

Code of Conduct Wef September 2016- Fixed Penalty Notices

RATIONALE

1. Regular and punctual attendance of pupils at schools is, under section 7 of the Education Act 1996, a legal requirement. Parents are responsible for ensuring their child of compulsory school age receives efficient full-time education that is suitable to the child's age, ability and aptitude and to any special educational needs the child may have
2. Compulsory school age is defined as: Commencing at the start of term on or after a child's fifth birthday and concluding on the last Friday in June of the academic year in which the pupil turns 16. The Education Investigation Service in Dudley instigates statutory intervention on behalf of the LA, when complaints are received that have appropriate levels of unauthorised absence

NB This code does not apply to children of compulsory school age who are not registered at a school.

3. Under the provisions of subsection (1) of section 23 of the Anti-social Behaviour Act 2003 and amended legislation, certain cases of unauthorised absence will result in a Penalty Notice being issued to the parent(s)/carer(s) responsible. Under these provisions the Penalty Notice is **£60** if paid within **21** days of receipt rising to **£120** if paid after **21** days, but within **28** days of receipt
4. Dudley EIS will maintain this code and ensure that the rights of the individual are not compromised, in order to fully comply with Article 6 and 8 of The Human Rights Act 1998. This Code of Conduct will govern the issuing of Penalty Notices across the borough
5. The issue of a Penalty Notice affords parents the opportunity of discharging their liability to an offence by payment of the fine. Where the fine is unpaid sufficient evidence must exist to prosecute and uphold an offence under the Education Act 1996

GUIDANCE AND LEGISLATION

The Head of Service is delegated the responsibility of this code and must have regard to the following:

- Human Rights Act 1998 must be applied fairly and consistently as inconsistency or unfairness may lead to challenge



- The Equality Act 2010 - age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage, civil partnership, pregnancy and maternity.
- Data Protection Act 1998
- Children Act 1989
- Crime and Disorder Act 1998
- Criminal Proceedings and Investigations Act 1996
- The Police and Criminal Evidence Act 1984
- The Education Act 1996

Section 576 of The Education Act 1996, Defines a 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
- 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 The education-related provisions of the Anti-social Behaviour Act 2003 apply to all parents who fall within the definition set out above.

GENERAL CONDITIONS FOR THE ISSUE OF PENALTY NOTICES

6. The issue of Penalty Notices will be strictly administered by the Education Investigation Service to ensure **independence** of judicial intervention, and ensure that the provisions of this code do not have a **negative impact** on any current forms of statutory intervention being pursued by the Education Investigation Service
7. Education Providers do make every attempt to advise parents on the use of Penalty Notices. It is recommended that advice and guidance is displayed in the schools Behaviour and or Attendance Policies but, school's may in addition, use other methods of communication.
8. The first response to any referral must be either a verbal or written warning or both to ensure the parent is advised of the use of penalty fines.
9. For a Penalty Notice to be issued the following must be considered:
 - a) That the parent has failed to perform their legal duty by ensuring their children registered at a school attend regularly in accordance with any legislation or case law at that time.

- b) Sufficient unauthorised absence is recorded; is commensurate with this Code of Conduct and meets our standard referral criteria for statutory intervention.
 - c) That a penalty fine is only issued when service systems indicate previous involvement of advice or warnings in any 12 month period.
 - d) That historic absence may be taken into consideration when issuing the penalty that is not in excess of a 12 month period and that it is consistent with any legislation or case law at that time
 - e) That the local Authority is **willing and able to prosecute should** the fine remain unpaid
 - f) That the investigating officer or supervisor is confident that it is a proportionate response
10. The Education Investigation Service will always issue Penalty Notices by post, but they may be delivered by hand if an Officer determines the risk appropriate.
 11. No parent may ordinarily receive more than two separate Penalty Notices in any twelve-month period.
 12. The Education Investigation Service may receive referrals/complaints with regard to cases where the issue of Penalty Notices may be appropriate, this could be from the Police or other agencies. The Education Investigation Service shall consider these requests providing the relevant information is supplied and that the level of unauthorised absence is consistent with service requirements

OTHER CONDITIONS WHERE A PENALTY NOTICE MIGHT BE ISSUED

Following Pupil Watch/Truancy Sweeps

13. Parents who are interviewed during, or following, a truancy sweep/pupil watch exercise, or where instances of truancy are identified, may be subject to a Penalty Notice. Each case will be assessed on an individual basis and full account will be taken of the pupil's overall levels of unauthorised absence. The Education Investigation Service may issue a Penalty Notice because of the negative impact on the community truancy can have.

ADMINISTRATION OF THE PENALTY NOTICE SCHEME

14. Penalty Notices shall be issued in a prescribed manner. Any revenue generated will be collected through the Borough Council scheme, allowing for various methods of payment.
15. A prosecution under s444 (1) Education Act 1996 will be undertaken when sufficient evidence exists. The failure to pay a Penalty Notice may be used in evidence to contribute to proving the offence.
16. There is no mechanism within either legislation or this Code for the collection of non payment nor is there an opportunity to pay in instalments and there is currently no right of appeal to a Penalty Notice, but it may be withdrawn (Para 17).
17. For any person to be prosecuted, the elements of s444 Education Act 1996 must be proven. The EIS cannot prosecute just because a Penalty Notice has not been paid. The Rules of Evidence and Criminal Procedural Rules apply. Any prosecution must meet the “evidential test” and the “public interest test” and otherwise a prosecution may not proceed
18. There are a number of reasons when a Penalty Notice may be withdrawn;
 - a) when it should not have been issued or
 - b) when issued to the wrong person
 - c) outside the terms and conditions of this Code
 - d) when it contains material errors
 - e) If a parent can prove it was delivered to the wrong address
 - f) The Education Provider has received medical evidence and decides to authorise some or all of the absence and the referral criteria is no longer met.
19. The Education Investigation Service shall produce an annual audited statement of revenue collected from Penalty Notices. Any such revenue may only be used to cover legal costs of the administration of the scheme or per suing a prosecution. Any surplus monies will be surrendered to the consolidated fund, and there is to be no profit margin in the use of such fines

Review

20. This code of conduct will be reviewed annually to ensure that it can service the school attendance landscape and any changes in legislation or case law.