

# **Pupil Services Court Team Code of Conduct**

## **Protocol to Assist Schools and Academies to Manage Attendance**

### **1 Context**

- 1.1 This protocol outlines the work that Leicestershire County Council (LCC) will undertake to meet its statutory duties in relation to the enforcement of regular school attendance. It also identifies the roles and responsibilities of schools, academies and alternative providers.
- 1.2 Leicestershire County Council is committed to improving and sustaining attendance in all educational settings as it recognises the links between attendance, attainment, safeguarding and future life opportunities. The key to outstanding attendance is undoubtedly high quality teaching and learning experiences for our children and young people. This is best achieved through educational settings adopting earlier intervention strategies as part of a whole-school approach to attendance, supported by consistent statutory action from LCC.
- 1.3 This protocol reflects the greater autonomy given to schools and the Department for Education focus on empowering schools to intervene early to address attendance issues. Recent amendments to existing regulations (which will take effect as of 1<sup>st</sup> September 2013), reflect the further powers that will be available to schools and LAs to tackle absence.
- 1.4 Staffing for attendance work within LCC has been reduced and will only cover the LA statutory responsibilities. This will take the form of one Court Officer and Administrative support. Any attendance casework with pupils and families will need to be undertaken by schools/externally employed attendance agencies.
- 1.5 The Council believes a partnership approach, where respective roles and responsibilities are adhered to, will provide high quality educational opportunities for all our children and young people.

### **2 Statutory Duties of Leicestershire County Council**

- 2.1 The Local Authority has a statutory duty under the Education Act 1996 to initiate legal proceedings where a child or young person is not receiving suitable education either by regular attendance at school or otherwise. This can be through a number of formalised routes including Penalty Notices and prosecution of parents/carers for irregular attendance, School Attendance Orders and Education Supervision Orders.
- 2.2 LCC employs a core group of personnel to ensure these statutory duties are met and quality assured.
- 2.3 The areas of legislation that LCC has responsibility for include:
- **School Attendance Order - Section 437 Education Act 1996**

If it appears to LCC that a child of compulsory school age in the area is not receiving suitable education, either by regular attendance at school or otherwise, a notice will be served in writing to the parent(s) requiring them to satisfy the Local Authority (LA) within a period specified in the notice that the child is receiving such education.

- **Prosecution under Section 444(1) and 444(1A) Education Act 1996**  
If a child of compulsory school age who is a registered pupil at a school is failing to attend regularly at the school, parent(s) are guilty of an offence.
- **PACE Cautions under Police and Criminal Evidence Act 1984.**  
The Code of Practice attached to the act sets out the conduct that persons who are charged with the duty of investigating offences or charging offenders' should observe when carrying out their duties, in particular the conduct of interviews and recording of statements under caution.
- **Penalty Notices (inserted into the Education Act 1996 by section 23 Anti-Social Behaviour Act 2003; and Section 105 of the Education and Inspections Act 2006)**  
Empowers designated 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, and for parental failure to ensure that their child is not present in a public place during school hours without reasonable justification during the first five days of exclusion. LCC has written a Code of Conduct which specifies how Penalty Notices will be issued.
- **Education Supervision Orders (ESO) Section 36 (The Children Act 1989)**  
Before instituting proceedings for an offence of irregular attendance or failure to comply with a school attendance order, the LA must consider whether it would be appropriate to apply for an ESO instead of, or as well as, prosecuting the child's parents.

### 3 Statutory Duties of Schools and Academies

3.1 Schools' responsibilities relating to attendance are detailed in the Education (Pupil Registration) (England) Regulations 2006 and The Education (Pupil Registration) (England) (Amendment) Regulations 2010.

These responsibilities include:

- advising LCC of any pupil who fails to attend regularly or has had 10 or more days of continuous unauthorised absence;
- taking a register twice each day (at the start of the morning session and once during the afternoon);
- marking pupils for each session indicating, with the appropriate code, whether each was present, absent, engaged in an approved educational activity off-site or unable to attend due to exceptional circumstances (unavoidable school closure, lack of school/LA transport and not within walking distance or widespread travel disruption due to local/national emergency); and
- complying with statutory registration & deletion procedures.

3.2 Where there are concerns about pupil absence, schools should seek to intervene early and maintain a chronology of all contacts regarding pupil absence with the pupil, parent and other agencies. This is of great importance, as schools will be required to produce this as evidence if legal intervention is subsequently used.

3.3 For the purposes of school attendance, the term 'parent' means all natural parents, whether they are married or not and includes any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) and any person who, although not a natural parent, has care of a child or young person.

3.4 Registration is a key aspect of excellent practice. Registers are legal documents and school leaders should ensure systems for recording attendance and absence is accurate at all times. Schools should maintain an up to date knowledge of pupil registration regulations by accessing information from the Department for Education (DfE) website. The DfE provides guidance on the use of National Attendance Codes which are used when completing the school census.

