

## **ATTENDANCE & PROSECUTION SERVICE (SANDWELL)**

### **PENALTY NOTICE CODE OF CONDUCT**

#### **1) Rationale**

The regular and punctual attendance of pupils at the school where they are registered is both a legal requirement and essential for students to maximise the opportunities available to them. The Attendance & Prosecution Service investigates cases of irregular attendance at school and, following investigation, may instigate legal action if appropriate.

Penalty notices are fines imposed on parents, requiring payment of £60.00 if paid within 21 days or £120.00 if paid within 28 days. They are an alternative to the prosecution of parents under S444 of the Education Act 1996 for failing to ensure that a child of compulsory school age regularly attends the school where they are registered, or at a place where alternative provision is provided. If the penalty notice goes unpaid, the responsible parent will be prosecuted for the offence under S444 Education Act 1996.

Penalty notices may also be issued under Section 105 of the Education and Inspections Act 2006 where parents allow their child to be present in a public place during school hours without reasonable justification during the first five days of a fixed period or permanent exclusion. The parent(s) must have been notified by the school at the time of the exclusion of this and the days to which it applies

Penalty notices can only be issued/requested by a head teacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police. All schools and the police must send copies of penalties issued to the local authority. Penalty notices can be issued to each parent liable for the attendance offence or offences. Penalty notices can be used where the pupil's absence has not been authorised by the school, including persistent lateness.

Although there is provision for police officers to issue penalty notices, it is unlikely that they will have sufficient knowledge of the incidence of unauthorised absences. Given that the parents must be prosecuted for the original offence if the penalty is not paid, there must be a sufficient level of unauthorised absence to demonstrate failure of the pupil to attend regularly at school. As such, agreement was reached with local police that police officers will not issue penalty notices but will support any action as necessary.

Penalty notices are issued by the Attendance and Prosecution Service on referral by head teachers when they are secure in the level of unauthorised absence on which to base court action. It is expected that any pupil with a significant level of unauthorised absence will be referred to the Attendance & Prosecution Service for action, as well as matters of unauthorised leave of absence.

It is essential that Penalty Notices be issued in a consistent manner. This Code of Conduct will govern the issuing of Penalty Notices for Sandwell Local Authority.

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## **2) Procedures for Issuing Penalty Notices**

To ensure that evidential requirements are met, a consistent approach is taken and duplicity is avoided, all Penalty Notices under Section 444A of the Education Act 1996 or Section 105 of the Education and Inspections Act 2006 will be issued by the Attendance & Prosecution Service on referral from schools / academies. The Service will ensure that the issuing of penalty notices is closely monitored, with checks upon recipients paying the relevant fine. Where appropriate, if the penalty is not paid within the appropriate period, the Attendance & Prosecution Service will instigate court action under the provisions of Section 444 of the Education Act 1996.

No one parent will receive more than two separate penalty notices resulting from the unauthorised absence of an individual child in any twelve month period. There is no limit to the number of warnings which may be issued. Repeat offences will be dealt with via Section 444 of the Education Act 1996.

Under S444 Education Act 1996, Magistrates can impose fines up to:-

- a) £1000 under S444(1)
- b) £2500 or up to 3 months imprisonment, or both, under S444(1A)

## **3) Circumstances Where a Penalty Notice May Be Issued**

Penalty notices may be issued in the following circumstances:

- Where Local Authority referral thresholds and prosecution criteria regarding irregular attendance at school are met.
- Where there are unauthorised absences in term time and there is clear evidence of failure to attend regularly at school. (This may include pupils taken on single or recurring unauthorised leave of absence in term time).
- Where there is irregular attendance and there is a reasonable expectation that the use of a penalty notice (leading to prosecution if unpaid) will result in improved attendance.
- Where the issuing of a penalty notice is considered appropriate and proportionate.
- Where there is irregular attendance and parents / pupils have not responded to local authority interventions, policy and/or advice.
- Where head teacher's discretion is applied to parents' requests for leave of absence in term time. (*Note: Department for Education guidance confirms that such requests should only be authorised in exceptional circumstances, which will not normally include family holidays. The issue of unauthorised leave of absence was also considered by the Supreme Court in the case of Isle of Wight v Platt [2017] UKSC28.*)
- Where parents allow their child to be present in a public place during school hours without reasonable justification during the first five days of a fixed period or permanent exclusion (see paragraph 3a below).

