

## Penalty Notice Code of Conduct

### Background

Primary responsibility for issuing Penalty Notices rests with the Local Authority who are responsible for the administration of the scheme and for bringing prosecutions for non payment of Penalty Notices under Section 23 Anti-Social Behaviour Act 2003<sup>1</sup>. Local Authorities are required to issue a local Code of Conduct and consult with School Head Teachers, including Academies and Free schools, Governors and the Chief Constable. The new code of Conduct needs to be adopted by all schools and The Chief Constable and the Local Authority in order to replace the existing Code of Conduct.

Bournemouth Borough Council's Safeguarding and Social Inclusion Service have previously issued all fixed penalty notices in relation to non school attendance on behalf of the Local Authority. However, some schools or Academies may want to issue their own. This revision of The Code of Conduct specifies how this can be done. Bournemouth Borough Council is aware from previous consultation that most schools within the Borough preferred the Safeguarding and Social Inclusion Service to continue to issue fines, and this will continue to be the practice, unless a school wishes to make their own arrangements and have notified the Local Authority of this.

If a school wishes to, a Head Teacher is empowered to issue Penalty Notices. The Head Teacher may delegate this to a Deputy or Assistant Head Teacher. Head Teachers who wish their school to issue fixed penalties must have the agreement of the Governing Body and must notify the Local Authority of this at the time that this revised Code of Conduct is signed. Penalty Notices can only be withdrawn on very limited grounds.

This Code of Conduct has been written in accordance with Section 23 of the Anti-Social Behaviour Act 2003 and the Education and Inspections Act (Section 105) 2006<sup>2</sup> and are subject to the Education (Penalty notices) (England) (amendment) Regulations 2012 1046<sup>3</sup>, following consultation with the Dorset Police, Head Teachers and Governors of Bournemouth schools.

The purpose of the Code of Conduct is to ensure a consistent response to the issuing of Penalty Notices for attendance issues across Bournemouth Borough Council.

### 1. Rationale

- 1.1 Regular and punctual attendance of children and young people at school is both a legal requirement and essential in order for students to maximise the opportunities available to them. The Bournemouth Safeguarding and Social Inclusion, Education Social Work Service (ESWS) will continue to investigate referred cases of absence from school, and, following appropriate casework, instigate legal action if applicable.
- 1.2 Schools that do not have a Service Level Agreement with the Safeguarding and Social inclusion Service must consider what assessments and support are required to enable a young person to attend school, before asking the Local Authority to institute legal proceedings when a Penalty Notice has not been paid, and whether an application for an Education Supervision Order should be sought rather than a prosecution.

<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2003/38/section/23>

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2006/40/section/105>

<sup>3</sup> <http://www.legislation.gov.uk/ukqi/2012/1046/made>

- 1.3 Penalty Notices supplement the existing sanctions currently available under Section 444 Education Act 1996<sup>4</sup> or Education Supervision Order, Section 36, The Children Act 1989<sup>5</sup> to enforce attendance at school where appropriate. Penalty Notices offer a means of early intervention which Bournemouth will use to deal with issues of unauthorised absence from school before attendance issues become entrenched.
- 1.4 The Local Authority and any persons authorised to issue Penalty Notices must do so in accordance with their responsibilities under the Human Rights Act 1998<sup>6</sup>, Data Protection Act 1998<sup>7</sup> and the Equality Act 2010<sup>8</sup> and in line with the Councils commitment to fairness, 'Diversity promise' and Equality and Diversity Policy.
- 1.5 It is essential that Penalty Notices be issued in a consistent manner throughout Bournemouth. This Code of Conduct will govern the issuing of Penalty Notices for schools which are state maintained in Bournemouth Borough Council and has been agreed between the Bournemouth Borough Council (the LA), School Governing Bodies, Head Teachers of Bournemouth schools including Academies and Free Schools and The Dorset Police.

