

**LONDON BOROUGH OF BEXLEY**  
**PENALTY NOTICE CODE OF CONDUCT**  
**AND**  
**INFORMATION SHARING PROTOCOL**  
**FOR INDEPENDENT EDUCATION WELFARE SERVICES**

**Issued: October 2011**  
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**LONDON BOROUGH OF BEXLEY**  
**SECTION 444 EDUCATION ACT 1996 &**  
**THE EDUCATION (PENALTY NOTICES) (ENGLAND) REGULATIONS 2007**  
**PENALTY NOTICE CODE OF CONDUCT**

## **Rationale**

Regular and punctual attendance of pupils at school is both a legal requirement, and essential in order for students to maximise the opportunities available to them. The London Borough of Bexley has a duty to secure the education of children in the Borough. In line with the recent development of independent Education Welfare providers we have, together with neighbouring boroughs, developed an Information Sharing Protocol (see appendix A) to clarify responsibilities.

## **Legislation**

An offence occurs if a parent/carer fails to ensure a child's regular attendance at a school at which he/she is a registered pupil and when that absence is not authorised by the school. Penalty Notices ("PN") provide an alternative to prosecution under section 444 of the Education Act 1996. Non-payment of a PN is not an offence of itself. Non-payment of a PN will be likely to lead to prosecution by the London Borough of Bexley for the school attendance offence under section 444.

Section 23 of the Anti-Social Behaviour Act 2003 empowers designated LA officers, Headteachers (and Deputy and Assistant Headteachers authorised by them) and the Police to issue PNs in cases of unauthorised absence from school.

The Education (Penalty Notices) (England) Regulations 2007 came into force on 1 September 2007. The Regulations allow for certain cases of unauthorised absence to be dealt with by way of a PN. Regulation 14 requires the LA to draw up a Code of Conduct, in consultation with partners, which sets out measures to ensure consistency in the issue of PNs. This is notwithstanding that each case must be considered on its own individual merits.

PNs will involve the recipient paying a fine, currently £50 if paid within 28 days rising to £100 if paid after that date but before 42 days have elapsed.

Current Department for Education guidance states that the level of evidence must be such as is required to secure a conviction under section 444 of the 1996 Education Act. In other words there must be available evidence to support taking the case to court in the event that a PN is not paid. It is considered that the courts will not accept the evidence of a "one off" offence as being sufficient to convict. Consequently cases must exhibit supporting evidence of an unacceptable level of unauthorised attendance. Cases where the Headteacher has not authorised a term time holiday, and as a result, a PN is proposed are an exception to this, since there is case law supporting a prosecution in these circumstances, even where the pupil's attendance is otherwise not an issue.

In addition, prior to the issue of a PN, the public interest in pursuing a prosecution must be satisfied (given that this will result from non-payment). The LA considers that there must have been reasonable attempts to engage with the parent/carer of the pupil to avoid the risk of a potential prosecution being defeated by an abuse of process argument. Again, an exception at law would be unauthorised term time holiday absence.

The LA has absolute discretion to refuse to prosecute in circumstances where it is not satisfied that there is sufficient evidence to support a referral or that the public interest is not served – for example, where the efforts to engage with the parent/carer have been insufficient.

Parents and pupils are supported at school and LA level to overcome barriers to regular attendance through a variety of intervention strategies. Sanctions of any nature are for use only where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem.

It should be noted that the issuing of a PN gives the recipient the opportunity to avoid being prosecuted by the LA under section 444 of the Education Act 1996. The LA is prevented from prosecuting during the period in which the PN can be paid. If paid, that precludes prosecution for the matters referred to in the PN. After the period for payment has passed without the person having paid it, then prosecution may be pursued by the LA.

In order to comply with Human Rights legislation it is essential that PNs be issued in a consistent manner. This Code of Conduct will govern the issuing of PNs for the London Borough of Bexley.

These sanctions are not intended to be used as a punishment for its own sake, but rather as a means of enforcing attendance where there is a reasonable expectation that their use will secure an improvement.

### **Procedure for issuing Penalty Notices**

In Bexley the designated LA officers, Headteachers (and Deputy and Assistant Headteachers authorised by them) will issue PNs in cases of unauthorised absence from school.

The relevant authority will ensure that the issuing of PNs is closely monitored with recipients paying the relevant fine. In cases where the penalty is not paid within the appropriate period, the LA will be likely to seek to instigate a prosecution through the courts as required by section 444 of the 1996 Education Act. As aforesaid, non-payment of a PN is not an offence of itself. Non-payment of a PN will lead to prosecution by the London Borough of Bexley for the school attendance offence.

