



# Penalty Notice Code of Conduct

**September 2023**

**Working for every child**



## Introduction

The purpose of this code of conduct is to ensure that powers are applied consistently and fairly across the London Borough of Hackney. Fixed Penalty Notices are intended to prevent the need for court action following an unsuccessful offer of voluntary early help support to address the barriers preventing regular attendance at school.

Schools should seek to work with parents and partner agencies to improve a child's attendance and seek to identify and address any underlying barriers preventing the child from attending school regularly.

Evidence that schools have undertaken this work strengthens the case that it is in the public interest to undertake enforcement action against a parent. Therefore, for unauthorised absence, schools will be expected to evidence the level of support offered to a family prior to a Penalty Notice being issued.

### 1. Legal basis

- 1.1 The Anti-social Behaviour Act 2003 contains provision for the issue of Penalty Notices for cases of unauthorised absence from school. Section 23 of that Act empowers designated Local Authority officers, typically School Attendance Officers (SAO), Headteachers (including Deputy and Assistant Headteachers nominated by them) and the Police to issue the aforementioned Penalty Notices.
- 1.2 In consultation with and following agreement from schools, the administration of the Penalty Notice Process will be undertaken by the Local Authority (Hackney Council), who will process Penalty Notice requests received from the school.
- 1.3 The Local Authority (LA) has primary responsibility for producing and overseeing the Penalty Notice Code of Conduct ("the Code of Conduct") and ensuring consultation takes place with governing bodies, Headteachers and the chief officer of police for the area in adopting the code.
- 1.4 The education-related provisions of the Anti-Social Behaviour Act 2003 apply to all parents who fall within the definition set out in Section 576 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.
- 1.5 Throughout this document, references to 'parent' mean each and every person 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.
- 1.6 In order for the Local Code of Conduct to reflect due regard to the Human Rights Act and DfE Regulations and Guidance, the LA 's Code of Conduct has been amended in order to meet its statutory obligations.
- 1.7 LA's, schools and the police must demonstrate regard to the Human Rights Act and ensure they apply their powers fairly and consistently and in the case of Penalty Notices, the local code of conduct must be seen to fully comply with the Human Rights Act.

### 2. Use of Penalty Notices

- 2.1 The law gives powers to the local authority and other designated bodies to issue Penalty Notices where a parent/guardian is considered to have failed in their legal duty to ensure their child's regular attendance at school.

- 2.2 Penalty Notices will only be issued for cases of unauthorised absence or in the case of pupils who have been excluded from school and are found in a public place without good reason. When a Penalty Notice is issued for cases of unauthorised absence, the defences in law against the offence remain the same as for the substantive offence under Section 444 (1) and 444 (1A) of the Education Act 1996. Any defence against conviction on this charge is very limited and the matter is dealt with in a Magistrates' Court.
- 2.3 The local authority is required to set out the maximum number of Penalty Notices which may be issued to each parent in any 12 month period. For these purposes the local authority has set the maximum at one Penalty Notice for each parent for each individual child (with no restriction on the number of warnings issued), although more than one Penalty Notice can be issued in a 12 month period in instances relating to multiple leaves of absence (i.e. unauthorised holidays during term time).
- 2.4 In considering whether the necessary conditions for a Penalty Notice are fulfilled, the Local Authority and Headteachers should have regard to their statutory duties including their wider safeguarding duties.
- 2.5 Should the issue of a Penalty Notice fail to improve attendance; consideration will be given to seek prosecution.

### **3. Key considerations prior to the issue of a Penalty Notice**

- 3.1 Where a pattern of absence is at risk of becoming, or becomes, problematic schools should listen to and understand the barriers to attendance the pupil or family is experiencing. In doing so, schools should take a curious approach and seek to address these barriers rather than reaching immediately for punitive approaches.
- 3.2 All schools are expected to:
- Support pupils and parents by working together to address any in-school barriers to attendance, and
  - Where barriers are outside of the school's control, should work with partner agencies to support pupils and parents to access any support they may need voluntarily.
- 3.3 Where absence intensifies, so should the level of support provided, this will require the school to work in tandem with the local authority and other relevant partners to seek an early help assessment. Where engagement in support is proving challenging, schools should hold more formal conversations with the parents and consider the use of a parenting contract prior to referring for a Fixed Penalty Notice.
- 3.4 Under the Education (Pupil Registration) (Amendment) Regulations 2013 Headteachers may not grant any leave of absence during term time unless there are exceptional circumstances. Headteachers should determine the number of school days a child can be away from school if the leave is granted.
- 3.5 It is for Headteachers to determine if the request is Exceptional. Legislation requires that each request is judged on a case-by-case basis.
- 3.6 Headteachers should be aware that by submitting requests for a penalty notice to be issued, they are assuring the Local Authority that they accept and support that, should the parent choose not to make payment within 28 days of the fine being issued, the School Attendance Support Team may progress the matter in line with Section 444 Education Act 1996 resulting in the parents being prosecuted for their failure to ensure the regular attendance of their child.

