Children Services Directorate



BEHAVIOUR & ATTENDANCE SUPPORT SERVICE

Penalty Notice Scheme Protocol

May 2024 (will be implemented from 19.8.24 as required by the DfE)

1. Introduction:

1.1 'The Education (Penalty Notices) (England) Regulations 2007' came into force on 1st September 2007 and as amended in 'The Education (Penalty Notices) (England) (Amendment) Regulations 2024'. The DfE updated its Guidance Working Together to improve attendance which will become statutory on 19th August 2024.

1.2 This legislation is governed by Section 23 of the Anti Social Behaviour Act 2003 and Section 105 of the Education and Inspections Act 2006.

1.3 These pieces of legislation empower designated Local Authority Officers, Head Teachers (& Deputy and Assistant Headteachers, authorised by their Headteacher) and the Police to issue Penalty Notices in cases of unauthorised absence from school.

1.4 In addition, Section 103 of the Education and Inspections Act 2006 placed a duty on parents from 1st September 2007 to ensure that their child is not present during school hours in a public place when they are excluded.

1.5 Section 105 of the Act enables a Penalty Notice to be issued where an offence is committed under section 103. Parents are allowed a defence of reasonable justification under section 103(4).

1.6 Statutory Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices in relation to the use of these measures is contained in 'School attendance: Guidance for maintained schools, academies, independent schools and local authorities' (DfE, February 2024) and in 'School attendance parental responsibility measures - Statutory guidance for local authorities, school leaders, school staff, governing bodies and the police' (DfE, January 2017) which outlines the Government's approach to school attendance and the use of parental responsibility measures.

1.7 The issuing of Penalty Notices must conform to all requirements of the Human Rights Act and Equalities.

1.8 The LA has the prime responsibility for developing the protocol within which all partners named in the Acts will operate.

1.9 The purpose of this protocol is to ensure that powers are applied consistently and fairly in accordance with Tower Hamlets Inclusion and Equalities policies to support children and young people in mainstream education and ensure that no individuals/groups within the community are either treated more favourably or unfairly discriminated against compared to any other individual/groups.

1.10 LBTH considers 96% or above as regular attendance. Hence will only consider administering the issuing of Penalty Notice if the overall attendance below 96%.

2. The Legal Requirements related to School Attendance:

2.1 It is required that the Penalty Notice Scheme Protocol is detailed to the School Governing Body so that they are fully aware of it. The use of Penalty Notices must also be detailed in the school prospectus or notification sent to all parents/carers so that they are fully informed and aware of it.

2.2 Regular and punctual attendance at school is both a legal requirement and essential for pupils to obtain the maximum benefit from their educational opportunities.

2.3 In law an offence occurs under section 444 (1) of the 1996 Education Act, if a parent/carer fails to secure a child's attendance at a school at which the child is a registered pupil and that absence is not authorised by the school.

2.4 When prosecution is undertaken in the Magistrates Court the sentencing options available to Magistrates upon conviction of a parent, are a fine, conditional discharge, absolute discharge, a parenting order, or in some cases a combination of the options listed.

2.5 Penalty Notices supplement the existing sanctions currently available under Section 444 (1) of the 1996 Education Act.

2.6 Penalty Notices are not meant to replace current practice but to add another option to Schools and the LA to secure regular and punctual attendance. The LA will only administer the issuing of Fixed Penalty Notice if the overall attendance is below 96%.

2.7 In Tower Hamlets, the Behaviour & Attendance & Support Service (THBASS) undertakes this responsibility on behalf of the LA.

3. Possible Benefits offered by Penalty Notices

There are a number of possible advantages and benefits offered by the use of Penalty Notices:

3.1 Speed and efficiency in dealing with emergent patterns of poor attendance and punctuality and lack of cooperation and engagement from the parent/carer(s);

3.2 Sending a very clear message to parents/carers regarding the importance of regular school attendance and punctuality and the immediacy with which action can be taken to address it.

3.3 Emphasising the need for schools to address (i) poor attendance and punctuality, and (ii) lack of cooperation and engagement from parents/carers.

