

HAVERING LOCAL AUTHORITY CHILDRENS SERVICES

Penalty Notices Local Code of Conduct

Role and responsibility of LA

1. Education (Penalty Notices) (England) (Amendment) Regulations 2013, which came into effect on 1st September 2013 set out the framework for the operation of the penalty notice scheme. The Regulations require each LA to draw up a local Code of Conduct which sets out measures to ensure consistency in the issuing of penalty notices.
2. The LA is responsible for the overall administration of the scheme and it is for them to make such arrangements for the operation of the scheme (not provided for in the government guidance or associated Regulations) as it sees fit, in consultation with its partners.
3. The authorised officer for the purpose of these arrangements shall be the Admissions and Attendance Manager

Purpose of this local Code of Conduct

4. This Code of Conduct has been produced in accordance with the Regulations referred to above. Its purpose is to ensure that the powers deriving from the PN scheme are applied consistently and fairly across the LA area and that suitable arrangements are in place for the administration of the scheme. Anyone issuing a PN under the scheme must do so within the terms of this local Code.

Signatories to this Code of Conduct

5. The following partners have been consulted on this local Code of Conduct and agree to its provisions:
 - Havering Borough Council (the LA);
 - Governing bodies and head teachers of Havering schools;
 - Havering Division of the Metropolitan Police Service;
 - Youth Support Service; and
 - The Youth Offending Team

Circumstances where a PN may be issued

6. The key consideration in deciding whether to issue a PN is whether it can be effective in helping to get the pupil back into school.
7. A PN can only be issued in cases of unauthorised absence, or in certain cases where a child or young person is subject to an exclusion from their education provision.
8. PNs offer a swift intervention that may be used to combat attendance problems before they become entrenched and where the LA considers that a prosecution would be inappropriate or unwarranted at that time. PN can be a suitable intervention in circumstances where the parent is judged capable of securing their child's regular attendance but is not willing to take responsibility for doing so, for example where the parent has failed to engage with any voluntary or supportive measures proposed.

9. The normal response to a first offence should be a warning rather than a penalty. However, authorised officers have the power to issue a PN for a first offence in exceptional circumstances. This could be where the unauthorised absence was for an extended period and condoned by the parent (for example where the parent has taken their child on holiday during term time without authorisation) or for parentally condoned absence identified in the course of a truancy sweep.
10. Specifically, a PN may be issued as an early alternative to prosecution or other forms of intervention as follows depending on the individual circumstances:
 - where a pupil has at least 20 sessions unauthorised absence during any given continuous 3 month period (school time only) and the parent(s) are not co-operating with the LA and/or school to resolve the problem;
 - The parent has received a formal warning of the possibility of a PN being issued and given a minimum of 15 school days to effect an improvement.
 - Where a pupil is required to attend alternative education provision at a named site, school or pupil referral unit and fails to attend on or after the first day.
 - Where a pupil is found in a public place, in school hours without reasonable justification during the first 5 days of a fixed term or permanent exclusion.
11. In addition, in the following exceptional circumstances, a PN may be issued without formal written notification to the parent depending on the individual circumstances:
 - where a parent has taken the pupil on holiday during term-time without the school's authorisation or (in cases where the school has authorised absence for a holiday) has failed to return the pupil to school on the date agreed with the school; or
 - where a pupil and parent(s) have been stopped by a truancy sweep, the parent(s) cannot provide an acceptable reason for absence and the parent is known to have condoned absence previously.
12. As is currently the case for prosecutions, the Attendance Service will determine whether a notice should be issued following discussion with the school (or other agency) and receipt of a completed school referral form.

