

Brighton & Hove City Council
Children, Families & Schools Directorate
Code of Conduct for the Issue of Penalty Notices for offences of failing to secure regular attendance at school (under Section 23 of Anti-Social Behaviour Act 2003)

1 Legal Basis

Section 23 of the Anti Social Behaviour Act 2003 (which subsequently amended Education Act 1996 at 444A and 444B) empowers designated LEA officers, Headteachers (and authorised senior school staff) and the Police (community support officers and accredited persons) to issue Penalty Notices, against parents, in cases of **unauthorised absence** of their children from school. These powers came into force in February 2004.

It is the duty of each LEA to develop a local 'Code of Conduct' with schools and the police to deal with all aspects of penalty notice use. All partners are bound to operate within the confines of the local code. Issuing of Penalty Notices must conform with all requirements of the Human Rights Act and all Equal Opportunities legislation.

2 Rationale

Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise the opportunities available to them. The impact of non-attendance at school is now clearly demonstrated in terms of low attainment and risk of involvement in crime. Recent DfES studies show:

- Only 10% of persistent truants achieve 5 A*-C GCSEs compared with 38% of occasional truants and 58% of non-truants.
- 21% of persistent truants had no qualifications as opposed to only 3% of non-truants.
- Truants are more likely to offend and, of the group of young people offending, $\frac{2}{3}$ had truanted.
- Unauthorised absence from school can be cause for concern in relation to child welfare and protection.

In law an offence occurs if a parent/carer fails to secure a child's regular attendance at a school where he/she is a registered pupil and if any absence is not authorised by the school. Penalty Notices supplement the existing sanctions currently available under Section 444, Education Act 1996 and orders made under Section 36, Children Act 1989, to enforce attendance at school where appropriate.

The Brighton & Hove Education Welfare Service (EWS) deliver this statutory LEA responsibility and this Service will continue to investigate cases of regular non-attendance from school and, following appropriate casework, instigate legal action if

applicable. Penalty Notices offer a means for swift intervention which the EWS can use to combat truancy problems before they become entrenched. Penalty Notices should only be used as a sanction where there is a reasonable expectation that their use will secure improved attendance at school.

Adherence to this code ensures that the power to use Penalty Notices is applied consistently and fairly across the City and that suitable administrative arrangements are in place.

The use of Penalty Notices is an opportunity for Children, Families & Schools to establish thresholds at community level, beyond which parentally condoned absence will not be accepted. The expectations on parents can be restated and emphasised by their use – an opportunity not available within the existing statutory framework.

3 Key points concerning Penalty Notices

A Penalty Notice can only be used in cases of **unauthorised absence**.

Parents/carers will receive a formal written warning before the authority proceeds to issuing a Penalty Notice.

Parents/carers will only receive a Penalty Notice if they live at the same address as the child, or if they are in a position to exercise some control or guidance over the child.

The use of Penalty Notices will be restricted to no more than one per pupil per academic year. If a second notice were to be considered then it would usually be appropriate to consider a Section 444 prosecution.

In cases where families contain more than one poor-attending pupil, multiple issue might be considered.

The parent of a child of statutory school age, whose attendance has been unsatisfactory in relation to this code will be required to pay a fine of:

- £50 if paid within 28 days of the date of issue
- £100 if paid within 42 days of the date of issue

4 Procedure for Issuing Penalty Notices

No Penalty Notices will be issued without authorisation by the Senior Education Welfare Officer. This will ensure consistent and equitable delivery, safeguard school-home relationships and ensure co-ordination with other enforcement sanctions.

Penalty Notices will be issued by Brighton & Hove City Council by first class post. They will **never** be used as an on the spot sanction.

The EWS will receive requests to issue Penalty Notices from schools, the police and neighbouring LEAs as well as the Service itself deciding to take such action is

appropriate. A referral pro-forma will be used to ensure that all relevant information is made available and to check that the absence meets the criteria for the issue of a penalty notice. A referral from any external agency should be made within 5 school days of the period of unauthorised absence occurring to ensure that the response is swift and can act as an early intervention initiative.