The following principles must be applied, including in accordance with the Regulations, which state:

- Regulation 16 - Any person issuing a PN must do so in accordance with this Code of Conduct.
- Regulation 19 - A party issuing a PN must (without delay) provide a copy of the notice to Bexley's Early Intervention Team administrator in which the London Borough of Bexley is named as the authority to which payment is to be made pursuant to Regulation 3(f).
- Regulation 20 – The LA will keep records of PNs to include—
  - (a) a copy of each Notice issued;
  - (b) a record of all payments made and on what dates;
  - (c) whether the Notice was withdrawn and on what grounds; and
  - (d) whether the recipient was prosecuted for the offence for which the Notice was issued (or, where the Notice related to an offence under subsection (1) of section 444 of the 1996 Act, for an offence under subsection (1A) arising out of the same circumstances).

In addition the following principles must be applied:

- Absences relevant to the case must not include any absences which have been authorised by the school;
- In any twelve month period no one parent will receive more than two separate PNs resulting from the unauthorised absence of an individual child. However, where families experience more than one child presenting attendance difficulties, multiple issues may occur. This will be subject to careful consideration and co-ordination in order to ensure that the stated principle is applied;

- The liable parent/carer shall receive a formal warning of the possibility of a PN being issued, and shall be given a maximum of 15 school days to effect an improvement. [para.192, The Education (Penalty Notices) (England) Regulations 2007]. This will not apply in cases of unauthorised term time holiday absences given that this is explicit in the school's attendance policy.
- Schools must consider every aspect of a pupil's case before judging whether or not issue of a PN is appropriate. This must include discussion with the assigned Education Welfare Officer and any other support staff, services or agencies whose involvement with the pupil and/or family has an impact on attendance. This discussion should include issues relating to aspects of the family's circumstances which may affect the ability to comply with the Law e.g. mental/physical health issues, economic/financial circumstances, housing issues, social difficulties etc;
- There shall be no restriction on the number of times a parent may be issued with formal warning of a possible PN;
- In all cases the parties will consider the cases on their individual merits so as to ensure that the public interest has been properly considered and to protect the LA from possible arguments as to abuse of process.

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

The issuing of PNs is considered appropriate:

- In the early stages of Education Welfare intervention with a pupil and parent/carer where the Education Welfare Officer may be of the opinion that the issuing of a PN is appropriate, e.g. where a parent/carer continually fails to provide an adequate explanation for a pupil's absence;
- In cases where a holiday is deliberately taken in term time without, or against, school permission, and it can be shown that the parent/carer understood that permission had not or would not be given. In such a case, each parent may receive a separate PN for each child taken out of school;
- In instances of excessive amounts of holiday in term-time. A request from parents for extended leave of absence in exceptional circumstances must be given due consideration by the Headteacher. Factors, which may influence the Headteacher's decision, include travel distance, cultural or ethnic origins, religious or family circumstances and the learning opportunities the leave may offer;
- In instances of delayed return from holidays, without prior school agreement and in the absence of a reasonable explanation;
- Following a Truancy Patrol where enquiries will be undertaken with the school/college of any pupil stopped. In cases where the school/college has recorded the absence of the pupil as unauthorised and there is an existing attendance difficulty, a PN may be issued;

PNs will **not** be issued during Truancy Patrols, as this could be a health and safety risk for officers. Additionally, not all the relevant evidence will be available to prove the offence at that time;

- Following a referral from the Police meeting the above criteria.

## The Process

PNs will only be issued by post and never as an on the spot action. This will ensure that all evidential requirements, public interest considerations, and processes to avoid abuse of process have been followed. It will also meet health and safety requirements.

Procedures for the issuing of cross-LA PNs will be drawn up in consultation with neighbouring Authorities and will be shared with key partners.

### *a. Formal warning*

Where all criteria are met the LA or Headteacher will:

- 1 Issue a formal written warning to the parent/carer of the possibility of a PN being issued. (*Where issued by the LA the School should be provided with a copy*);
- 2 In the same letter set a period of 15 school days within which the pupil must have no unauthorised absence;
- 3 Issue a PN through the post at the end of the 15 day period if the required level of improvement has not been achieved.

The LA or Headteacher will not be bound to issue second or subsequent warning letters in circumstances where attendance has not improved to a sustained and significant degree.