## 2. Legal Basis

- 2.1 Penalty Notices for unauthorised absences from school were introduced under Section 23 Anti-Social Behaviour Act 2003. The Education Penalty notices (England) regulations came into force on the 27<sup>th</sup> February 2004. Under Section 23 of this Act, Education Act, 1996 was amended with the introduction of two new subsections under Section 444 (subsections 444A and 444B)
- 2.2 Section 103 of the Education and Inspections Act 2006<sup>9</sup> places a duty on parents/carer(s)\* in relation to their child when excluded from school. A parent has to ensure that their child is not present in a public place during school hours without reasonable justification during the first 5 days of each and every fixed period of exclusion.
- 2.3 Section 105 of the Education and Inspections Act 2006 allows for a Penalty Notice to be given to a parent believed by the authorised officer to have committed an offence under Section 103 (failing to ensure that their child is not present in a public place on the days specified in a notice given to them). The parent must have been notified by the school at the time of the exclusion of their duty and days to which it relates.
- 2.4 The Education (Penalty Notices) (England) Regulations 2004 have been revoked and replaced by the Education (Penalty Notices) (England) Regulations Act, 2007<sup>10</sup>. This was with effect from 1 September 2007.
- 2.5 Certain cases of unauthorised absence can now be dealt with by way of a Penalty Notice. These Penalty Notices will involve the recipient paying a fine which is currently £60.00 if paid within 28 days, or £120 if paid within 42 days. If the fine is not paid in full within 42 days, court action will be pursued to address the non-school attendance under Section 444(1) Education Act 1996, or withdrawn in the circumstances listed in The Education (Penalty Notices) Regulations (England) 2007.

<sup>4</sup> <http://www.legislation.gov.uk/ukpga/1996/56/section/444>

<sup>5</sup> <http://www.legislation.gov.uk/ukpga/1989/41/section/36>

<sup>6</sup> <http://www.legislation.gov.uk/ukpga/1998/42/contents>

<sup>7</sup> <http://www.legislation.gov.uk/ukpga/1998/29/contents>

<sup>8</sup> <http://www.legislation.gov.uk/ukpga/2010/15/contents>

<sup>9</sup> <http://www.legislation.gov.uk/ukpga/2006/40/section/103>

<sup>10</sup> <http://www.legislation.gov.uk/uksi/2007/1867/contents/nnade>

- 2.6 The Education (Penalty Notices) (England) Regulations Act 2007 have been further amended by the Education (Penalty Notices Regulations) (England **2013**). **From 1st September 2013 parents must pay £60.00 within 21 days or £120 within 28 days.**

### **3. Procedure for issuing Penalty Notices**

- 3.1 The Safeguarding and Social Inclusion Service will issue Penalty Notices in Bournemouth on behalf of the Local Authority, Schools and the Police for all children who attend Bournemouth state maintained schools, Academies and Free Schools unless they have notified the Local Authority of their intention to issue their own Penalty Notices. Head Teachers who wish to do so must have the agreement of their Governing Body. Parents must be made aware that the Local Authority may prosecute if the Penalty Notice remains unpaid. The Safeguarding and Social Inclusion Service will action these requests provided:
- The circumstances of the case meet the criteria for the issuing of a Penalty Notice as specified in the Code of Conduct, and
  - All necessary information is provided to the Safeguarding and Social Inclusion Service with the PN1 form (see appendix) in order to establish that an offence, under Section 444 (1) of the Education Act 1996 for truancy or Section 103 (3) of the Education and Inspections Act 2006 for exclusion, or Section 444(1) has been committed.
- 3.2 The **Safeguarding and Social Inclusion Service will ensure that the issuing of Penalty Notices** is closely monitored. Schools must notify the Safeguarding and Social Inclusion Service of all Penalty Notices that they have issued, and whether paid or withdrawn. In cases where the penalty is not paid within the appropriate period, the Safeguarding and Social Inclusion Service will consider action through the courts as required by legislation. Prosecution in such cases would be for the non-attendance to which the Penalty Notice relates, but could also include other periods of unauthorised absence as appropriate. In this way, Bournemouth Borough Council will have the means to avoid the issue of duplicate notices.
- 3.3 An individual parent/carer will usually receive no more than one separate Penalty Notice resulting from the authorised absence of an individual child in any twelve month period; unless the unauthorised absence is attributable to an unauthorised leave of absence in which case a Penalty Notice may be issued to each parent, for each unauthorised leave of absence taken, up to a maximum of one per term.
- 2.4 Any Penalty Notice issued must be addressed to one parent but a Penalty Notice may be issued to each parent/carer liable for the offence or offences.
- 2.5 Penalty Notices will only be issued by post **and never as an 'on the spot' action; this is to ensure that all evidential requirements are in place to meet Health and Safety requirements.**
- 2.6 The Safeguarding and Social Inclusion Service will manage a central database for storing pupil data and Penalty Notices. This database will contain details of cases where legal intervention is a likely outcome, to **ensure that a Penalty Notice is not issued when proceedings for an offence under Section 444 (1) of the Education Act 1996 are contemplated or have been commenced by the Local Authority. It will keep records of all Penalty Notices issued, all payments, court dates, whether the recipient was prosecuted and whether the notice was withdrawn and on what grounds.**

- 2.7 Payment of a Penalty Notice discharges any liability to conviction for the offence under Section 444(1), to which the notice relates. However, if a Penalty Notice is not paid, proceedings may be commenced under Section 444(1) and the fact that the Penalty Notice was offered in lieu of a prosecution will be brought to the courts attention.