Procedure for issuing PNs

13. To avoid duplication of PNs, the Attendance Service will be solely responsible for issuing PNs in Havering and will process requests for PNs from schools, the Metropolitan Police Service and neighbouring boroughs. Requests will be considered provided that:
 - all relevant information is supplied in the specified manner to the Attendance Service;
 - the requirements of this Code of Conduct are met; and
 - the issue of a PN does not conflict with other intervention strategies in place or other enforcement sanctions already in process.
14. The Attendance Service will respond to all requests within 10 school days and, provided the criteria in paragraphs 6-12 above are met, will:
 - Issue a formal written warning to the parent of the possibility of a PN being issued;
 - In the same letter give the parent 15 school days to improve the pupil's attendance. An improvement would mean no unauthorised absence.
 - Issue a PN by post at the end of the 15 day period if the required improvement has not been achieved.

Serving of PNs

15. A notice may be served by:

- Giving it to the recipient; or
- Leaving it at the recipient's usual or last-known address; or
- Sending it to the recipient at that address by first class post.

NB: service by post shall be deemed to have been effected, unless the contrary is proved, on the second working day after posting the notice by first class post.

Actions for schools

16. Although the LA is responsible for the authorisation and issue of PNs, schools have an important part to play in identifying, with the Attendance Service, pupils whose attendance might be improved by issuing a PN to their parent(s). PNs should be considered on a case by case basis (and taking account of the circumstances in which a PN may be issued – see paragraphs 6-12 above) as part of the established The Attendance Service/school procedures for the identification and referral of poor attendance generally.

Withdrawal of PNs

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

18. 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; or
- Where the notice ought not to have been issued to the person named as the recipient; or
- 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.

19. Where a PN has been withdrawn in accordance with the above, notice of the withdrawal will be given to the recipient by the Attendance Service. Except where the PN is withdrawn under (c) above, 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(1A) of the Education Act 1996 arising out of the same circumstances.

20. The EWS will determine whether a PN should be withdrawn or whether a prosecution of the parent(s) should be instituted.

Maximum number of penalty notices that may be issued to one parent in any twelve month period

21. The LA must have regard to the parent's ability to pay and other factors. Multiple penalty notices may be issued by agreement with the LA's partners but generally no more than one penalty notice per child will be issued during each school year.

Payment and collection of fines

22. All penalties will be paid to the LA which will retain the revenue to cover the costs of issuing or enforcing notices, or the cost of prosecuting recipients who do not pay. The penalty is £60 if paid within 21 days of receipt of the invoice, rising to £120 if paid after 21 days but within 28 days of receipt of the invoice (an invoice served by post is deemed to have been received on the second day after posting it by first class post).

Prosecution for non-payment of fines

23. The parent cannot be prosecuted for the particular offence for which the notice was issued until after the final deadline for payment has passed (28 days after receipt of the invoice – see paragraph 22 above) and cannot be convicted of that offence if they pay a penalty in accordance with the notice.

24. 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 (can only be done in limited circumstances – see paragraphs 18-20 above).

NB: 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. In the case of a penalty notice – exclusions, the prosecution will be brought by the LA under Section 103 of the Education and Inspection Act 2006.

Arrangements for co-ordination between Havering LA and neighbouring LAs

25. 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. However, most attendance follow-up is carried out by the LA for the pupil's home address except where cross-border arrangements exist, 'Home' LAs requiring penalty notices to be issued should contact the 'school' LA.

Arrangements for co-ordination with the police

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

Monitoring and reporting on effectiveness of arrangements

27. The LA's Strategic Attendance Group has been established to monitor the implementation of the scheme and code of conduct and to modify and adapt the code in the context of regular reviews of its effectiveness. Representatives from Havering head teachers, the police and the Youth Offending Team will be invited to participate in the group as appropriate.

28. An annual committee report on the operation and effectiveness of the scheme will be produced by the Head of School and Student Services and circulated as appropriate.

