

## **NOTTINGHAM CITY COUNCIL CODE OF CONDUCT IN RELATION TO PENALTY NOTICES**

### **1. Rationale**

- 1.1 Regular and punctual attendance of pupils at school is a legal requirement. Under section 7 of the Education Act 1996 parents are responsible for ensuring the efficient fulltime education according to the child's age, ability and aptitude and to any special needs the child may have for all compulsory school age children. The Education Welfare Service will investigate cases of irregular school attendance by undertaking casework and, where appropriate, instigate legal action under the Education Act 1996 for unauthorised absence.
  
- 1.2 This Code of Conduct will govern all Penalty Notices issued in respect of children of compulsory school age who are registered at a maintained school, a Pupil Referral Unit, an Academy, A City Technology College, a City College for the Technology of the Arts, Free Schools and those attending alternative provision within the jurisdiction of Nottingham City Council, hence referred to as the LA (Local Authority).
  
- 1.3 The term 'school' will apply to those establishments listed above.
  
- 1.4 The purpose of the code is to ensure that Penalty Notices are issued consistently and fairly across the LA. The issuing of Penalty Notices will be administered by the Education Welfare Service to ensure independence, proportionality and fairness regarding compliance with the law and regulations and that the provisions of this code do not conflict with other forms of statutory intervention pursued by the Education Welfare Service.

## 2. Guidance and Legislation

- 2.1 The Anti-Social Behaviour Act 2003, Section 23, Sub-Section (1) adds two new Sections (444A and 444B) to Section 444 of the Education act 1996. The Act empowers designated LA Officers, Head Teachers (and Deputy/Assistant Head Teachers authorised by them) and the Police, Community Support Officers and accredited persons to issue Penalty Notices. Under these sections, penalties are set at £60 if paid within 21 days of the notice, rising to £120 if paid after 21 days but within 28 days of the Notice. These Sections enable Penalty Notices to be issued as an alternative to prosecution under Section 444 Education Act 1996 and enable parents to discharge liability for conviction for that offence by paying the penalty.
- 2.2 The Education (Penalty Notices) (England) (Amendment) Regulations 2013 amended the Education (Penalty Notices) (England) Regulations 2007 to the effect that leave of absence should only be granted where the application for leave has been made in advance and there are exceptional circumstances for the leave.
- 2.3 In relation to exclusions, The Education and Inspections Act 2006 section 103 places a duty on parents in relation to an excluded pupil to ensure that their child is not present in a public place during the first five days and school hours without reasonable justification. This criterion applies to each and every fixed term or permanent exclusion. These days are known as the 'specified days of exclusion.' Under section, 104 schools must notify parents in writing that they are responsible for the child during these days. Section 105 allows for a Penalty Notice to be issued to a parent guilty of an offence under section 103(3)
- School hours are defined 'as school session or the break between sessions on the same day'

- Public place means any highway or other public place to which the public have access
  - Reasonable justification is provided by the parent prior to the issuing of a Penalty Notice. A justification which is reasonable will depend on points of fact and proof and is a matter for the Court.
- 2.4 The parent is liable for a Penalty Notice if they fail to ensure the attendance of a child at the alternative provision following permanent exclusion.
- 2.5 Within this Code of Conduct a parent is as defined in Section 576 Education Act 1996.

### **3. Procedures for Issuing Penalty Notices**

- 3.1 The Education Welfare Service will consider requests for service and determine the appropriate response based on the evidence provided, the level of unauthorised absence and previous involvement. The decision to issue a Penalty Notice will be made on a case by case basis.
- 3.2 Parents will have been warned in writing before a Penalty Notice is issued.
- 3.3 In relation to Penalty Notices for exclusions or Truancy Patrols, the parent will be given the opportunity to provide a reason for the child being seen in a public place.
- 3.4 Penalty Notices will only be issued subject to the approval of the Service Manager or Legal Intervention Officers.
- 3.5 Penalty Notices will always be issued by first class post unless it is deemed appropriate to hand deliver the Penalty Notice.

3.6 No parent will receive more than three Penalty Notices resulting from the unauthorised absence of an individual child in any twelve month period. Unless the child is encountered for a second or subsequent time on a truancy patrol or the child is seen in a public place while excluded.

3.7 The collection of payments and issuing of receipts will be administered by the Local Authority.

#### **4. Circumstances for Issuing a Penalty Notice**

4.1 Penalty Notices can be issued for

- Irregular attendance (unauthorised absence)
- Unagreed leave for holiday or absence
- Excluded pupil failing to attend provision after the fifth day of exclusion
- Excluded pupil seen in a public place within the first five days of the exclusion
- Pupil stopped on more than one occasion during a three month period
- On behalf of neighbouring Local Authorities

4.2 Penalty Notices will be issued to a parent(s) if:

- the pupil has at least 38 unauthorised absences over the equivalent of a school year (380 sessions) or;
- a Deferred Prosecution Notice has been breached
- an Advisory Notice has been breached

In the case of unagreed leave, Penalty Notices will be issued if

- There has been at least 10 consecutive school sessions of unauthorised absence or

- If the unagreed leave of absence immediately precedes, or is attached to, a school closure (e.g. school holidays/INSET/school closure etc.) or any form of absence.

Unauthorised absence is where the school has either not received a reason for absence or the reason given is unacceptable. It is the Head Teacher who determines whether or not the absence is authorised.

## **5. Withdrawing a Penalty Notice**

- 5.1 A Penalty Notice may be withdrawn by the Local Authority in any case the authority determines that:
- when it has not been issued in accordance with the Code of Conduct
  - It has been issued to the wrong person.
  - It contains material errors
  - Where the LA decide not to prosecute the offence

## **6. Payment of Penalty Notices**

- 6.1 Non-payment of the Penalty Notice must result in the consideration of prosecution under section 444(1) Education Act 1996. The fact that a Notice was issued and unpaid can be used as evidence in the prosecution case.
- 6.2 There is no mechanism to pay by instalments or to appeal the issuing of a Penalty Notice.
- 6.3 Revenue generated from the Penalty Notices will be used to cover the costs of issuing and enforcing notices or the cost of prosecuting parents who do not pay. Any surplus will be surrendered to the Secretary of State.

## **7. Administration of the Penalty Notice Scheme**

- 7.1 The Penalty Notice Scheme will be administered by the Education Welfare Service with support from the Finance Department.
- 7.2 The purpose of this Code of Conduct is to ensure that the powers are applied consistently and fairly across the Local Authority and to state the administration arrangements of the scheme.
- 7.3 Any person authorised to issue a Penalty Notice shall only do so in accordance with this Code of Conduct.

This Code of Conduct will be regularly reviewed and developed in accordance with DfE guidance, legislation, case law and local circumstances.