3.5 Developing and maintaining a whole school approach to attendance is identified as a key principle of excellent practice. Outstanding schools:

- demonstrate a strong attendance ethos
- have a clear policy on absence
- use effective, non-bureaucratic systems
- use data to improve school and pupil performance
- promote the importance of legal requirements to all staff, pupils parents/carers
- intervene early when individual pupil absence gives cause for concern
- have support systems in place for vulnerable pupils
- reward and celebrate good and improved attendance
- make best use of additional support for those with greatest need.

3.6 Where a Headteacher/Externally employed Attendance Agency wishes to refer a matter to LCC for legal proceedings to be considered under s444 (1) or (1A) Education Act 1996, they should complete the attached Request for Legal Proceedings form.

## **4 Protocol for Penalty Notices**

4.1 Penalty Notices can act as an early intervention tool in cases of overt truancy, parentally-condoned absences and holidays in term-time. Schools have had the responsibility of requesting the issuing of Penalty Notices by LCC since September 2012. Schools should be mindful that Penalty Notices have to meet the evidential requirements of Section 444(1) Education Act 1996. The Code of Conduct for Penalty Notices has been revised and updated accordingly.

4.2 The thresholds laid out in the Code of Conduct for issuing a Penalty Notice must be adhered to. There is an expectation that a warning letter will precede a Penalty Notice. Upon receipt of a referral, LCC will issue this warning letter (known as a Notice of Intention to Issue a Penalty Notice) on behalf of the school. Following a minimum monitoring period of fifteen school days, a Penalty Notice will usually only be issued if the pupil has at least 20 unauthorised half day absences recorded against their name within the previous 12 week period. It is important to note that the warning letter that LCC will issue will only be valid for a period of six months, from the date of issue.

- 4.3 If a Headteacher wishes a warning letter and subsequent Penalty Notice to be issued (where appropriate), they should complete the Penalty Notice Request Form attached to this Code of Conduct and return it, along with the required supporting evidence, to LCC.
- 4.4 When using Penalty Notices, accurate registration and record keeping by the school is critical.
- 4.5 All monies received by virtue of a Penalty Notice will be paid to Leicestershire County Council.
- 4.6 The Education (Penalty Notice) (England) Regulations 2007 state Penalty Notices can only be withdrawn on very limited grounds and these are detailed in the Code of Conduct. If a penalty remains unpaid after 28 days, LCC will commence proceedings to prosecute the parent(s).
- 4.7 The prosecution under section 444(1) of the Education Act 1996 is for the irregular attendance of the pupil and not the non-payment of the Penalty Notice. Schools should therefore ensure accurate information is available for the period concerned as they will be responsible for writing the evidence to be presented as part of any court proceedings (a Section 9 statement of witness). The Head teacher (or representative) may also be called to give evidence. (See section 5 of this protocol for further information).

## **5 Protocol for Court**

- 5.1 Prosecution of parent(s) under s444 of the Education Act 1996 will usually only be considered when a pupil has at least 20 unauthorised half day absences recorded against their name within the previous 12 week period.
- 5.2 When schools/externally employed attendance agencies make a request for LCC to start legal proceedings due to irregular attendance, the form, Legal Proceedings Request should be completed. Referrers need to ensure they:
- provide a copy of their letter, notifying parents that the matter is now being passed to the Local Authority for legal action to be considered;
  - describe whether the proposed prosecution should, in the opinion of the referrer, be a strict liability offence (s444(1)) or an aggravated offence (s444(1A));
  - provide an up-to-date attendance certificate relating to the period of complaint, including periods of unauthorised absence;
  - agree, should a prosecution take place, to complete a Statement of Witness (CJ Act 1967 Section 9, MC Act 1980, s 5A(3)(a) and 5B Magistrates Court Rules 1981 Rule 70). This section 9 statement will need to be provided within set timeframes. Failure to provide a statement could result in the local authority withdrawing the case from the legal process.
- 5.3 Referrers must forward their requests for legal proceedings to the Pupil Services Court Team, Room 100b, Pen Lloyd Building, County Hall, Glenfield, Leicestershire LE3 8RF. Referrers may email their Legal Proceedings Request (along with relevant supporting documentation) to the Court Team at [pupilservicescourteam@leics.gov.uk](mailto:pupilservicescourteam@leics.gov.uk) and request a read receipt. This will act as a request to issue a Notice of Intention to prosecute/issue a Penalty Notice. LCC will issue a Notice of Intention to Prosecute/issue a Penalty

Notice to parent(s) and, where this Notice does not result in a child/young person returning to school on a full-time basis, cases will be progressed. In prosecution cases, a PACE interview will be convened. In Penalty Notice cases, a Penalty Notice will be issued, providing the required unauthorised absence thresholds are met.