Parenting contracts

29. If a pupil fails to attend school regularly the LA and/or the school may consider it appropriate to offer a parenting contract to the parent as an alternative to more formal

action. A parenting contract is a formal written agreement between the parent, the LA and/or the school. Entry into a parenting contract is voluntary, the parent cannot be compelled if they do not wish to do so. Equally there is no obligation on the LA and/or the school to offer a parenting contract. The contract will contain:

- a) a statement by the parent that they agree to comply with whatever requirements are specified within the contract; and
- b) a statement by the LA and/or school agreeing to supply support to the parent for the purpose of complying with the contract.

Circumstances in which a parenting contract might be pursued

30. *A parenting contract may be a more appropriate course of action where a parent is willing to address their child's poor attendance or persistent lateness but is in need of support.*

31. A Parenting contract may be used in cases of truancy where a pupil has failed to attend regularly at the school or education provision at which they are registered.

At which point should the contract be arranged

32. *In cases of truancy and poor attendance over a period of not less than 6 weeks during term time.*

Code of conduct signed by:

Date:

Part 1

Definition of parent: Section 576 Education Act 1996

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

- All natural parents, whether they are married or not;
- 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; and
- Any person who, although not a natural parent, has care of a child or young person – having care in this context means that a person with whom the child lives and who looks after the child, irrespective of their legal relationship to the child, is considered to be a parent in education law.

NB: Throughout this document, references to parent mean each and every parent coming within the definition, whether acting jointly or separately.

Part 2

Penalty Notice Pro-forma

S.444A EDUCATION ACT 1996

Please read the notes overleaf carefully.

If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence under S.444 Education Act 1996.

To: [Title of recipient]

[Forenames of recipient]

[Surname of recipient]

Date of Birth: [Insert recipients Date of Birth]

Of: [Address of recipient]

You are a parent of [name and address of child] (called in this notice 'the pupil') who is a registered pupil at [name of school]

Between [Insert Date PN from and Date PN to] the pupil failed to attend regularly at the school.

This notice gives you the opportunity to pay a penalty fine instead of being prosecuted for the offence given above. The amount of the penalty is either £60 or £120. If you pay this penalty within the time limits set out below, no further action will be taken against you in connection with the offence as set out in this notice.

You will shortly be receiving an invoice from the Revenue and Benefits Collection Service. Payment should be made within 21 days of receipt. If paid after 21 days but within 28 days the penalty is doubled to £120. -

Late or part payments will not be accepted and no reminders will be sent. **If payment is not received by [insert date 28 days from date of issue or date of receipt (the second day after posting first class) if posting] you may be prosecuted for the offence and could be subject to a fine of up to £1000.**

This notice is issued by [name] [official particulars] of [address of employer] within Havering LA.

Date of issue: [Insert date of issue]

NOTES

1. Contact details

If you have any queries about this notice, please contact Havering Local Authority at [insert department contact name, telephone number, fax number and address]

2. Amount of penalty

The amount of the penalty is as follows:

When paid	
Within 21 days	£60
Within 28 days	£120

3. Code of conduct

This notice is issued in accordance with a local code of conduct drawn up by Havering Local Authority.

Any questions or correspondence about the code should be addressed to the Havering Education Department at [address and phone no].

4. Withdrawal

Havering LA may withdraw this notice if it is shown that it should not have been issued to you or has not been issued to you in accordance with the local code of conduct. If you believe the notice was wrongly issued you must contact the LA to ask for it to be withdrawn as soon as possible, stating why you believe the notice to have been incorrectly issued. The LA will consider your request and will contact you to let you know whether the notice is withdrawn. If the notice is not withdrawn and you do not pay, you will be liable to prosecution for the offence that your child has failed to attend school regularly.

5. Payment

You should await receipt of a formal invoice and then send/deliver your payment to the address provided on the invoice.

6. Prosecution

If you do not pay the penalty, and the notice is not withdrawn, you will be prosecuted for the offence of failing to ensure your child's regular attendance at school. You will receive a separate summons for this which will give you notice of the time and date of the court hearing. You will be able to defend yourself and you would be advised to seek legal representation; in some circumstances you may be entitled to legal aid.