

## Wiltshire Council

### Penalty Notice - Code of Conduct

#### Rationale

- 1.1 Regular and punctual attendance of pupils at school is both a legal requirement and essential for pupils to maximise the educational opportunities available to them. Wiltshire Council's Education Welfare Service will investigate cases of irregular attendance from school and, where appropriate, instigate legal action. Penalty Notices offer a means of swift intervention to detail with unauthorised absence to avoid this becoming entrenched.
- 1.2 Under Section 7 of the Education Act 1996, parents are responsible for ensuring that their child of compulsory school age receives efficient, full time education that is suitable to the child's age, aptitude and ability and to any special educational needs the child may have. This may be by regular attendance at school or otherwise.
- 1.3 Parents are defined in Section 576 of the Education Act 1996: all natural parents, whether they are married or not; any person who has parental responsibility for a child; and any person who, although not a natural parent has care of a child. Having care of a child means that a person with whom a child lives and who looks after a child irrespective of what their relationship is with that child, is considered to be a parent in education law.
- 1.4 If a child of compulsory school age who is registered at a school fails to attend regularly at the school then the parent is guilty of an offence under Section 444(1) of the Education Act 1996. It is the commission of this offence that can trigger the use of a penalty notice. If a penalty notice is used by the Local Authority it provides the parent with an opportunity to discharge liability for the offence and avoid court proceedings.
- 1.5 Wiltshire Council may prosecute for offences under Section 444 (1) of the Education Act 1996. Possible defences available include the following:
  - The pupil's absence was authorised by the school
  - The pupil was ill or prevented from attending by unavoidable cause
  - The absence was on a day exclusively set aside for religious observance by the religious body to which the parent belongs
  - The school is not within walking distance of the child's home and the LA has made no suitable arrangements
  - The parent can show that their trade or business requires them to travel, and the child has attended school as regularly as the nature of the trade or business allows, and the child has attended school for at least 200 sessions during the preceding twelve months
- 1.6 Under Section 103 Education and Inspections Act 2006 a parent of an excluded pupil must ensure that the pupil is not present in a public place at any time during school hours on a day which is one of the first five school days to which the exclusion relates or, where that exclusion is for a fixed period of five days or less, any of the days to which the exclusion relates, and is stated in the notice under section 104 (Education and Inspections Act 2006) to be a day on which Section 103(2) applies. If the excluded pupil is present in a public place at any time during school hours on a school day falling within Section 103(2), the parent commits

an offence (section 103(3)). A Penalty Notice may be issued by the Local Authority to offer the parent/s an opportunity to discharge liability for this offence. Wiltshire council may prosecute for offences under Section 103 Education and Inspections Act 2006. A possible defence is reasonable justification for a parent to fail to comply with their duty under Section 103(2) of the act.

## **Legislation**

- 2.1 The Education (Penalty Notice) (England) Regulations 2007 supports offences under section 444 of the Education Act 1996. Penalty Notices supplement existing sanctions available under Section 444 of the Education Act 1996 or Section 36 of the Children Act 1989 to enforce attendance at school or alternative provision. There is no legal requirement to consider a Penalty Notice before proceeding to a section 444 prosecution.
- 2.2 Section 105 The Education and Inspections Act 2006 allows a penalty notice to be issued in respect of excluded pupils in a public place (as mentioned above).
- 2.3 The Anti-Social Behaviour Act 2003 (section 23) adds two sections (444A and 444B) to the Education Act 1996. These sections introduced penalty notices as an alternative to prosecution and enable parents to discharge potential liability for conviction for that offence by paying a penalty.
- 2.4 If it appears that an offence under section 444(1) of the Education Act 1996 has been committed and none of the defences outlined above apply, then consideration can be given to issuing a penalty notice
- 2.5 Penalty Notices will require the parent of a child of compulsory school age whose attendance has been unsatisfactory to pay a penalty currently £120 if paid within 28 days, reduced to £60 if paid within 21 days as stated in the Education (Penalty Notices) (England) (Amendment) Regulations 2013, statutory instrument No 757. (Figures correct at the time of writing, subject to amendment by further Statutory Instrument)
- 2.6 This Code of Conduct complies with the requirements as set out in Sections 14 – 16 of the Education (Penalty Notices) (England) Regulations 2007
- 2.7 The issuing of Penalty Notices must conform to all requirements of the Human Rights Act 1998 and Equality Act 2010

## **Procedure**

- 3.1 In Wiltshire Penalty Notices will be issued by the Education Welfare Service by first class post. In any case where the Penalty Notice is not paid within the prescribed period and where it is not appropriate to withdraw the Penalty Notice the Education Welfare Service will instigate action through the Magistrate's Court as required by legislation. Prosecution in such cases will be for the offence to which the Penalty Notice relates.
- 3.2 No parent shall receive more than three separate penalty notices resulting from the unauthorised absence of an individual child in any twelve-month period
- 3.3 Penalty Notices will be issued individually to each parent for each child according to each parent's liability for the offence or offences. An authorised officer has discretion when deciding to issue a penalty notice to one or more parents of a child. The specific circumstances in each individual case will be the determining factor.

- 3.4 The Education Welfare Service will receive requests to issue penalty notices from schools / academies / colleges in Wiltshire, Wiltshire Police and neighbouring Local Authorities. The Education Welfare Service will take forward these requests providing that:
- The circumstances of the case meet the criteria for the issue of a penalty notice as specified in this code
  - All necessary information is provided to the Education Welfare Service in order to establish that an offence, under section 444 (1) of the Education Act 1996 for failure to secure regular attendance or section 103(3) of the Education and Inspections Act 2006 for failure to comply with a duty towards an excluded pupil, has been committed.
- 3.5 The Education Welfare Service will ensure that the issuing of Penalty Notices is closely monitored to make certain that they are not duplicated, not issued where prosecution proceedings for the same offence are being considered and that recipients pay the relevant fine within the time frames specified.