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3a) Under Section 103 of the Education and Inspections Act 2006, where a child of compulsory school age is excluded on disciplinary grounds, the parent of that child, provided they have been served with Notice under Section 104 of the act, must ensure that the child is not present in a public place during school hours during the first five days of that exclusion without reasonable justification. Failure to do so is an offence, punishable by a fine of up to £1,000.00 on conviction in the Magistrates Court. As an alternative to prosecution, a penalty notice may be issued under Section 105 of the act, requiring payment of £60 if paid within 21 days or £120 if paid within 28 days.

#### **4) Procedure for Withdrawing Penalty Notices**

A penalty notice may be withdrawn if the local authority determines that:

- a) It ought not to have been issued, or issued to the person named as the recipient.
- b) The notice contains material errors
- c) The issuer did not comply with this code of conduct.
- d) After the expiry of the last date for payment the penalty notice is unpaid and the local authority has neither instituted proceedings for the offence to which the notice relates nor is contemplating such proceedings.

Where a penalty notice has been withdrawn, 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 it. No proceedings shall be continued or instituted against the recipient for the offence about which the withdrawn notice was issued or for an offence under S444 of the Education Act 1996 arising out of the same circumstances (except where a notice was withdrawn due to a material error and a further penalty notice in respect of the offence was issued at the same time as withdrawal of the original notice).

#### **5) Payment of Penalty Notices**

The arrangements for the paying of penalties will be detailed on the penalty notices. The Local Authority (Attendance and Prosecution Service) will retain any revenue to cover enforcement and administration of justice costs as detailed in legislation. The Attendance and Prosecution Service may issue a discretionary final notice.

#### **6) Legislation**

- a) The regular attendance of children of compulsory school age who are registered pupils at a school is a legal requirement under Section 444 Education Act 1996.
- b) Compulsory school age is defined under Section 8 of the Education Act 1996 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 school year in which the pupil becomes 16.
- c) Under the provisions of Section 444A Education Act 1996, where a child of compulsory school age fails to attend regularly at a school at which they are a registered pupil, a penalty notice may be issued to the parent(s)/carer(s) responsible offering them the opportunity to discharge any liability to conviction for the offence

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under Section 444 to which the notice relates by payment of a penalty in accordance with the notice.

- d) This Code of Conduct will govern the issuing of penalty notices issued under Section 444A of the Education Act 1996 and Section 105 of the Education and Inspections Act 2006 for the borough of Sandwell. The Attendance and Prosecution Service (Sandwell) will:
- ensure the administration of justice of the necessary process
  - ensure compliance with Article 6 and 8 of The Human Rights Act 1998
  - ensure the consistent, fair and transparent application of its penalty notices throughout the borough.
- e) The provisions of this code of conduct apply to all parents including those who fall within the definition set out in Section 576 of the Education Act 1996, i.e.:
- 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
  - any person who, although not a natural parent, has care of a child or young person
  - Throughout this document, references to 'parent' shall mean each and every parent coming within the definition, whether acting jointly or separately, and should not be taken to mean that provisions only apply to 'parent' in the singular.
- f) The Attendance and Prosecution Service Manager is authorised to operate this code and must have regard to the following legislation and guidance: -
- Education Act 1996
  - Education (Penalty Notices) (England) Regulations 2007
  - The Education (Pupil Registration) (England) Regulations 2006
  - Education and Inspections Act 2006
  - School Attendance – Guidance for maintained schools, academies, independent schools and local authorities (September 2018)
  - School Attendance Parental Responsibility Measures (Guidance January 2015)
  - Equality Act 2010
  - Data Protection Act 1998
  - Children Act 1989
  - Crime and Disorder Act 1998
  - Human Rights Act 1998
  - Special Educational Needs and Disability Code Practice Guidance 2015

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# Leave of Absence – Guidance Notes

**Section 1** For Parents/Carers • **Section 2** For Schools • **Section 3**  
**Penalty Notices**

## **Section 1**

### **For Parents/Carers**

Under the Education (Pupil Registration) (Amendment) Regulations 2013 absence **may not** be Authorised unless:

- (a) An application has been made in advance to the Head teacher by a Parent/Carer with whom the pupil normally resides (lives with most of the time); and
- (b) The Head teacher, or a person Authorised by them, considers that Leave of Absence should be granted due to the exceptional circumstances relating to that application.

