

Slough Borough Council

Penalty Notice Code of Conduct

September 2023

1. Legal Basis

1.1 **Section 23** of the **Anti Social Behaviour Act 2003** empowers designated Local Authority (LA) Officers, Head Teachers (& Deputy and Assistant Headteachers authorised by them) and the Police to issue Penalty Notices in cases of unauthorised absence from school. The **Education (Penalty Notices) (England) Regulations 2004** came into force on 27th February 2004.

1.2 The issuing of Penalty Notices must conform to all requirements of the **Human Rights Act** and all Equal Opportunities legislation. The LA has the prime responsibility for developing the protocol within which all partners named in the Act will operate. It is recommended that the Attendance Service is responsible in Slough for the issuing of Penalty Notices to ensure consistency.

1.3 For the purpose of this legislation and Code of Conduct a 'parent' is defined under **section 576 Education Act 1996** 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 the day to day care of a child or young person. (Throughout this document, references to 'parent' mean each and every parent coming within the definition, whether acting jointly or separately.

1.4 For the purpose of the legislation and Slough Council's Code of Conduct, 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 academic year in which they turn 16.

2. Rationale

2.1 Regular and punctual attendance at school is, under **Section 7** of the **Education Act 1996**, a legal requirement. In law an offence occurs where a parent/carer fails to ensure a child's attendance at a school at which they are a registered pupil and where that absence is not authorised by the school. Penalty Notices supplement

the existing sanctions currently available under **Section 444, Education Act 1996** or **Section 36, the Children's Act 1989** to enforce attendance at school where appropriate.

2.2 The Attendance Service is responsible for the enforcement of attendance. Parents and pupils are supported by schools and the LA to overcome barriers to regular attendance. However, sanctions are sometimes necessary where parental co-operation is either absent or considered insufficient to resolve the problem. Sanctions are never used as a punishment, only as a means of enforcement where there is a reasonable expectation that their use will secure an improvement in attendance.

3. Circumstances where a Penalty Notice may be issued

3.1 The issuing of penalty notices by the local authority is considered appropriate in the following circumstances:

1. A specific period of unauthorised absence (i.e. without the Head Teacher's permission) from school (e.g. a holiday in term time). If a Head Teacher does not authorise a request from a parent/carer for an absence, s/he must respond to the request directly. This response will constitute a valid Warning to the parent. In all cases, a minimum of 10 sessions in total (5 school days) of absence must have been accrued before a penalty notice is requested. The days of the absence period must be consecutive although 2 separate periods of less than 5 school days each may be bridged (by weekends, bank holidays, inset days etc.) as long as their aggregate is at least 5 school days.
2. Persistent unauthorised absence: where a minimum of 10 unauthorised absences have accrued during a 12-school week period. In such cases following the issue of a warning notice, a penalty notice can be issued. The 10 sessions need *not* be consecutive.
3. Unauthorised Lateness – i.e. arrival at school after the register has closed: where a minimum of 10 unauthorised late absences have accrued within a 12-school week period. In such cases following the issue of a warning notice, a penalty notice may be issued. During the 12 school weeks review period any other unauthorised absence will also be included in the 10 sessions. The 10 sessions need *not* be consecutive.
4. A combination of 10 unauthorised absences, whether caused by persistent absence (O code) or unauthorised lateness (U code) as outlined in 2 and 3 above.
5. An Excluded Pupil found in a public place during the school day: in all cases the attendance team will check whether the pupil was excluded at the time. If the criteria are satisfied, then a penalty notice will be issued (a school is *not* deemed by the **Education & Inspections Act 2006** to be a public place for the purposes of this legislation).

6. During a Truancy Sweep by the attendance team in conjunction with the Police: if a child is found out of school or at home, and the absence is unauthorised, a warning notice will be issued. Following the issue of the warning notice, if a further 10 sessions of unauthorised absence is accrued within a 12-school week period a penalty notice may be issued.

3.2 To ensure consistent and fair delivery of Penalty Notices, the following criteria will apply:

- The decision to request a penalty notice sits solely with the Head Teacher.
- The local authority will not issue more than 2 penalty notices in any 12-month period in respect of each child of the family.
- The pupil concerned must have lost at least 10 sessions (5 school days) to unauthorised absence during a 12-week period
- The parent/carer shall receive a formal warning that a Penalty Notice is about to be issued and shall be given a maximum of 15 school days to demonstrate an improvement in the pupil's attendance. Where the extended leave policy has not been followed there will be no formal warning.
- Penalty notices will be issued on a per parent per child basis.

4. Procedure for issuing Penalty Notices

4.1 The Attendance Service will issue Penalty Notices in Slough. This will ensure consistent and equitable delivery, maintain home-school relationships and take into account any other interventions by other services. Notices will only be issued following the agreement of the Headteacher or a nominated Deputy. Penalty Notices will only be issued by post and never as an on-the-spot action; this to ensure that all evidence supports the issue of a notice and to meet Health & Safety requirements.

4.2 The Attendance Service will receive requests to issue penalty notices from schools, Thames Valley Police and schools within neighbouring LAs. These requests will be actioned provided that:

- All relevant information is supplied in the specified manner.
- The circumstances of the pupil's absence meet all the requirements of this protocol.

- The issue of a penalty notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.
- The neighbouring LA has given their agreement to the action.

5. Procedure for withdrawing Penalty Notices

Once issued a penalty notice will only be withdrawn in the following circumstances:

1. It ought not to have been issued; or it ought not to have been issued to the person named as the recipient.
2. The school receives further information not originally provided which means that they feel it is appropriate for the penalty notice to be withdrawn.
3. It appears to the authority that the notice contains material errors.

If a school wishes a penalty notice to be withdrawn, an email should be sent to the Attendance Service outlining the reason why. The LA will confirm when a penalty notice has been withdrawn and it is the responsibility of the school to inform the parent of the withdrawal.

6. Payment of Penalty Notices

6.1 Arrangements for payment will be detailed on the penalty notice itself. Payment of a penalty notice discharges the parent/carer liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the penalty notice.

6.2 Parents will be required to pay a fine of £120 if paid within 28 days. Parents may pay the lesser amount of £60 if they do so within 21 days. The LA retains any revenue from Penalty Notices to cover enforcement costs (collection or prosecuting in the event of non-payment).

7. Non-payment of Penalty Notices

7.1 Non-payment of a penalty notice will result in the withdrawal of the Notice and may trigger the prosecution process under the provisions of **Sec 444, 1996 Education Act**.

7.2 The LA can decide to take no further action; taking into consideration any new information and exceptional circumstances pertaining to the individual case; or deal with the matter through an Education Supervision Order if this is deemed

appropriate. The LA can also decide to launch a criminal prosecution for failing to ensure the regular attendance of a child at school under the **Education Act 1996 Section 444(1)** (“**The Education Act**”) if the case meets the evidential and public interest tests for a prosecution. In all cases where a local authority decides to prosecute, an Education Supervision Order will have been considered first and not considered suitable. Where a prosecution is an appropriate course of action, a caution may be offered by the LA as an alternative method of disposal.

7.3 There is no statutory right of appeal against the issue of a penalty notice.

8. Policy & Publicity

8.1 Slough Borough Council will include information on the use of **penalty notices** and other attendance enforcement sanctions in any public information material. All policies in schools relating to school attendance should include information on the utilisation of penalty notices and this sanction should be brought to the attention of all parents.

9. Reporting & Review

9.1 The Attendance Service will report as required to Primary and Secondary Schools and other relevant bodies on the deployment and outcomes of penalty notices.

9.2 The Attendance Service will review the use of penalty notices at regular intervals and update the protocol.