#### Criteria for the Issuing of a Penalty Notice

- 4.1 Penalty Notices can be issued where a pupil has accrued 10 unauthorised sessions within the six-month period prior to the request being made or evidence of an offence under s.103 (3) Education and Inspections Act 2006 is established.
- 4.2 The issue of a penalty notice will be preceded by having previously issued a formal warning letter to each parent / carer. The letter will:
- Raise concern regarding the level of the unauthorised absence and give advice regarding contact with the school and the Education Welfare Service
  - Advise the parent of the powers of the Local Authority to issue penalty notices
  - State the number of unauthorised absences accrued which give rise to the formal warning being issued
  - Notify the parent that additional unauthorised absence may lead to a penalty notice if no improvement is effected within an agreed period – the standard period shall be fifteen school days except where exceptional circumstances apply e.g. deliberate parentally condoned absence or where a pupil has been located on a truancy sweep / located by the Police during school time and there are additional occurrences of unauthorised absence.
  - In the case of unauthorised leave of absence from school, advise that a request for leave of absence has not been authorised and that parents can be liable to the issue of a penalty notice by the Local Authority where the unauthorised absence amounts to 10 sessions or more.
- 4.3 Penalty Notices will not be issued for pupils in the care of the Local Authority. Any attendance concerns will form part of the pupil's Personal Education Plan.
- 4.4 With effect from 22 March 2020 Wiltshire Council will **not** issue Penalty Notices for unauthorised absence **directly related** to the Covid-19 pandemic until such time as the Department for Education (DfE) deems appropriate.

### **Circumstances in which a Penalty Notice will be issued:**

- 5.1 If in the view of an Education Welfare Officer the issuance is deemed appropriate in cases where a parent or parents continually fail to provide an explanation or fails to provide a justifiable explanation for a pupil's absence and this is recorded as an unauthorised absence by the proprietor of the school. This could include late arrival after the register has closed which is recorded as an unauthorised absence where these total 10 or more sessions.
- 5.2 For pupils stopped during a truancy sweep or located by Police during school hours where there are found to be additional unauthorised absences totalling 10 or more sessions
- 5.3 Following a request from a School / College / Academy for intervention where the circumstances appear to have been totally avoidable (e.g. too tired after a late night, a birthday treat, family / friends visiting, shopping) where this is unauthorised and these total 10 or more sessions
- 5.4 Where a school/college/academy makes a notification for an instance of unauthorised leave of absence (holiday during term time) which totals 10 or more sessions continuous or aggregated within the previous six months and within the current academic year and where the proprietor has not given permission or where permission was not sought prior to the unauthorised leave of absence being taken
- 5.5 Following notification from a neighbouring Local Authority
- 5.6 For pupils who are stopped by Police in a public place during the first five school days of an Exclusion, whether for a fixed period or permanent exclusion or, where that exclusion is for a fixed period of five 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 is subject to this subsection.

### **Procedure for withdrawing Penalty Notices**

- 6.1 A Penalty Notice may be withdrawn by Wiltshire Local Authority if the Authority determines that:
  - It ought not to have been issued
  - It ought not to have been issued to the person named as the recipient
  - It is materially defective
- 6.2 Where a penalty notice has been withdrawn in accordance with the above a notice of the withdrawal will be issued 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 section 444 (1A) of the Education Act 1996 arising out of the same circumstances.
- 6.3 A Penalty Notice cannot be withdrawn because of an inability to pay
- 6.4 If a Penalty Notice is not paid in full before the expiry of the period of paying it and Wiltshire Council has neither instigated proceedings for the offence to which the notice relates nor is contemplating such proceedings, then the notice will be withdrawn.
- 6.5 If a Penalty Notice has been issued for unauthorised absence **directly related** to the Covid-19 pandemic (the pupil is required to self-isolate, has a positive Covid test or is required to have a

period of quarantine) **after** 16 March 2020 this will be withdrawn by Wiltshire Council immediately.

- 6.6 If a Penalty Notice has been issued for unauthorised absence **directly related** to the Covid-19 pandemic **before** 16 March 2020 any action relating to this will be suspended until such time as the Department for Education (DfE) deems appropriate.

### Appeals

- 7.1 There is no statutory right of appeal against the decision to issue a penalty notice and the sole authority to authorise absence rests with the Headteacher of the school / academy / college
- 7.2 The Education (Pupil Registration) (England) Regulations does not permit Headteachers to give authorisation for absence retrospectively.

### Payment of Penalty Notices

- 8.1 The arrangements for the paying of penalty notices will be detailed on the Penalty Notice
- 8.2 Payment by way of instalment is not permitted. Payment should be made in full according to the dates as stipulated on the Penalty Notice

### Non-payment of Penalty Notices

- 9.1 Non payment of a Penalty Notice will normally result in prosecution under the provisions of section 444 of the Education Act 1996 or prosecution under section 103 of the Education and Inspections Act 2006

### Publicity

- 10.1 All schools / academies / colleges / alternative education provisions intending to use penalty notices must:
- Set out the establishment's process for managing absence
  - Ensure that all parents / carers are aware of the process to request leave of absence during term time
  - Make notifications to the Local Authority without delay when the particular criteria is reached
  - Publish details regarding arrangements of managing absence within the establishment's Attendance Policy