It is only a Parent “with whom the child normally resides” (lives with most of the time) that can apply for a Leave of Absence for their child. A Parent/Carer who does not live with the child **cannot** apply for a Leave of Absence. Any application they might make should be rejected by the school.

Parents/Carers should ensure that any Leave of Absence application is made in advance of any Leave of Absence to be taken. (Schools may have specific timescales for processing Leave of Absence applications. Parents/Carers should make sure they know what these are. Different schools may have different timescales.)

Parents/Carers should ensure that they know if their Leave of Absence application has been Authorised by the Head teacher **before** planning, booking or paying for anything in relation to that Leave of Absence application.

Parents/Carers should ensure they provide the Head teacher with **all** the detail and information they would want the Head teacher to know in deciding if a Leave of Absence can be Authorised.

Head teachers can only Authorise a Leave of Absence if they consider that the detail and information provided by a Parent/Carer in the application can be considered as an “exceptional circumstance”.

It is at the Head teacher’s discretion to decide if the detail and information provided by a Parent/Carer can be considered as an “exceptional circumstance” and agree if any Leave of Absence can be Authorised.

Disagreements between Parents/Carers and schools in relation to what is and is not an “exceptional circumstance” cannot be considered by the Attendance & Prosecution Service.

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## **Section 2**

### **For Schools**

Schools should consider having a clear, detailed and published policy or process that Parents/Carers should follow in applying for any Leave of Absence at their school.

Schools should decide on the format of their Leave of Absence Application Form. (The Attendance & Prosecution Service provide a template document for consideration)

Schools should decide on the timescales for accepting, processing and responding to any Leave of Absence applications received.

Such a timescale would need to consider how the school might inform the Parents/Carer of the outcome of the Head teachers decision so that it is received by them before any planned Leave of Absence starts.

Schools should decide that if any late or incomplete application is received if they will process this or if the Leave of Absence application cannot be considered and the Absence recorded as Unauthorised.

Schools should decide how they will advise Parents/Carers of the Head teachers decision and if the Absence is to be Authorised or not.

Schools should mark all Absences in accordance with the Pupil Registration Regulations.

Schools can request that a Penalty Notice be issued to Parents/Carers should any Unauthorised Leave of Absence be taken. (Such a request should be made within 5 school days of the child's return to school after the Leave of Absence is taken)

The Attendance & Prosecution Service cannot issue a Leave of Absence Penalty Notices unless a Request is made by the Head teacher to do so, that the school can provide the required information and detail that allows for the Penalty Notice to be issued in accordance with the Penalty Notice Code of Conduct.

[http://www.sandwell.gov.uk/downloads/download/1990/penalty\\_notice\\_code\\_of\\_conduct](http://www.sandwell.gov.uk/downloads/download/1990/penalty_notice_code_of_conduct)

## **Section 3**

### **Penalty Notices**

If a Leave of Absence is not Authorised and the child is then absent from school, the Head teacher can request that the Attendance & Prosecution Service issue Parents/Carers with Penalty Notices.

The Attendance & Prosecution Service can only issue Penalty Notices for Leave of Absence following receipt of a request to do so by the school.