#### **4. Circumstances when a Penalty Notice will be issued**

##### **A) Excluded Pupils found to be in a public place:**

- 4.1 For pupils who are found in a public place during the first five school days of an exclusion, whether for a fixed term period or permanently from school, or, where that exclusion is for a fixed period of 5 days or less, any of the school days to which the exclusion relates as specified in Section 103 (2) of the Education and Inspections Act 2006 and is stated in the notice under Section 104 to be a day on which the parent/carer is subject to this subsection.
- 4.2 The Safeguarding and Social Inclusion Service recognises that in some circumstances, it may be necessary for a pupil to be in a public place during school hours on a day when they are excluded. For example, where the pupil has a pre-arranged medical appointment or there is a medical emergency which needs immediate attention. Similarly the parent may need urgent medical assistance and it would be inappropriate to leave the child alone at home. In all cases it will be for the parent to prove reasonable justification. A justification which is capable of being reasonable will depend upon points of fact and proof and will ultimately be decided by the Courts.

##### **B) Unauthorised Absence from school:**

- 4.3 In the early stages of casework an Education Social Worker or a school in cases which have not been referred might form an opinion that the issuing of a Penalty Notice is appropriate in lieu of a prosecution at this stage, e.g. where a parent/carer continually fails to provide an explanation for a pupils unauthorised absence, or where the reasons given are determined to be unauthorised in accordance with the school's procedures; or where the pupils unauthorised absence is 10% or more. The Safeguarding and Social Inclusion Service or school would need to discuss this with their line manager/Head Teacher, and if approved, a Penalty Notice would be issued if following a period of warning the attendance had not improved to a satisfactory level.
- 4.4 If the matter is referred to the Safeguarding and Social Inclusion Service to consider a Penalty Notice a warning letter will be sent to the parent(s)/carer(s) for a first offence advising that ha prosecution under Section 444(1) could result if a child's unauthorised attendance falls below 90% in any 6 weeks. Fifteen school days will then elapse to allow the parent to improve the situation before the Safeguarding and Social Inclusion Service makes a formal consideration of whether to commence proceedings which could result in a Penalty Notice being offered in lieu in the first instance.

##### **C) Unauthorised leave of absence taken during term time:**

- 4.5 All Bournemouth schools will be required to inform parent/carers that they may be liable to prosecution, which could be by way of a Penalty Notice being issued in lieu in the first instance, if they take their child out of school for a leave of absence without authorisation.
- 4.6 The 2013 amendments to the 2006 Regulations remove reference to family holidays and extended leave as well as the statutory threshold of ten school days.

**Head Teachers may not grant any leave of absence during term time unless there are exceptional circumstances.** Head Teachers should determine the number of school days a child can be away from school if leave is granted.

- 4.7 Parent/Carers will be expected to complete an exceptional leave of absence form. The Safeguarding and Social Inclusion Service recommends the model 'leave of absence request form' sent to all schools which contains information about the use of Penalty Notice in lieu of prosecution, as a consequence of unauthorised leave of absence taken in term time.
- 4.8 Where a parent/carer has taken a child off on a leave of absence without authorisation, there should be evidence of a minimum of 10 sessions of unauthorised absence, in order for the Safeguarding and Social Inclusion Service to consider issuing a Penalty Notice. The Head Teacher will be required to provide the following information in order for a Penalty Notice to be issued:
- A completed Penalty Notice request form (PN1)
  - A copy of the leave of absence request form from the parents
  - Notes of any meeting the school had with the parent/carer regarding the application
  - The schools response in writing, outlining the reasons why the request was rejected
  - Evidence that the parents/carers were informed of the consequences of taking unauthorised Leave of absence
  - A copy of the school attendance for the previous academic year
  - A copy of the school attendance prior to the leave of absence being taken and following the absence
  - The letter informing the family that the school would be requesting that consideration should be given to a Penalty Notice being issued, as they believe that an offence has been committed under Section 444(1)