### *b. Issue of the PN*

A PN will only be issued in the following circumstances (whether by the LA or by a Headteacher direct):

- all relevant information has been supplied to the decision maker;
- the circumstances of the pupil's absence meets all the requirements of this Code of Conduct;
- family circumstances/ability to pay is set against the likelihood of securing an improved attendance by issuing a PN (this to include any cases of possible multiple issue to any one family);
- the issue of a PN does not conflict with other intervention strategies or enforcement sanctions already being processed.
- Where the decision maker has evidenced the authorisation of the issue of the PN in writing (this need not be on the face of the PN itself). In the case of a Headteacher this will be evidenced by completion of the **Authorisation by Headteacher to issue a Penalty Notice**. If the PN cannot be shown to have been properly authorised then it will be invalid from the outset.

## Procedure for withdrawing Penalty Notices

The Regulations permit a LA (or Headteacher as appropriate) to withdraw a PN in circumstances where the Authority subsequently receives additional information leading to a determination that it ought not to have been issued to the person named as the recipient.

Withdrawal will be made only in one of the following circumstances:

- Where there is proof to establish that the PN was issued to the wrong person;
- The use of the PN did not conform to the terms of this Code of Conduct;

- It contains a material error; or
- Where it has not been paid in full and the LA has not instigated, and does not intend to instigate, proceedings in the court.

Where a PN 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 section 444 (1A) of the Act arising out of the same circumstances.

### **Payment of Penalty Notices**

The arrangements for the paying of penalties must be detailed on the PNs. Payment will, in all cases, be made to the London Borough of Bexley as the Local Authority, without deduction. This will be reflected in the PN issued.

In the case of non-LA Education Welfare providers they shall provide the LA with the PN information and the LA will issue an invoice to go with the Notice. This will then be sent by the LA to the parent/carer of the pupil in question (see appendices B and C). The start of the payment period is the day the Notice leaves the LA.

Not following any of the above regarding payment of PNs may render the PN invalid. Invalid PNs can prevent an effective prosecution being pursued, if the PN is unpaid, because of the risk of an abuse of process argument.

Payment of a PN discharges the parent/carer's liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the PN. Non-LA Education Welfare providers will be notified of payments made.

If the revenue is greater than the costs involved, then that sum reverts to the Secretary of State.

### **Non-payment of Penalty Notices:**

Non-payment of a PN within time will result in the expiry of the Notice and will trigger the prosecution under the provisions of section 444, 1996 Education Act.

Enc:

Appendix A - Information sharing protocol between the London Borough of Bexley & School/Academies using Independent Education Welfare Services

Appendix B – Procedure for issuing invoices for Penalty Notices

Appendix C - Authorisation by Headteacher to issue a Penalty Notice

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## **Appendix A**

### **Information Sharing Protocol between the London Borough of Bexley & Schools/ Academies using Independent Education Welfare Services**

#### **Introduction**

Upon written notification from the school/academy that an independent organisation has been commissioned to carry out attendance related work on their behalf the following Protocol is adopted to ensure that:

- A managed secure exchange of information services the interests of students in securing their full-time education,
- Roles and responsibilities are understood of the parties signing up to this Information Sharing Protocol,
- The following legislative requirements are met:
  - Education Act 1996;
  - Children Act 2004;
  - Crime and Disorder Act 1998;
  - Police and Criminal Justice Act 2006;
  - Data Protection Act 1998;
  - Human Rights Act 1998, 2000;
  - The Anti-social Behaviour Act 2003;
  - The Education (Penalty Notices)(England) Regulations 2007 and
  - Guidance on Education related parenting contracts, parenting orders and Penalty Notices
  - Caldicott Guidance

There will, of course, be a need to add additional documentation to this agreement as required and for the agreement to be retained by the London Borough of Bexley as evidence of an Independent Education Welfare supplier agreeing to the Protocol's principles.

#### **1. Initial Referrals**

- 1.1. Best practice recognises that it is not in the interest of children and their parents for agencies with the same remit to be working independently of one another in supporting the children in their education. Apart from the duplication of resources it can lead to misunderstandings, a sense of grievance within families and impair or damage proceedings brought in the Magistrates' Court or the Family Proceedings Court.
- 1.2. If an Independent Education Welfare Officer (EWO) is working with a family and the Local Authority (LA) Early Intervention Team EWO receives a referral in relation to a sibling then the LA EWO will liaise with the Independent EWO regarding joint working, either within or cross geographical borough borders. However, joint working will be dependent on the available resources and wishes of the commissioning school/academy. The reverse would also apply.
- 1.3. All appropriate inquiries will be responded to in line with LA protocols.