#### **4. Cases where issuing a Penalty Notice may be considered:**

##### **4.1 Poor School Attendance**

4.2 The level of absence at which a Penalty Notice will be considered will be at least 10 sessions of UA over a 12 week period.

##### **4.3 Unauthorised Leave of Absence during term time**

4.4 A leave of absence of three consecutive days (six sessions) or more was taken during term time without the school's consent.

##### **4.5 In case of an Excluded Pupil**

4.6 The pupil is found unsupervised in a public place during school hours during the first 5 days of exclusion without good reason. Good reasons might include attendance at a medical appointment, Young Hackney appointment or other appointment with a statutory or voluntary agency.

#### **5. School action prior to a Penalty Notice referral**

5.1 Although Hackney Education does not condone any unauthorised absence, the criteria for issuing a Penalty Notice have been set to ensure the Hackney Education can confidently institute Magistrate Court proceedings if the Penalty Notice remains unpaid. Therefore, it is expected that:

- a. The School's Governing Body has endorsed the operation of the Penalty Notice scheme;
- b. The School's Attendance Policy clearly explains the criteria and process for addressing poor attendance;
- c. The School has fully considered any extenuating circumstances and has established there are no justified causes for the absences;
- d. The parent has been regularly contacted by the school to establish the reasons for absence;
- e. For unauthorised absence, the school has offered and can evidence that support has been provided to secure regular attendance, but this has not worked or been engaged with.
- f. A written notice has been sent to parents informing them of the consideration to refer to the Local Authority to issue a Penalty Notice;
- g. While the Headteacher can delegate the authority to a member of staff to make Penalty Notice referrals on their behalf, all referrals must include a signed attendance certificate to ensure that referrals are made in line with this protocol.

5.2 Hackney Education recommends that parents are reminded on an annual basis of the school's policy on attendance, including the existence of Penalty Notices and any arrangements for granting leave during term time.

5.3 To avoid duplication of process and to ensure fairness and equality, no Penalty Notice should be issued by a Headteacher without prior consultation with Hackney Education.

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

6.1 Schools that wish to refer for a Penalty Notice should send the following to Hackney Education:

### **6.2 If the Penalty Notice is in relation to unauthorised absence**

- a) Completed Penalty Notice referral form,
- b) a copy of the warning letter(s) that have been sent to parents,
- c) Evidence that the school has attempted to provide support, but this has not worked or been engaged with, and
- d) an attendance certificate covering the period of offence signed by the Headteacher.

### **6.3 If the Penalty Notice is in relation to an unauthorised leave of absence**

- a) Completed Penalty Notice referral form,
- b) a copy of the application for leave of absence from the child's parent,
- c) a refusal of leave letter from the school, and
- d) an attendance certificate covering the period of offence signed by the Headteacher.

6.4 If the parent has not applied for a leave of absence, but the school ascertains after a period of absence that this should have been unauthorised, a refusal of leave letter must be sent detailing how the school established it was a period of unauthorised leave.

This letter must include,

- the reasons for refusal,
- any exceptional circumstances the school considered, and
- highlight the consequences of taking an unauthorised holiday, including the issuing of a Penalty Notice.

### **6.5 If the Penalty Notice is in relation to an Excluded Pupil found unsupervised in a public place during school hours without good reason**

- a) Completed Penalty Notice referral form,
- b) a copy of the exclusion letter, which must advise the parent of the possibility of a Penalty Notice being issued if their child is found in a public place without reasonable justification,
- c) an attendance certificate covering the period of exclusion signed by the Headteacher, and
- d) a signed witness statement setting out where and when the child was seen and that they are not aware of any reasonable justification for the child being in a public place.

6.6 The above will be used as evidence in court should the Penalty fine remain unpaid. The parent(s) will be then be prosecuted for an offence under Section 103(3) Education and Inspections Act 2006 (excluded pupil stopped in public place).

## **7. Hackney Education action on receipt of a Penalty Notice referral**

7.1 Hackney Education will check the referral to confirm that it meets the criteria whereby a Penalty Notice can be issued and the consequences for failure to pay within the required time scale.

7.2 The decision whether to issue a Penalty Notice will be authorised by the Courts Officer or an authorised person in their absence.

7.3 Should the Courts Officer feel that the request is not in line with the Code of Conduct or that there is insufficient evidence to issue the Penalty Notice, the matter will be discussed with the Principal Officer, Pupils Out of School and a conclusion reached.

7.4 Penalty Notices for unauthorised leave of absence during term-time will be issued without a Warning Letter. The school's letter confirming the refusal of the request will have acted as a warning and raised parental awareness of the unauthorised holiday and the risk of receiving a Penalty Notice.

