

# **Code of conduct on the provisions for fixed penalty notices**

*Reviewed September 2023*

# **Code of conduct on the issue of fixed penalty notices in respect of poor school attendance and holidays requested in term-time**

## **1. Preliminary**

In accordance with The Education (Penalty Notices) (England) Regulations 2007 Ealing Council is required to draw up a code of conduct which sets out measures to ensure consistency in the issuing of penalty notices, including:

- (a) means of avoiding the issue of duplicate penalty notices;
- (b) measures to ensure that a penalty notice is not issued in respect of an offence when proceedings for that offence under section 444 of the 1996 Act (or an offence under subsection (1A) of that section arising out of the same circumstances) or section 103(3) of the 2006 Act, as the case may be, are contemplated or have been commenced by the local education authority;
- (c) the occasions when it will be appropriate to issue a penalty notice for an offence;
- (d) a maximum number of penalty notices that may be issued to one parent in any twelve- month period; and
- (e) arrangements for co-ordination between the local education authority, neighboring local education authorities where appropriate, the police and authorised officers

This is a local code of conduct for the borough and seeks to cover the requirements above as set out in Regulation 14 of The Education (Penalty Notices) (England) Regulations 2007.

Penalty Notices supplement the existing sanctions available under Section 444 Education Act 1996 or Section 36 Children 1989 to enforce attendance at school or alternative provision. There is no legal requirement to consider a Penalty Notice before proceeding to a section 444 prosecution - Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices DfE (DCSF) 2007.

Relevant Legislation:

Education Act (1996) – Section 444 as amended by the Anti-Social Behaviour Act (2003).

## **2. Regulations:**

Education (Penalty Notice) (England) Regulations (2007).

The Education (Penalty Notices) (England) (Amendments) Regulations 2012  
Education (Penalty Notices) (England) (Amendments) Regulations 2013

The Education (Pupil Registration) (England) (Coronavirus) (Amendment) (No. 2) Regulations 2020

### **3. Guidance:**

DFE Guidance on Education Related Parenting Contracts, Parenting Orders and Penalty Notices (September 2007).

The issuing of Penalty Notices must conform to all requirements of the Human Rights Act and Equal Opportunities legislation.

### **4. Introduction**

Section 7 Education Act 1996 places a duty on parents to ensure that their child of compulsory school age receives a suitable education either by regular attendance at school or otherwise. A child is of compulsory school age at the beginning of the 1st term after their 5th birthday, A child remains of compulsory school age until the last Friday in June in the school year that they turn 16. From September 2015 all 16-year olds must remain in education or training until their 18<sup>th</sup> birthday.

Section 576 Education Act 1996 defines a 'parent' widely to include:

- a biological parent of the child (even if they do not have Parental Responsibility and even if the child does not reside with that parent);
- any person who is not a parent but has Parental Responsibility for the child (for example through a Residence Order, Child Arrangements Order, Special Guardianship Order, Step- Parental Responsibility Order, Adoption Order or Care Order);
- someone who has care of the child.

Therefore, all these people have the duty to ensure a child of compulsory school age receives a suitable education. This does not mean that the child has to attend a school – it is possible to fulfil this duty by home educating the child. However, the education must be:

- full-time;
- efficient – the education must achieve what it sets out to achieve;
- suitable – to their age, ability and aptitude and any special educational needs they may have. The education must equip the child for life within the community and must not limit a child's options in later life.

The Registration (Pupil Registration) Regulations 2006 require a school to put the child's name on the Admissions Register on the first day that the child is expected to attend school. If the pupil does not attend, they will be recorded as absent – this can be authorised or unauthorised.

A school will authorise an absence if:

- the child is too ill to attend, and the school accepts this as valid (Schools should authorise absences due to illness unless they have genuine cause for concern about the veracity of an illness). If the authenticity of illness is in doubt, schools can request parents to provide medical evidence to support the illness.
- the parent has got the advance permission of the school e.g. for an exceptional circumstance, religious observation;
- the child has a medical or dental appointment;
- the child is on study leave;
- the child is being educated off-site;

- the child has been excluded.