#### **2. Case Transfer**

- 2.1. It is acknowledged that schools who have contracted out from the LA will hold relevant information on students who have previously been referred and dealt with by LA agencies, including the EWO.

### **3. Prosecutions - Section 444 & 444(1a) Education Act 1996**

- 3.1 Case papers will be completed in compliance with criminal justice legislation within 6 weeks of the final date on the attendance certificate and submitted to Early Intervention Team administrator. The papers will be accompanied with any dates to avoid for hearings.
- 3.2 Any discrepancies or errors in case papers submitted will result in the return of said papers to the management of the independent EWS.
- 3.3 It is to be acknowledged that authorisation to issue a PN rests with the LA or Headteachers, as stated in the 2007 Guidance (para. 178). It is further to be acknowledged that only the LA can authorise a prosecution.
- 3.4 The independent EWS will have management responsibility for quality assurance of all legal documents. Any inaccurate or incomplete documents will be returned by post.
- 3.5 The independent EWO will only attend court for trials and not for non-effective hearings. It is to be accepted that occasions may occur when a case listed for trial may be adjourned on the day without notice.
- 3.6 Any costs arising from court attendance are not recoverable, except where the Court has made a specific stipulation to this affect.
- 3.7 If a Court requires a Parenting Order assessment then this will be undertaken by the Independent EWO (assuming this is acceptable to the Court). The prosecutor will seek an adjournment of not less than 4 weeks in order for the assessment to take place.
- 3.8 Upon the granting of a Parenting Order the independent EWO will become the Responsible Officer (assuming this is acceptable to the Court). The LA will identify and resource a suitable Parenting class. Good practice permits Schools/Academies to contribute if they so wish.
- 3.9 Court results will be notified direct to the Schools/Academy's Headteacher/Principal with a copy to the independent EWO.
- 3.10 The LA accepts the principle of Fast Tracking when there are unauthorised absences and a body of written evidence is provided demonstrating the non engagement.

### **4. Fixed Penalty Notices**

- 4.1 The Anti-Social Behavioural Act 2003 provides PNs to be issued when endeavouring to combat erratic attendance. In doing so Headteachers/Principals must have due regard to the LA's Code of Conduct at all times.
- 4.2 All monies must be paid direct to the LA; any monies in excess of the administration costs are passed to the Secretary of State.
- 4.3 The cost of preparing prosecution papers arising from the non-payment of a notice for submission to the LA is not recoverable from the LA.

### **5. Applications for Education Supervision Orders – section 36 Children Act 1989**

- 5.1 If having considered the "No Order" principle an application for an Education Supervision Order remains desirable then the independent EWO will prepare an application for submission to the LA.

- 5.2 On the granting of an Order the independent EWO will become the Responsible Officer (assuming this is acceptable to the Court).
- 5.3 The independent EWO will liaise with the Early Intervention Team administrator in respect of (a) providing supplementary information to the Family Proceedings Court, (b) seeking an extension to an Order or its revocation.
- 5.4 The Legal costs of applications for Education Supervision Orders will be met by the LA. Schools/Academies may contribute if they so wish.
- 5.5 Costs for court attendance by the independent EWO are not recoverable from the LA.

## **6. Registers**

- 6.1 Registers of maintained schools will be accessible at all times for inspection by the LA. Academies may wish to ask for the LA to check registers to confirm the validity of these attendance records..

## **7. Truancy Sweeps**

- 7.1 At present truancy sweeps in Bexley are instituted on the request of PCSOs who may find a problem with children out of school in their area. They report to the Early Intervention Team leaders who will delegate an Education Welfare Officer to assist with the sweep.
- 7.2 Existing practice in Bexley states that those stopped are returned to their own school wherever practicable.
- 7.3 Reports on all students stopped or removed to a “place of safety” will be maintained on a standardised report form. A copy of the LA letter sent to the parent will also be sent to the pupil’s school or Academy.

## **8. Off-rolling Students**

- 8.1 Students will only be off rolled in compliance with The Education (Pupil Registration) (England) Regulations 2008 as amended and Sect.434 (6) Education Act 1996.
- 8.2 Where the whereabouts of a child are not known or cannot be confirmed it is incumbent on the school/Academy either directly or via a commissioned Independent EWO to notify the LA CME panel administrator. The School/Academy must hold the place until the LA has made reasonable enquires – See legislation.
- 8.3 Where a child comes to the notice of an independent EWO and it is established that they are without a school the LA CME panel administrator must be advised.