In cases of irregular unauthorised attendance at school:

- A copy of any parenting assessments, CAF's or other assessments that have been undertaken

#### **D) Pupils stopped during a Truancy Patrol**

- 4.9 Following a truancy patrol, enquiries will be undertaken with the schools of all pupils stopped. In cases where the school have recorded the absence of the pupil as unauthorised and there are existing concerns about unauthorised school absence with the pupil's attendance being below 90% unauthorised, or 80% authorised, including lateness, in a 6 week period then a Penalty Notice (in lieu of prosecution) will be issued by Bournemouth Borough Council for children and young people attending a Bournemouth school
- 4.10 The key consideration in deciding whether to issue a Penalty Notice is appropriate, in the first instance, will be whether it may be effective in ensuring the pupil attends school on a regular basis or following exclusion if found in a public place without reasonable justification on days 1-5. A Penalty Notice is a suitable intervention in circumstances where the parent is judged capable of securing their child's regular attendance, e.g. where a parent has consistently failed to engage and act upon voluntary and supportive measures proposed.

## **5. Procedure for withdrawing Penalty Notice**

- 5.1 There is no statutory right of appeal against a Penalty Notice.
- 5.2 A Penalty Notice may be withdrawn by Bournemouth Local Authority, school or Academy in any case in which the authority determines that:
- a) It ought not to have been issued, or;
  - b) It ought not to have been issued to the person named as the recipient;
  - c) It has been issued outside the Code of Conduct;
  - d) It contains a material error;
  - e) Must withdraw it if it is not paid in full; it is therefore essential that the attendance information provided is accurate for any case in which a fine or subsequent legal action may follow is correct;
  - f) Where after the expiry of 42 days the Penalty Notice is unpaid and the Local Authority does not feel that it is in the public interest to commence legal proceedings under Section 444(1) (in such cases the Safeguarding and Social Inclusion Service will seek the view of the Local Authority Legal Services)
- 5.3 Where 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 refunded. No proceedings shall be continued or instigated against the recipient for the offence under section 444(1) of the Education Act 1996 in connection with which the withdrawn notice was issued arising out of the same circumstances.

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

- 6.1 The arrangements for the payment will be detailed on the Penalty Notices.
- 6.2 Payment of the Penalty Notice discharges the parent/carer of any liability to conviction of the offence under Section 444(1) to which the notice relates

## **7. Non Payment of Penalty Notices**

- 7.1 Non-payment of a Penalty Notice may result in prosecution proceedings being commenced under Section 444(1) of the Education Act 1996 for the offence of failure to secure regular attendance at school of the registered pupil. Non payment of the Penalty Notice is not an offence in itself and cannot be used as a reason for prosecution; the reason is for the non-attendance/unauthorised absence.
- 7.2 The Safeguarding and Social Inclusion Service will take into account factors including previous school attendance, if it is in the public interest to proceed with legal action under Section 444(1)

## **8. Review arrangements**

- 8.1 The impact of the use of the Penalty Notice Code of Conduct will be reviewed at the end of the 2013/2014 academic year.
- 8.2 The impact on the workload of the Local Authority staff and Revenue and Benefits section will also be reviewed at this time.

**\* For the issuing of a Penalty Notice a parent/carer is defined as per Section 576, The Education Act 1996.**

**The word 'Parent' within of the meaning of the act includes:**

- All natural parents, whether they are married or not.
- Any person who, although not a natural parent, has parental responsibility for a child or young person (as defined in the Children Act 1989).
- Any person who, although not a natural parent, has care of the child or young person, (having care of a child or young person means that a person whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law).

Signature \_\_\_\_\_ Name \_\_\_\_\_ Date \_\_\_\_\_

**Bournemouth Borough Council Children and Young Peoples Services**

Signature \_\_\_\_\_ Name \_\_\_\_\_ Date \_\_\_\_\_

**Dorset Police**

Signature \_\_\_\_\_ Name \_\_\_\_\_ Date \_\_\_\_\_

**Head Teacher**

**St Michael's CE (VC) Primary School**

Signature \_\_\_\_\_ Name \_\_\_\_\_ Date \_\_\_\_\_

**Chair of Governors**

**St Michael's CE (VC) Primary School**