Schools have to regularly inform Ealing Council of any pupils who are regularly absent from school, have irregular attendance, or have missed 10 school days or more without the school's permission.

In law an offence occurs if a person with parental responsibility 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, the Children's Act 1989 to enforce attendance at school where appropriate subject to statutory defences.

## **5. Issuing a Penalty Notice**

Parents and pupils are supported at school and local authority 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 used primarily as a means of ensuring regular school attendance is improved. Amendments were made to the 2007 Regulations in the Education (Penalty Notices) (England) (Amendment) Regulations 2013. These amendments came into force on 1<sup>st</sup> September 2013. Parents must, from 1st September 2013, pay £60 within 21 days or £120 within 28 days.

## **6. Occasions where a fixed penalty notice may be issued**

The issuing of a Fixed Penalty Notice is considered appropriate where it has been agreed between the school and the council that a prosecution is a proportionate response. Only after the following occasions:

- a) In cases of absence from school when the pupil has been taken on holiday during term time, the absence has not been authorised by the school, and the child has attendance below the local authority average.
- b) There must be at least 6 consecutive sessions (3 school days) lost due to unauthorised leave of absence during term time.
- c) Excessive delayed return from extended holidays without prior school agreement.
- e) Following a Truancy sweep, enquiries will be undertaken with the school of any pupil stopped. In cases where the school have recorded the absence of the pupil as unauthorised and the evidence shows that the pupil has been stopped on a previous patrol within a year then a Fixed Penalty Notice will be issued.

No one parent will receive more than three (and typically, Ealing issue two) separate Fixed penalty notices resulting from the unauthorised absence of an individual child in any 12- month period, however, there will

be no restriction on the number of times a parent/carer may receive a formal warning of a possible issue of a Fixed Penalty Notice.

## 7. Procedures for issuing fixed penalty notices – irregular school attendance

In Ealing fixed penalty notices may be initiated by the school if the Governing Body approves such action and the attendance policy is amended to note the approval. However, in such circumstances the council will still need to agree the issuing of the notice dependent on it's being willing and satisfied that there is sufficient evidence to prosecute for the offence in the case of non-payment. This includes consideration of the following:

- The School register must show absences recorded as unauthorised.
- The key consideration in deciding whether to issue a penalty notice will be whether it can be effective in helping to get the pupil who is truanting/not attending – back into school
- A penalty notice is a suitable intervention in circumstances where the parent is judged capable of securing the child's regular attendance but is not willing to take responsibility for doing so, for example when the parent has failed to engage with any voluntary or supportive measures

e.g. parenting attendance contract. aka. Attendance improvement plan.

- It will be particularly useful as a sanction at an early stage before attendance problems become entrenched and where the council considers that a prosecution would be too heavy-handed and so it is an alternative to prosecution.
- A penalty notice may be issued to each parent in respect of each of their children if they fall within the criteria above.
- The normal response to a "first offence" should be a warning<sup>□</sup> rather than a penalty. However, the council has the discretion to issue a penalty notice for a first offence in exceptional circumstances such as where the unauthorised absence was for an extended period and condoned by the parent, for example where the parent has chosen to take their child on holiday during term time without authorisation or for other parentally condoned absence, or where a child is witnessed to be truanting from school.
- The parent/carer may have been offered help and support, including a parenting attendance contract to overcome the attendance problem.
- The parent/carer has been issued with a verbal and written notification from the School of the possibility of a penalty notice (and of other possible/alternative or legal sanctions) and being given a period of time to effect an improvement.

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- A notice may be issued where parents are unwilling to sign a parenting contract and attendance remains unsatisfactory.

Ealing Council will issue penalty notices to avoid the issue of duplicate notices. The council will ensure consistent and equitable delivery, retain school-home relationships and allow cohesion with other enforcement sanctions. Penalty notices will only be issued for offences where the council is willing and able to prosecute.