## **9. Information Assurance/security of information**

- 9.1 All personal and sensitive personal data will be processed in line with the Data Protection Act 1998. Information will be provided by the London Borough of Bexley for the legitimate use of schools or 3<sup>rd</sup> parties subject to this Protocol and the following:
  - 9.1.1 Schools which have opted out of LA control and hold personal or sensitive personal information about students or their families are the de-facto Data Controller for such information even if previously held by the LA or other agencies.
  - 9.1.2 The LA will deal with a school appointed education welfare officer with a registered office address, company e-mail and landline.

- 9.1.3 Contractors providing services for a school are operating as Data Processors on behalf of the school in question.
- 9.1.4 Contractors are authorised to provide services by their schools and this shall be evidenced in writing by way of the acknowledgment document being sent to the Local Authority or Local Authorities.
- 9.2 Requests for personal data will be specific and proportionate to purpose.
- 9.3 Personal data will not be held longer than is necessary in accordance with data protection principles.
- 9.4 Personal data will be stored securely at all times:
- 9.4.1 Data at rest on electronic media will be stored within secure information systems which are managed in line with best IT security practice.
- 9.4.2 Data in transit on portable electronic media (USB drives, laptops, CDs/DVDs, portable hard drives etc.) will be secured by encryption.
- 9.4.3 Data in transit over the internet will either use an approved method for secure e-mail or file transfer, or file attachments will be encrypted to industry standards.
- 9.4.4 Encryption keys for data in transit will be shared securely using an alternative method of transit than the original data.
- 9.4.5 Data at rest in non-electronic media (paper copies, printed files, photographs, recordings or any other physical format) will be stored in locked secured cabinets in private offices not open to the general public.
- 9.4.6 Data in transit in non-electronic media will use secure post, courier services or fax services subject to an assured methodology to confirm safe receipt.
- 9.5 Parties to this protocol will ensure that any personal data shared under this agreement will not be passed to a 3<sup>rd</sup> party except as required for the delivery of contracted services and always subject to the assurance principles contained herein and subject to the statutory requirements of the Data Protection Act 1998.
- 9.6 All parties will apply a strict policy of access to personal data on a “need to know” basis only.

## **10. Complaints**

Any complaints in respect of the delivery of an Independent Education Welfare Service will be addressed by the Headteacher/Principal of the contracted school. Where that complaint is not dealt with to a parent's satisfaction any appeal should follow the accepted route through to the Young People's Learning Agency (YPLA). Any unresolved complaint against a LA employee will follow the standard LA complaints procedure.

## **11. Liaison**

Each contracted out school/Academy will identify a member of staff who will act as a point of reference to address any inquiries from the Local Authority or Department for Education.

## **Appendix B**

### **Procedure for issuing invoices for Penalty Notices**

Arrangements for independent Education Welfare Services to raise an invoice from the London Borough of Bexley when a Headteacher/Principal has authorised a Penalty Notice to be issued.

1. The school/ independent Education Welfare Services will draw up the Notice.
2. The Headteacher will date and sign the '**Authorisation by Headteacher to issue a Penalty Notice**' which will accompany each Penalty Notice issued, on school headed paper. Alternatively, the Headteacher can sign the Notice.
3. The Notice(s) with the Authorisation will be sent to the Early Intervention Team at Hill View, Hill View Drive, Welling, Kent, DA16 3RY, for the attention of Jean Scott (early Intervention Team administrator).
4. An invoice will be generated via the LA's financial management system for each Notice.
5. The LA will send the London Borough of Bexley invoice with the Penalty Notice to the parent. The payment period starts from the day the Penalty Notice leaves the LA.
6. The Independent Education Welfare Services will be notified of the date when the Penalty Notice has been sent.
7. The Independent Education Welfare Services will be notified when the Penalty Notice is paid by the parent.

**NB.** Please **DO NOT date the Notice**. This will be put in by hand with the date that has been generated on the invoice. Invoices will be generated within 2 working days of receipt of the Notice.

**Appendix C**  
**Authorisation by Headteacher to issue a Penalty Notice**

*Use school headed paper*

Direct Dial

Date

The person dealing with this matter is:

**Authority to issue a Penalty Notice**  
**Penalty Notice No:**

The attached Penalty Notice has been authorised by the Headteacher.

Please arrange for the London Borough of Bexley to issue the invoice relating to this Notice.

**Name of parent/carer:**

**Parent/carer of:**

Dated and Signed (Headteacher):

**Name (Headteacher):**