3.4 Offering another stage of intervention as part of the tiered 'levels of intervention' approach to addressing school non-attendance and punctuality and leading to more effective use of the resources and powers available to schools and the THBASS;

3.5 Establishing greater parity and equality in terms of responses to challenging casework where parents/carers fail to cooperate and work in partnership to re-engage children with the education system.

4. Criteria where a Penalty Notice may be considered:

A Penalty Notice may only be issued in cases of unauthorised absence or lateness or where parents/carers fail to ensure that their child is not in a public place during the first five days of exclusion from school.

The issue of a Penalty Notice may be considered appropriate in any of the following circumstances:

4.1 In instances of the deliberate taking of unauthorised leave/holidays in term time, where it can be clearly demonstrated that the parent/carer understood that permission had not/would not be given and where this has created a period of unauthorised absence of 10 sessions or more.

4.2 Where parents/carers fail to attend without reasonable cause LA led In-School Attendance Panels, to which they have been invited to discuss their child's unauthorised absences and/or lateness.

4.3 In cases of pupils identified as having Persistent Absence i.e., attendance of 90% or less (as defined by DfE from 1.9.15 onwards) over a period of a school term with 10 or more unauthorised sessions (half-days) of absence and with substantial evidence of failure on the part of the parent/carer to work in cooperation and partnership to address and improve the situation.

4.4 In cases of persistent late arrival at school (10 minutes after the attendance register has closed) with 10 avoidable late marks or more over the period of 10 school week period and after normal school procedures and sanctions have been followed and applied. The journey involved and particular issues such as adverse weather conditions and disruptions to transport should be taken account of as necessary.

4.5 Where there is a combination of unauthorised absence and avoidable lateness (10 minutes after the attendance register has closed) amounting to 10 sessions or more over the period of 10 school week period.

4.6 Where parents/carers fail to ensure that their child is not in a public place during the first five days of exclusion from school without reasonable justification.

5. Circumstances for issuing Penalty Notices:

To ensure consistent and fair delivery of Penalty Notices, the following criteria for their use shall apply:

5.1 Penalty Notices are issued on an individual child per parent/carer basis. Where families have more than 1 child who fits the criteria, multiple issuing of Penalty Notices may occur – 2 parents/carers who have 3 children who fit the criteria will therefore be liable to receiving 3 Penalty Notices each. In these circumstances issuing should be subject to careful consideration and co-ordination.

5.2 Other than in those specific circumstances, detailed in point 4.1 related to (i) the taking of unauthorised leave/holidays in term time, and in point 4.6 (ii) where parents/carers fail to ensure that their child is not in a public place during the first five days of exclusion from school without reasonable justification, each liable parent/carer shall receive a formal Notice To Improve Letter of the possibility of a Penalty Notice being issued.

5.3 Schools and their Attendance & Welfare Advisor / Attendance Support Provider must scrutinise every aspect of a pupil's case in preparation for consideration for the issue of a Penalty Notice. This must include discussions with and any other agencies and professionals who have knowledge of or involvement with the family.

5.4 There shall be no restriction on the number of times a parent/carer may be issued with formal Notice to Improve letter of a possible Penalty Notice.

5.5 Reasonable justification for a pupil to be present during school hours in a public place during the first five days of exclusion includes: the pupil having a pre-arranged medical appointment or a medical emergency requiring immediate attention; and, there being a pressing need for the parent/carer to seek medical help and it being inappropriate to leave the pupil alone in the home unattended and it not being possible to make alternative arrangements for the pupil such as leaving him/her with a relative or friend .

6. Consideration of circumstances in which a Penalty Notice may be issued

6.1 When considering whether to issue a Penalty Notice attention should be given to the issues of whether it is likely to be effective in helping to re-engage and improve the attendance and punctuality of the child/young person at school, and whether there is substantive evidence of non-cooperation and/or collusion on the part of the parents/carers that justify its use.

6.2 Full consideration must be given to the circumstances affecting the child/young person and their family and the reasons given for the non-attendance and poor punctuality.

