The Education (Penalty Notices) (England) Regulations 2007

Code of Conduct-Regulation 14

Penalty Notices and Parental Responsibility for the whereabouts of children excluded from school

RATIONALE

1 Section 103 of the Education and Inspections Act 2006 places a duty on parents in relation to an excluded pupil; a parent has to ensure that their child is not present in a public place during school hours without reasonable justification during the first five days of each and every fixed period or permanent exclusion.

2 School hours mean a school session or a break between sessions on the same school day, a public place means any highway or any place to which the public have access, and a school is not a public place for this purpose (s547 Education Act 1996 refers in this regard).

3 The days of exclusion when this duty on parents applies, are known as "specified days of exclusion" and will be detailed in the notice given to the parent under section 104 of the 2006 Act. The parent is responsible for the child during the specified days upon receipt of the notice.

4 Sections 100 and 101 of the Education and Inspections Act 2006 place a duty on the school or the local authority to make provision for the excluded child's full time education from the sixth day of fixed period exclusion in a school year (in the case of a relevant school) or from the sixth day of each permanent exclusion (in the case of a Local Authority) but they can make the provision earlier. Once the provision is made, the parent's duty to ensure that their child is not in a public place becomes a duty to ensure the child regularly attends the provision.

5 Section 105 allows for a penalty notice to be given to a parent who may be guilty of an offence under section 103, the notice enables the parent to pay a penalty as a way of discharging liability for the offence of failing to ensure that their child is not present in a public place on the days specified in the notice given to them. The parent must have been notified by the school at the time of the exclusion and their duty and the days, to which it relates, a penalty notice need not be served before any prosecution takes place.

6 Penalty notices require £60 payment within 21 days, thereafter rising to £120 after 21 days provided it is paid within 28 days
The code of conduct applies to parents of children of compulsory school age who are registered at a maintained school, a pupil referral unit, an Academy, a city technology college, or a city college for the technology of the arts and those attending alternative provision.

The Education Investigation Service, Dudley MBC will provide independence in the administration of justice of the necessary process and in order to fully comply with Article 6 and 8 of the Human Rights Act 1998 to ensure the consistent, fair and transparent application of fixed penalty notices throughout the borough. This Code of Conduct will govern the issuing of fixed penalty notices across the borough in relation to exclusions.

OTHER GUIDANCE AND LEGISLATION

Persons authorised to operate this code must have regard to the following legislation and guidance:

- Human Rights Act 1998 must be applied fairly and consistently as inconsistency or unfairness may lead to challenges under this Act.
- The Equality Act 2010 - age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, and pregnancy and maternity are now to be known as ‘protected characteristics’
- Data Protection Act 1998
- Children Act 1989
- Crime and Disorder Act 1998
- Criminal Proceedings and Investigations Act 1996
- The Police and Criminal Evidence Act 1984
- The Education Act 1996

Section 576 Education Act 1996: Definition of a Parent

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.

Throughout this document, references to ‘parent’ mean each and every parent 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.

PROCEDURE FOR THE ISSUE OF PENALTY NOTICES

The issue of Fixed Penalty Notices will be strictly administered by the Education Investigation Service to ensure compliance with the operation of the provisions of this code ensuring they do not have a negative impact on the current forms of statutory intervention pursued by the Education
Investigation Service. Therefore, no fixed penalty notices will be issued without evidence of the parent receiving a relevant warning and the pursuance of relevant assessment of the case.

11 The Education Investigation Service will always issue Fixed Penalty Notices by post, as there may be considerable health and safety implications involved in the operation of a hand/face-to-face delivery mechanism.

12 The responsibility of the issue of Fixed Penalty Notices will be held within the statutory duties of the Education Investigation Service. This service, in conjunction with the current Borough Council revenue collection mechanisms, will ensure that the issue of fixed penalty notices is closely monitored with the relevant financial penalty being imposed and collected.

13 In the case where the penalty has not been paid within 28 days of issue, the Education Investigation Service will instigate statutory action under section 103 Education and Inspections Act 2006. The Borough Council, therefore, will have the means to avoid the issue of duplicate notices, to ensure that any action taken is compliant with relevant legislation and that no conflict arises with other statutory interventions applied by the Local Education Authority.