The council will ensure that the issuing of penalty notices is closely monitored to ensure that recipients pay the relevant fine. In cases where the penalty in respect of unauthorised leave of absence or persistent non- attendance is not paid within the

appropriate period the Education Welfare Service will instigate action through the courts as required by legislation.

The council will consider requests to issue fixed penalty notices in respect of unauthorised holidays in term time and will require supporting documentation and relevant information including all correspondence with the parent to ensure any mitigation is considered.

It is expected that schools will have considered every aspect of a pupil's case before considering whether a fixed penalty notice would be appropriate. A penalty notice may be issued to each parent in respect of each of his or her children. **Usually** no more than two issues of penalty notices per parent per child should be during any 12-month period.

## **8. Procedures for issuing fixed penalty notices – Exclusions 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 without reasonable justification at any time during school hours on a day which-(a) is one of the first five school days to which the exclusion relates or, where that exclusion is for a fixed period of five days or less, any of the days to which the exclusion relates, and (b) is stated in the notice under section 104 to be a day on which the parent is subject to this subsection. Reasonable justification will be assessed on the individual circumstances of each case but may include medical emergency of parent or child or pre- arranged medical appointment.

It is a defence for a person charged with an offence under 103(3) to prove that he had reasonable justification for the failure to comply with the duty imposed under s103(2). Reasonable justification will take to mean. Appearing in a public place within a reasonable time of; *or with documentation for*

- a) Attending a religious ceremony on a day of religious observation
- b) Attending a pre-arranged medical/dental appointment
- c) A medical emergency.
- d) Attending an appointment with any supporting agency.

There is no limit to the number of penalty notices that may be issued within a twelve-month period for excluded children.

Any request for a penalty notice should contain the circumstances of the offence in writing (where, when, who etc) and the reasons for requesting a Penalty Notice.

There should be an enquiry, as far as possible, at the time of the incident as to whether the child;

- Is of compulsory school age and identifiable by the person reporting.
- Has been excluded on disciplinary grounds from a relevant school for a fixed period or permanently
- Remains excluded from that school,
- Has not subsequently been admitted as a pupil to any other school,
- Has no reasonable justification for being in the public place

The person requesting a notice will be prepared to act as witness in any court action that may result if the notice remains unpaid, thus will have had direct involvement in the incident that attracted the request. There is no sanction for non-payment of a penalty notice; rather the local authority (only) prosecutes the parent under section 103(3). Requests may be made by school staff authorised by the Head teacher, a Police Officer or Local Authority Officer No penalty notice will be issued until after the authorised, or any delegated officer (Local Authority) has reason to believe that a person has committed an offence under section 103(3), and that the code of conduct is adhered to.

In all cases the Local Authority will

- Maintain a database of penalties issued and outcomes
- Penalty notices will be issued by post to the last known address, communicated to the school.
- Penalty notice is copied to the council's debtors section and invoice numbers are inserted with the expected dates of payment noted.
- A copy of the penalty notice and invoice is kept on file;
- The school is notified of the issuing of the penalty notice.
- In respect of unauthorised leave of absence, the school has requested the penalty notice be issued and in respect of subsequent withdrawals, the school has notified the Local Authority

## **9. School attendance orders**

School attendance orders (SAO) serve to protect children who the Local Authority believe are not in receipt of adequate education. Section 437 to section 444 Education Act 1996 sets out how the school can intervene in a child's educational development. Children who are of statutory school age, which is up to the age of 16, are required to attend school regularly unless they receive a home education that is considered to be suitable. For children who do not attend school regularly but are assessed as being home schooled adequately then no action will be required.

If the local authority are satisfied that the child is not receiving the standard of education required or at all, further steps will be taken. The local authority will only issue a SAO after all other reasonable steps have been taken to establish a suitable education with the parents.