6.3 Recognition of the family's financial/material living conditions and whether serving a Penalty Notice would affect their safety and wellbeing and put them at risk of severe adversity and hardship.

6.4 Direct liaison must also be undertaken with the key worker where the child/young person is designated as vulnerable i.e., the subject of a Child Protection Plan, is a Child in Need, is a Child in Public Care, has a Statement of Special Educational Need, is a Young Carer, has been affected by Domestic Violence or is Privately Fostered.

7. Administration of the Penalty Notice Scheme:

The LA will administer the Penalty Notice Scheme and will issue all Penalty Notices to ensure:

7.1 Consistent and equitable delivery of the Penalty Notices.

7.2 Ensure consistent administration and monitoring of the system.

7.3 Avoid duplication.

7.4 Schools will not be burdened with excessive administration.

7.5 It will prevent relationships between schools and families being unnecessarily strained.

7.6 Penalty Notices will only be issued by post/email and never as an on-the-spot action.

8. Requirement on schools to notify parents/carers of the LBTH Children and Culture Directorate Penalty Notice Scheme Protocol

The Statutory Guidance related to Penalty Notices requires that a school's Governing Body formally notify all parents/carers of pupils at the school about the Penalty Notice Scheme.

8.1 A letter ***(Appendix 1)*** is sent to all parents/carers by the school signed by the Headteacher.

8.2 The Information Leaflet for Parents on the Penalty Notice Scheme ***(Appendix 2)*** should also be sent to all parents/carers together with the letter from the Headteacher.

9. Procedure

When a school is concerned about the unauthorised absence or lateness of a pupil then the normal procedures within school that would usually be followed should be initiated. If the concern continues, then the school can initiate the Penalty Notice procedures.

9.1 The school formally refers the pupil to Tower Hamlets Behaviour & Attendance Support Service (THBASS) and all relevant information must be supplied on the THAWS 1 Attendance Referral Form in the specified manner ***(Appendix 3)***

9.2 The referral of a pupil with a view to a Penalty Notice being issued must not adversely affect any other ongoing strategies already in place to improve school attendance and punctuality.

9.3 In those specific circumstances related to (i) the taking of 10 sessions or more of unauthorised leave/holidays in term time where it can be clearly demonstrated that the parent/carer understood that permission had not/would not be given, and (ii) where parents fail to ensure that their child is not in a public place during the first five days of exclusion from school without reasonable justification, the pupil should be referred immediately to the Attendance & Welfare Service for issue of the Penalty Notice.

10. The Role of the LA/THBASS in issuing Penalty Notices:

Upon receipt of an appropriately completed THAWS 1 Attendance Referral Form:

10.1 The THBASS will act upon all referrals within 10 school days of receipt of the referral and where all criteria are met.

10.2 Penalty Notices will be issued and sent by 1st class post/email where the criteria for doing so are met.

10.3 Where a Penalty Notice is issued and attendance improves, the LA is still expected to prosecute the parent/carer if the Penalty Notice remains unpaid.

10.4 When a Penalty Notice is issued and paid within the timescales identified earlier but attendance levels do not improve, the Penalty Notice cannot be used as evidence in any subsequent prosecution of parents/carers under S.444 of the Education Act 1996.

11. Criteria for withdrawing Penalty Notices:

11.1 The Penalty Notice was issued to the wrong person.

11.2 The Penalty Notice was issued outside the agreed criteria.

11.3 If parent/s provide evidence to the LA which confirms the unauthorised holiday was taken under emergency circumstances, for example a close relative has died, and tickets were booked thereafter, and relevant evidence provided. Or if the family is visiting a seriously ill and close relative who later died before the family return back to the UK and evidence is provided then the Local Authority will not proceed.

12. Payment of Penalty Notices:

12.1 Arrangements for payment will be included on the Penalty Notice.

12.2 Payment of a Penalty Notice within the established time period discharges the parent/carer of liability for the period of absence/lateness for which the Penalty Notice was issued.

12.3 Once the Penalty Notice has been paid the parent/carer cannot subsequently be prosecuted under other enforcement powers for the period covered by the Penalty Notice.

