the PN is withdrawn due to the notice not ought to be issued, any amount paid by way of penalty in pursuance of that notice will be repaid to the person who paid it; and no proceedings will be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued or for an offence under S.444 (1) of the Education Act 1996 arising out of the same circumstances.

The Courts Manager will determine whether a PN should be withdrawn or whether a prosecution of the parent(s) should be instituted based on overall attendance and Court capacity.

**There are also Public Interest factors against prosecution which must be considered:**

A prosecution is likely to have a detrimental effect on the victim’s physical or mental health;

The defendant is suffering from mental or physical ill-health;

It is considered that there is insufficient evidence to provide a realistic prospect of conviction;

At the point of considering issuing a penalty notice the above principles should be taken into account. However should these issues only come to the notice of the school or LA once the notice has been issued, a withdrawal will be considered in discussion with the school’s Attendance Lead.

**Prosecution for non-payment of fines**

The parent cannot be prosecuted for the particular offence for which the notice was issued until after the final deadline for payment has passed and cannot be convicted of that offence if they pay a penalty in accordance with the notice.

If the penalty is not paid in full by the end of the 28 day period the LA must either:

Prosecute for the offence to which the notice applies; or withdraw the notice.

Unlike other penalty notice schemes the prosecution is not for non-payment. If there is a prosecution it will follow the usual procedures of a prosecution for irregular attendance. Prosecutions will be brought by the LA under section 444 of the Education Act 1996.

**Arrangements for co-ordination between Lambeth LA and neighbouring LAs**

The Regulations state that the penalty shall be paid (and any correspondence about the notice sent) to the LA in whose area is the school at which the recipient’s child is a registered pupil.

**Arrangements for co-ordination with the police**

As for schools and neighbouring LAs, any authorised police officer who feels a notice should be issued should contact the Courts Manager.

**Monitoring and reporting on effectiveness of arrangements**

The Integrated Early Help Services will monitor the implementation of the scheme and code of conduct and adapt the code in the context of regular reviews of its effectiveness. Representatives from Lambeth Head Teachers, the Police, the Youth Offending Service and the Anti-Social Behaviour Team will be invited to contribute as appropriate

Reports, Freedom of Information (FOI) requests and summaries will be produced by the Courts Manager and Early Integrated Help Services and circulated as appropriate.

**Code of Conduct Signed By:**

**Date:**

**APPENDIX 1**

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**Penalty Notice Referral Form**

|  |  |  |
| --- | --- | --- |
| Referral Source | Name of Referrer  **Please Print** |  |
|  | Telephone |  |
| Establishment  *e.g. school name / police station* | |  |

|  |
| --- |
| Full Name of Child |

|  |  |  |  |
| --- | --- | --- | --- |
| First Name | Last Name | Date of Birth | Gender |

|  |  |  |
| --- | --- | --- |
| DCSF Ethnicity Code | Looked After Pupil? | Statemented Pupil? |

|  |  |  |
| --- | --- | --- |
| Full Name of Mother | First Name | Last Name |
| Full Name of Father | First Name | Last Name |
| Address | | Postcode |
| Period of absence for which Penalty Notice is requested | From: DD / MM / YY  / / | To: DD / MM / YY  / / |
| Previous Prosecution Warning Requested |  | Date |
| Previous Penalty Notice Requested |  | Date |
| Previous Penalty Notice Issued |  | Date |

|  |
| --- |
| Specific reasons for believing a penalty notice is appropriate: |

I certify that during the period indicated above, the school was open for sessions

during which time the named pupil attended sessions; of the absences

were unauthorised by the school.

Name Signature

Position Date

**Completed forms must have an attendance printout, signed by the Headteacher, attached before sending to:**

The Courts Manager, London Borough of Lambeth, PO Box 734, Winchester, SO23 5DG**.**

**Please note that incomplete forms will be returned to the sender**

**Code of Conduct**

This notice is issued in accordance with a local Code of Conduct drawn up by Lambeth Local Authority (LA).

Any questions or correspondence about the notice or the code should be addressed to:

Education Welfare Service

Civic Centre, 6 Brixton Hill, London SW2 1EG

Telephone: 020 7926 9614 Fax: 020 7926 9502

**Amount of Penalty**

The amount of the penalty is as follows:

**When paid Penalty**

Within 21 days £60

Within 28 days £120

Unpaid after 28 days Prosecution

**Right of Appeal**

There is no right of appeal.

**Payment**

You should return this notice with your payment to the postal address stated or personally deliver it to

Lambeth LA at the One Stop Shop based on the ground floor of International House between 10:30am and 4:30pm Monday to Thursday or 11am to 4.30pm on a Friday. A receipt will be issued for payments made.

Payments must be made within stated deadlines and in full-no part payments are allowed.