- 7.5 Where a Penalty Notice is issued, it will be sent by the Courts Officer via First Class post to the parent's last known address.
- 7.6 Penalty Notices will be issued to the parents of pupils registered at Hackney schools, irrespective of their actual home address. This also means that follow-up prosecutions where parents fail to pay the Notice or to improve their children's attendance will extend to families resident outside the Borough. Hackney Education's Courts Officer will notify the 'home' authority of all pupils' resident outside of Hackney if a prosecution is undertaken. Penalty Notices will not be issued to parents whose children are not on roll of a Hackney school.
- 7.7 In the event of non-payment of a Penalty Notice, Hackney Education will send a PACE Court Warning letter to the parent(s), warning of the possible consequences, as well as giving them an opportunity to produce any evidence that would support the unauthorised absence.

## **8. Withdrawal of a Penalty Notice**

- 8.1 There is no right of appeal against the issue of a Penalty Notice.
- 8.2 Hackney Education may only withdraw a Penalty Notice in the following circumstances:
- a) Where it ought not to have been issued i.e. where it has been issued outside the terms of the Code of Conduct or where no offence has been committed;
  - b) Where it has been issued to the wrong person;
  - c) Where the notice contains material errors; or
  - d) Where new evidence or information has come to light after the initial application that warrants the withdrawal of the Penalty Notice.
- 8.3 Where any of the above occurs, written notice of the withdrawal shall be given to the recipient and any monies paid over shall be fully refunded.
- 8.4 If a parent disagrees with the contents of Penalty Notice, or does not agree with the conditions under which it has been issued, they may write to the Courts Officer to identify their concerns within 14 days of the issue of the Penalty Notice. No correspondence will be entered into after the 14 day period.
- 8.5 All correspondence should be addressed to the Courts Officer and emailed to [courtsofficer@hackney.go.uk](mailto:courtsofficer@hackney.go.uk)

## **9. Payment**

- 9.1 Arrangements for payment will be detailed on the Penalty Notice.
- 9.2 A Penalty Notice shall be for the sum of £60 if paid within 21 days rising to £120 thereafter until the final deadline of 28 days.
- 9.3 Part Payments or Payment plans are not acceptable, and fines must be paid in full within 21/28 days.
- 9.4 Payment in full of the Penalty Notice discharges the parent's legal responsibility for the period of unauthorised absence outlined in the Notice and the parent cannot be subsequently prosecuted for that period.
- 9.5 Any revenue arising from the issue of Penalty Notices will be retained by Hackney Education to offset the costs involved in their issue.
- 9.6 Payment after the deadline may be accepted in exceptional circumstances. In this situation, the higher amount of £120 is payable in full.
- 9.7 Payment of a Penalty Notice does not amount to a conviction for a criminal offence.

## **10. Non Payment**

- 10.1 The offence detailed in the Penalty Notice must be capable of proof in the Magistrates' Court so that in the event of non-payment of the charge the parent can be prosecuted. Non-payment of Penalty Notices within the prescribed time limits will result in the initiation of a criminal investigation and possible prosecution under Section 444(1) of the Education Act 1996 for the original offence detailed in the Penalty Notice.
- 10.2 However, there may be specific circumstances in some cases that mean it is no longer in the public interest to bring a prosecution despite the Penalty Notice being unpaid. Such situations will be judged on a case by case basis in discussions between the Courts Officer and Principal Officer, Pupils Out of School.
- 10.3 To assist with any decision, Hackney Education's Courts Officer will send a PACE Court Warning letter to the parent(s). The purpose of this is to allow parents to make representations regarding any possible statutory defences that might apply.
- 10.4 The Courts Officer will consider any response received before deciding whether to recommend withdrawing the Penalty Notice and taking no further action or proceeding with a prosecution.

## **11. The Decision to Prosecute**

- 11.1 The decision to bring a prosecution will be made in line with the Council's policies and procedures for bringing a prosecution.
- 11.2 The prosecution would not be for non-payment of the penalty notice, but for the original offence of failing to ensure the child's regular attendance at school. The Courts Officer will look at all the circumstances of the case when assessing the likelihood of securing a conviction for the original attendance offence. If the decision is made to proceed with prosecution the parent or carer will be issued with a Notice of Intended Prosecution in the first instance.
- 11.3 For prosecutions relating to unauthorised absence, schools will be expected to provide a witness statement outlining the actions undertaken during the period of offence by the pre-statutory referral casework lead and any supporting evidence for the period of offence.
- 11.4 When a Notice is withdrawn, no proceedings under Section 444 of the Education Act 1996 shall be instituted against the recipient in respect of the period covered by the original Penalty Notice.

## **12. Monitoring and Review**

- 12.1 The Attendance Team must maintain records of penalty notices including:
- A copy of each notice issued,
  - A record of all payments made and when they were paid,
  - Whether the notice was withdrawn and on what grounds, and
  - Whether the penalty notice led to a prosecution and the outcome.
- 12.2 This code of conduct will be reviewed on an annual basis, or following any changes to relevant legislation and/or regulations.