The Senior EWO must satisfy him/herself that the issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being used.

In all cases where a Penalty Notice is being considered, the EWS will be the investigating authority to ensure that the request to issue is valid and that all reasonable and expected actions have already been taken by the appropriate agencies/schools. This would be particularly important where Looked After Children are concerned concerning the responsibilities of carers.

The EWS will respond to all requests to issue a Penalty Notice within 10 school days of receipt and where all relevant information has been supplied. The response will be as follows:

- Issue a formal written warning to the parent(s)/carer(s) of the possibility of a Penalty Notice being issued.
- In the same warning letter indicate that if over a set period of 15 school days the pupil has no unauthorised absence, the penalty notice will not be issued.
- Issue a Penalty Notice through the post at the end of the 15 day period if the required level of improvement has not been achieved.
- The Senior Education Welfare Officer will keep full written records.

5 Criteria for Issuing Penalty Notices

The issuing of a Penalty Notice is considered appropriate in the following circumstances:

- Overt (where the pupil is not sick and clearly should be in school) truancy (including pupils caught on truancy sweeps)
- Parentally condoned absences.
- Unauthorised holidays in term time (over 10 school days) in an academic year*
- Excessive delayed return from holiday without prior school agreement (beyond one additional school day).
- Persistent late arrival at school (after the register has closed (longer than 30mins after the start of the school day)) of 5 days in any half term.

The trigger for a Penalty Notice in Brighton & Hove will be:

- **At least 20 sessions (10 school days) lost to unauthorised absence by the pupil during the current term.**

**The deliberate taking of holiday in term time without school permission and against school advice (where it can be clearly demonstrated that the parent/carer understood that permission had not/would not be given) and where this has created a period of*

unauthorised absence in the current term of at least 20 sessions. The issue of children from black and minority ethnic (BME) backgrounds taking longer visits to the county of origin will arise. In each case, a full discussion between the parents and the school should take place. In all cases where the holiday will exceed 20 school days, parents should be advised that the child's name will be removed from the school roll, in line with DfES Guidance. The issue of a Penalty Notice will also be considered. For BME children with statements of special educational needs (SEN), it is critical that parents are advised of the serious adverse affect such absence will have on their education and placement should they wish to return to the UK.

In all circumstances schools must consider every aspect of a pupil's case and, have taken all appropriate and expected action (particularly in relation to LAC, children with SEN and other vulnerable groups), before considering whether a Penalty Notice would be appropriate. This must include strategic discussions with the school EWO and other CFS staff who have involvement with/knowledge of the pupil/family.

6 Procedure for withdrawing Penalty Notices:

Once issued a Penalty Notice will only be withdrawn in the following circumstances:

- Proof has been established that the Penalty Notice was issued to the wrong person.
- The use of the Penalty Notice did not conform to the terms of this Code.
- For all cases where consideration of withdrawal is being made, the Head of Pupil Support Services will review the case.

When a Penalty Notice has been withdrawn in accordance with the above, a notice of the withdrawal shall be given to the recipient and any amount paid by way of penalty in pursuance of that notice shall be repaid to the person who paid. 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.

7 Payment of Penalty Notices

Arrangements for payment will be detailed on the Penalty Notice.

Payment of a 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.

The EWS retains any revenue from Penalty Notices to cover enforcement costs (collection of fines or prosecution in the event of non-payment).

8 Non-payment of Penalty Notices

Non-payment of a Penalty Notice within the statutory periods will trigger the prosecution process under Section 444 of the Education Act 1996. However no

decision on the issue of summonses will be taken before the expiry of 42 days from the date the Penalty Notice posted.

9 Policy and Publicity

Use of Penalty Notices as a sanction will be included in the Authority's Attendance Policy.

All School Attendance Policies will be revised to include information on the use of Penalty Notices and this will be publicised to all parents.

The Authority will publish parent information on Penalty Notices for distribution through schools and other council buildings.

10 Monitoring and Review

The EWS will report annually to Elected Members, Headteachers, Governors and the Police on the use and outcomes of Penalty Notices. The Code of Conduct will be reviewed and amended as appropriate.