12.4 The cost of the Penalty Notice is £80 payable within 21 days.

12.5 If the Penalty Notice is not paid within 21 days, then the cost increases to £160 which must be paid within a further 7 days i.e., by 28 days after the original date of issue.

12.6 Where it is deemed appropriate to issue a second penalty notice to the same parent for the same pupil within 3 years of the first notice, the second notice is charged at a flat rate of £160 if paid within 28 days.

12.7 A third penalty notice must not be issued within a 3-year period. Therefore, in cases where the threshold is met for a third (or subsequent) times within those 3 years, a penalty notice cannot be issued, and alternative action should be taken instead. This will often include considering prosecution but may include other tools such as one of the other attendance legal interventions. In these cases, once 3 years has elapsed since the first penalty notice was issued to the parent a further penalty notice can be issued if appropriate, but in most cases, it will not be the most effective tool for changing what may have now become an entrenched pattern of behaviour.

12.8 Local authorities must ensure their existing processes record where a penalty notice has been issued to an individual parent in respect of an individual pupils. They will also need to retain records for at least 3 years from the date of issuing any penalty notice in order for the escalation procedures to be followed.

12.9 If the Penalty Notice is not paid then the parent/carer will be summoned to appear before the Thames Magistrates Court, under section 444(1) of the Education Act 1996, 'failure of a child to attend school regularly'.

12.10 The THBASS retains any revenue from Penalty Notices to cover administration and enforcement costs (collection and prosecution in the event of non-payment).

13. Non-payment of Penalty Notices:

13.1 Non-payment of a Penalty Notice will result in the withdrawal of the Notice and will trigger the prosecution process under the provisions of Section 444(1) of the 1996 Education Act.

14. Policy and Publicity:

14.1 The LA will include information on the use of Penalty Notices and other initiatives to improve school attendance and punctuality in promotional/public information material.

14.2 When the Tower Hamlets Penalty Notice Scheme is adopted by school, the school should include details of the Scheme in their Attendance Policy, and this should be brought to the attention of all parents/carers.

15. Reporting and Reviewing:

15.1 Monitoring of the operation of the Penalty Notice Scheme will be reported to the Director for Education in the LA on a regular basis and an annual report produced at the end of each academic year detailing the development and progress of the scheme.

16. Appeals

16.1 There is no right of appeal identified within the guidance pertaining to ‘School Attendance parental responsibility measures – statutory guidance for local authorities, school leaders, school staff, governing bodies and the police’ (DfE, January 2017).

16.2 In those specific circumstances related to (i) the taking of 10 sessions or more of unauthorised leave/holidays in term time where it can be clearly demonstrated that the parent/carer understood that permission had not/would not be given, and (ii) where parents fail to ensure that their child is not in a

public place during the first five days of exclusion from school without reasonable justification, the pupil should be referred immediately to the Tower Hamlets Behaviour & Attendance Support Service (THBASS) for issue of the Penalty Notice.

16.3 In relation to the other criteria no Penalty Notices can be issued until parents/carers have received a warning letter (Notice to Improve – **Appendix 4**) from the school/allocated Attendance & Welfare Adviser (AWA) for the school warning of the possibility of such a Notice being issued unless parents/carers show improvements in their child's attendance levels and punctuality. If a parent/carer disagrees with the school over this matter, they should put their concerns and objections in writing to the school within 10 school days of the date of issue of the warning letter (Notice to Improve).

16.4 Similarly, if a parent/carer receives the Penalty Notice and does not agree with the conditions under which it has been issued, they may write to identify their concerns, and this must be received within 14 days of the issue of the Penalty Notice. No correspondence after this point will be entered into and the parent/carer must pay the Penalty Notice or face the possibility of proceedings for non-payment in the Magistrates Court for failure to ensure regular and punctual attendance at school.

16.5 All such correspondence should be addressed to the:

Attendance Legal Manager
Tower Hamlets Behaviour & Attendance Support Service
Tower Hamlets Town Hall
160 Whitechapel Road
London E1 1BJ