14 No one parent may receive more than two separate Fixed Penalty Notices resulting from a child being present in a public place in respect of the Education and Inspections Act 2006 in any twelve-month period. Fixed Penalty Notices will be issued to each parent of the child concerned.

15 The Education Investigation Service will receive referrals with regard to cases where the issue of Fixed Penalty Notices may be appropriate from schools in Dudley, the Police and other agencies as appropriate. The Education Investigation Service shall action these requests subject to investigation, providing the relevant information is supplied in the specified manner.

CIRCUMSTANCES WHEN FIXED PENALTY NOTICES MIGHT BE ISSUED

16 Exclusion

It may be appropriate to issue Fixed Penalty Notices if, following due assessment, where a parent is capable of but unwilling to secure their child from being in a public place during the specified days stated in the notice. In addressing the issue of failing to secure their child from a public place when excluded, fixed penalty notices may offer a prompt and potentially effective deterrent to poor behaviour at a point, which may not be as easily accessed through existing enforcement provisions.

16 Following Pupil Watch/Truancy Sweeps whilst excluded

Parents interviewed during, or contacted following, a truancy sweep/pupil watch exercise, during which instances of a child in a public place whilst excluded are identified may be subject to a penalty notice. Each case will be assessed on an individual basis.

17 Complaints from Education Providers, Police, Neighbouring LEAs and other Agencies

The Education Investigation Service will assess any referrals received in this regard from other agencies/schools, and subject to the evidence may issue a Fixed Penalty Notice.
ADMINISTRATION OF THE FIXED PENALTY NOTICE SCHEME

16 Fixed Penalty Notices shall be issued in a prescribed manner and revenue from such notices shall be collected through the current borough council scheme allowing for various methods of payment throughout the borough.

17 A prosecution under the Education and Inspections Act 2006 will be undertaken when sufficiency of evidence exists to warrant statutory intervention, the failure to pay a Fixed Penalty Notice may be used in evidence. There is no mechanism within the legislation or this code for the collection of none payment, neither is there an opportunity to pay in instalments and there is no right of appeal to the notice. Non payment of a Fixed Penalty Notice must result in prosecution to be considered of that person under the Education and Inspections Act 2006.

18 For any person to be prosecuted the elements of the offence must be proven. The Rules of Evidence and Criminal Procedural Rules apply, any prosecution must meet the "evidential test" and the "public interest test" otherwise a prosecution may not proceed.

19 There are exceptions when a notice may be withdrawn;

a) when it should not have been issued or
b) when issued to the wrong person
c) outside the terms of the code of conduct
d) when it contains material errors
e) If a parent can prove it was delivered to the wrong address

20 Once a penalty notice has been issued the parent cannot be prosecuted for the offence to which it relates until after the final deadline for payment has passed.

21 The penalty notice is £60.00 if paid within 21 days following receipt of the notice rising to £120.00 if paid after 21 days but within 28 days of the receipt of the notice. A notice served by first class post is deemed to have been received on the second working day after posting unless it is shown otherwise.

22 If the penalty notice is not paid by the end of the prescribed period the local authority via the EIS must either prosecute for the section 103 offence or withdraw the notice, any prosecution will relate to the offence and not to the none payment of the notice, if convicted the offence is punishable by level 3 on the standard scale of a fine up to £1,000.

23 The Education Investigation Service shall be able to rely upon the exclusion letter from the parents providing it states the specified days and the consequences of being in a public place during that period. For example, “take notice that if your child is identified in a public place during the (date and the (date), known as the specified days, you may be subject to a penalty notice from the local authority”

24 Whilst this may suffice the issue of the penalty fine further evidence would be required to prove the offence should the notice remain unpaid either through eye witness testimony or proven evidence from CCTV systems.

25 The Education Investigation Service shall produce an annual audited statement of revenue collected from Fixed Penalty Notices. Such revenue
may only be used to cover legal costs of administering the scheme or taking a prosecution as a result of non-payment, any surplus shall be surrendered to the consolidated fund.