If the local authority remain concerned that the child is not receiving a suitable education the issuing of a SAO will be considered. SAO's are given to the parents of children and will set out the school that the child must attend and give guidelines to the parents regarding how they should register the child at the named school. The process is as follows:

- If It appears to the local authority that a child of compulsory school age is not receiving suitable education, they shall serve a notice in writing on the parent/s requiring them to satisfy the local authority within a period of 15 days beginning with the day on which the notice is served, that the child is receiving a suitable education.
- If there is no response the local authority will serve a second notice in writing on the parents informing them of their intention to serve the order, specifying the school which the local authority intends to name in the order, and, if they think fit, one or more other schools which are regarded as suitable

alternatives and require a response within 15 days.

- If there is no response to this, then the Local Authority will serve the school attendance order which requires the child to be registered at the listed school within 15 days.
- If the parent/s fail to comply with the SAO within 15 days, it is an offence.
- The Local Authority will issue a fixed penalty notice of £60 which can increase to £120 if the parent/s fail to pay it within 21 days. If the FPN is not paid within 28 days, the Local Authority can issue a summons to prosecute the parent/s.
- If the Local Authority prosecute a parent/s, the Magistrates court can fine up to a maximum penalty of £2,500; a community order or a prison sentence up to 3 months. The court will also order a parenting order.

## **10. Procedures for Withdrawing Fixed penalty notices**

A Fixed Penalty Notice may be withdrawn by the Local Authority in any case in which the authority determines that: -

- It ought not to have been issued or
- It ought not to have been issued to the person named as the recipient.
- In the case of exclusions, if the parent has provided written and acceptable evidence as to the reasonable justification of the child's presence in a public place.

Where a fixed penalty notice has been withdrawn in accordance with the above, a notice of withdrawal shall be given to the recipient and any amount paid by way of penalty pursuant of that notice shall be repaid to the person who paid it.

No proceedings shall be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued or for an offence under Section 444 (1A) of the Act arising out of the same circumstances.

Requests will be checked against the code of practice and issued by the local authority following consultation with head teachers or their designated school personnel or police and after the local authorities' school attendance service has checked its records that a duplicate notice is not being issued and proceedings under Section 444(1) of 1996 Education Act are not in progress, and that previous warnings have been issued, either by the school or the Local Authority.

## **11. Working with neighbouring local authorities**

Ealing Local Authority will be able to issue notices for any pupil in any Ealing school. If the pupil lives in another local authority, then Ealing may consult the home Local Authority before issuing a notice to ensure the criteria on duplicate notices, other legal action, and the appropriations of a notice have been met.

In the case of pupils excluded from an out of borough school (and/or are also resident out of borough), Ealing Council will contact the relevant authority and furnish them with relevant information and documentation.



## **12. Right of appeal**

There is no statutory right of appeal once a fixed penalty notice has been issued. a parent must pay the fixed penalty notice or face proceedings in the magistrate's court under Section 444 of the Education Act 1996 in relation to absences.

## **13. Payment of penalty notices**

The arrangements for the paying of penalties will be detailed on the penalty notices. From 1 September 2013 fixed penalty notices were set nationally by the DfE at

- £60 per parent per child if paid within 21 days of receipt of the notice
- increasing to £120 per parent per child if paid within 28 days of receipt of the notice.

Payment of a fixed penalty notice discharges the parent/carer liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the penalty notice.

Ealing Council retains any revenue from fixed penalty notices to cover enforcement costs.

## **14. Non-payment of fixed penalty notices**

Non-payment of a fixed penalty notice may result in the fast-track prosecution process under the provisions of Sec 444 Education Act 1996. The fact that a notice was issued and unpaid can be used as evidence in a subsequent prosecution.

## **15. Reporting and review**

Ealing Council will review the Code of Conduct on the issue of fixed penalty notices regarding unauthorised holidays taken in term time and poor school attendance at regular intervals and update the code if there is any further guidance issued.