

## **Attendance & Prosecution Service (Sandwell)**

### **PENALTY NOTICE CODE OF CONDUCT (POLICY)**

#### **Rationale**

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

Since 29 February 2004, certain cases of unauthorised absence have been dealt with by way of a Penalty Notice which supplements the sanctions under Section 444 of the Education Act 1996 (as amended by Anti Social Behaviour Act 2003) and Section 36 of the Children Act 1989 - where parents/carers fail to ensure regular attendance at the school at which their child is on roll and there is failure to co-operate with interventions to address the problem.

Penalty Notices involve the recipient paying a fine, currently £60.00 if paid within 21 days or £120.00 if paid within 28 days (as from September 2013).

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 absence. Given that the parents must be prosecuted for the original offence if the penalty is not paid, there has to be a sufficient level of unauthorised absence to initiate court action. Therefore, agreement was reached with local police, that police officers will not issue penalty notices but will support any subsequent action as necessary.

Head teachers may request penalty notices under the Act and must be secure in the level of unauthorised absence on which to base possible 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.

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.

#### **Procedures for issuing Penalty Notices**

To ensure that evidential requirements are met, Penalty Notices will be issued by the Attendance & Prosecution Service, The Service will ensure that the issuing of Penalty Notices is closely monitored with recipients paying the relevant fine. In cases where the penalty is not paid within the appropriate period and legal thresholds are met, the Attendance & Prosecution Service will instigate action through the courts as required by legislation.

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(1) of the Education Act 1996. Magistrates can impose fines up to:-

- a) £1000 under S444(1) (Level 3)
- b) £2500 or up to 3 months imprisonment , or both under S4441(A) (Level 4)

### **Circumstances where a Penalty Notice will be issued**

Fixed penalty notices may be issued in the following circumstances:

- All local authority referral thresholds and prosecution criteria are met.
- Where there is unauthorised leave of absence in term time and there is clear evidence of “failure to attend regularly”. (This may include pupils taken on single or recurring unauthorised leave of absence in term time).
- Where 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 parents / pupils have not responded to school/academy interventions, policy and/or advice.
- Where parents / pupils have not responded to local authority interventions, policy and/or advice.
- Where head teacher’s discretion\* is applied to each individual request for leave of absence in term time. (Note: DfE advice confirms that “exceptional circumstances do not normally include family holidays”).

\* The Department for Education has NOT issued guidance for head teachers

### **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, e.g. sent to the wrong address.
- c) Where the issuer did not comply with this protocol
- 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.

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 repaid to the person who paid it. No proceedings shall be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued or for an offence under S444(1A) of the Act arising out of the same circumstances.

## Payment of Penalty Notices

The arrangements for the paying of penalties will be detailed on the Penalty Notices. The LA (Attendance and Prosecution Service) will retain any revenue to cover enforcement and administration of justice costs as detailed in legislation. The LA (Attendance and Prosecution Service) may issue a discretionary final notice to avoid court action and minimise court costs likely to be incurred by the “payee” (person receiving the penalty notice).

## Guidance and Legislation

- 1 Regular and punctual attendance of pupils at schools is, under the Education Act 1996, is a legal requirement: Parents are responsible for ensuring that any 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.
- 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 school year in which the pupil becomes 16. It is also essential for pupils to attend school regularly in order to maximise the opportunities available to them.
- 3 Under the provisions of subsection (1) of section 23 of the Anti-social Behaviour Act 2003, in certain cases of unauthorised absence a fixed penalty notice may be issued to the parent(s)/carer(s) responsible.
- 4 The Attendance and Prosecution Service (Sandwell) will ensure the administration of justice of the necessary process and in order to fully comply with Article 6 and 8 of The Human Rights Act 1998 and ensure the consistent, fair and transparent application of fixed penalty notices throughout the borough. This Code of Conduct will govern the issuing of fixed penalty notices across the borough.
- 5 The Attendance and Prosecution Service (Sandwell) is authorised to operate this code and must have regard to the following legislation and guidance: -
  - The Race Relations (Amendment) Act 2000
  - The Race Relations (Statutory Duties) Order 2001
  - Disability Discrimination Act 1995
  - Data Protection Act 1998
  - Children Act 1989
  - Crime and Disorder Act 1998
  - Human Rights Act 1998
  - Special Needs Code of Practice 2003
  - Ensuring School Attendance: Guidance on the Legal Measures to Secure Regular School Attendance 2003
  - Education Act 1996 (as amended by the Anti Social Behaviour Act 2003)
  - The Education (Pupil Registration) (England) Regulations 2006

### **Section 576 Education Act 1996: Definition of a Parent**

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.
- 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, irrespective of what their relationship is with the child is considered to be a parent in education law.

Throughout this document, references to 'parent' 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.