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Penalty Notices are issued based on the information and detail provided by the school and in accordance with the Penalty Notice Code of Conduct [http://www.sandwell.gov.uk/downloads/download/1990/penalty\\_notice\\_code\\_of\\_conduct](http://www.sandwell.gov.uk/downloads/download/1990/penalty_notice_code_of_conduct)

Once issued a Penalty Notice cannot be 'withdrawn' unless it meets the criteria detailed in Section 4 of the Code of Conduct (see below):

*A penalty notice may be withdrawn if the local authority determines that:*

- a) It ought not to have been issued, or issued to the person named as the recipient.*
- b) The notice contains material errors, e.g. sent to the wrong address.*
- c) Where the issuer did not comply with this code of conduct*
- d) Where after the expiry of 28 days the penalty notice is unpaid and the local authority has not started legal proceedings, or wishes to take such action under section 444.*

**Unpaid Penalty Notices can result in Parents/Carers being put before the Magistrates Court and fined up to £1,000 per Parent/Carer per child plus Court costs.**

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## PN Code of Conduct – Appendix Revised 28<sup>th</sup> January 2021

This appendix has been produced at the request of the Secretary of State who has written to Directors of Children's Services setting out the department's expectation that no parent is penalised for their child's non-attendance due to Covid-19. In that letter, LAs have been asked to:

- Suspend any penalty notice action or prosecutions for **Covid-19 related absence with immediate effect**.
- Update their Code of Conduct for issuing penalty notices to make this clear.
- New cases should not be taken forward and any cases from 16<sup>th</sup> March should be withdrawn. This approach should also be applied to prosecutions for non-attendance.

Based on the advice received

- PNs issued prior to Friday 13<sup>th</sup> March 2020 will be actioned as normal, if not paid.
- Court files will be processed and legal services consulted to decide whether or not it is in the public interest to proceed.
- **As from Monday 16<sup>th</sup> March 2020** no PNs, Warning Notices / other will be issued.

For further information please see DFE advice received by local authorities including links below:

- Schools and parents should refer to the latest information and advice from the Department of Health and Social Care and Public Health England to get the most up to date guidance from Government. <https://www.gov.uk/guidance/wuhan-novel-coronavirus-information-for-the-public>
- The Government has published guidance for schools and other educational settings in providing advice for pupils, students, staff and parents about the novel coronavirus, COVID-19. The following link will take you to that advice: <https://www.gov.uk/government/publications/guidance-to-educational-settings-about-covid-19>
- Where a pupil cannot attend school due to illness, as normally would happen, the pupil should be recorded as absent in the attendance register and the school will authorise the absence. Code I (Illness) should be used in this instance.
- Where a pupil is in self-isolation, in accordance with latest information and advice from Department of Health and Social Care and Public Health England, the pupil should be recorded as unable to attend due to exceptional circumstances in the attendance register. Code Y (Unable to attend due to exceptional circumstances) should be used in this instance.
- Schools closed on Friday to all pupils except vulnerable children and the children of critical workers. This is an offer for parents and carers and there is no requirement for parents and carers to send their children to school if they do not need to or wish to do so.

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- The department has published detailed guidance on this [here](#) and separate guidance on vulnerable children and young people [here](#). On Thursday, the Cabinet Office published a list of critical workers which you may find useful. It can be found [here](#).
- On 22 March 2020 the department issued advice to schools to set out that: From Monday 23 March, until schools reopen for education to all pupils, educational settings will need to temporarily change their attendance recording practices. To minimise the burden on settings and ensure that only the most important information is submitted, settings must stop taking normal attendance registers. For administrative purposes, code # (planned whole or partial closure) should be used in the normal register.

On 28 April 2020, the Secretary of State for Education issued a notice disapplying section 444(1) and (1A) of the Education Act 1996.

The specified period of that notice was 1 May to 31 May 2020.

A second notice was issued on 28 May 2020 with a specified period from 1 June to 30 June 2020.

A third notice was issued on 29 June with a specified period from 1 July to 31 July 2020.

A fourth notice was issued on 27 July with a specified period from 1 August 2020 to 23 August 2020.

The Secretary of State for Education has now issued a fifth notice (January 2021) with the same effect as the previous notices.

[Education Act 1996: school attendance offence disapplication notice January 2021](#)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/950219/Education\\_Act\\_1996\\_-\\_school\\_attendance\\_offence\\_disapplication\\_notice\\_January\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/950219/Education_Act_1996_-_school_attendance_offence_disapplication_notice_January_2021.pdf)

**Note: Above may be subject to change, dependent on further government advice.**

**The interim expiry date of this appendix (reviewed 28.01.2021) is 08 March 2021 – the date given by government as the commencement of a phased return of most pupils to on-site learning.**

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