N.B. PACE interviews will not be conducted when the offence arises from non-payment of a Penalty Notice.

- 5.4 The LCC Court Officer will ensure that a copy of all correspondence that is sent to the parent(s) are forwarded to the school/referrer. Where, following a PACE interview or unpaid Penalty Notice, a prosecution is agreed, a Statement of Witness will be requested from and prepared by the school. This must be precise, factual and provide relevant information to demonstrate the offence has been committed and show why the parent is guilty of the offence. Evidence should attempt to pre-empt any likely parental defence. The person writing the witness statement should have an active involvement with the case as hearsay evidence is not admissible. They should also be available to attend court if required.
- 5.5 The information must be laid by Leicestershire County Council with the court within 6 months of any offence having taken place.
- 5.6 If LCC determines it is not appropriate or in the public interest to proceed with a prosecution, it will write to the school setting out the reasons why.



**LEICESTERSHIRE COUNTY COUNCIL**  
**PENALTY NOTICE CODE OF CONDUCT**

**(Revised August 2013)**

**1. Rationale**

- 1.1. Regular and punctual attendance of pupils at school is both a legal requirement and essential in order for pupils to maximise the opportunities available to them, unless parents elect formally to educate their children at home. A Penalty Notice is a useful sanction at an early stage before attendance problems become entrenched and where prosecution may seem inappropriate.

**2. Legal Basis for the issue of Penalty Notices**

- 2.1. In February 2004, the Anti-Social Behaviour Act 2003, section 23, sub-section 1 added sections 444A and 444B after section 444 of the Education Act 1996. These sections enable Penalty Notices to be used as an alternative to prosecution and provide parents with the opportunity to discharge liability for conviction of an offence under section 444 by paying a financial penalty to the Local Authority.
- 2.2. Section 105 of the Education and Inspections Act 2006 enables Penalty Notices to be issued to parents in relation to an excluded pupil of compulsory school age, should they fail to ensure their child is not present in a public place during school hours in the first five days of each and every fixed period or permanent exclusion without reasonable justification.
- 2.3. Persons authorised to issue Penalty Notices must have regard to The Education (Penalty Notices) (England) Regulations 2007, the guidance issued by the Secretary of State, and the following legislation:

Human Rights Act 1998  
Equality Act 2010  
Data Protection Act 1998

**3. Procedures for issuing Penalty Notices**

- 3.1. The issue of Penalty Notices will be undertaken by staff authorised by Leicestershire County Council (LCC).
- 3.2. A Penalty Notice request proforma has been attached to this Code of Conduct.

- 3.3 If a Headteacher wishes a Penalty Notice to be issued they should complete Penalty Notice Request, and attach copies of relevant documentation issued to parents, and return them to LCC.
- 3.4 LCC will always issue Penalty Notices by first class post (with proof of posting) as there may be health and safety implications involved in the operation of direct delivery.
- 3.5 Parents will normally receive a warning letter from the LA before a Penalty Notice is issued. The warning letter will indicate the period of time over which improvement is expected (typically a further 15 school days).
- 3.6 A Penalty Notice will usually only be issued to each parent if the pupil has at least 20 unauthorised half day absences recorded against their name within the previous 12 week period. The 20 unauthorised half day absences will be included within the Penalty Notice.
- 3.7 An exception to 3.5 and 3.6 are holidays in term-time where no permission has been requested by parents or where permission has not been granted by the Headteacher of the school. In such cases a Penalty Notice may be issued for less than 20 unauthorised absences in the previous 12 week period.

**NB. As of 1<sup>st</sup> September 2013, LCC will issue Penalty Notices where parents choose to take a family holiday during term time and where the Headteacher deems the holiday to fall outside of their definition of 'exceptional circumstances.' A specific request form, Guidance notes on the process to be followed in relation to this updated legal support (Annex 4) and a sample letter for use by Headteachers when informing parents that leave of absence will not be granted for a family holiday during term time (Annex 5) are all provided herewith.**

- 3.8 Each parent will receive no more than one separate Penalty Notice resulting from the unauthorised absence of an individual child in any one academic year. This is ensured by checking the database for previous actions.
- 3.9 To ensure the powers associated with Penalty Notices are applied consistently and fairly, Headteachers and LCC must be confident the circumstances of each case:
- meet the criteria for the issue of a Penalty Notice specified in this Code of Conduct; and
  - that all necessary information can be provided to LCC should a Penalty Notice be unpaid in order to pursue legal proceedings under Section 444(1) Education Act 1996.
- 3.10 A Penalty Notice would not be issued where other statutory intervention for irregular attendance is being pursued by the LCC or where a parent has received a previous conviction in respect of his/her child's absence from school within the previous two years.
- 3.11 Within this Code of Conduct, a parent is defined as in Section 576, Education Act 1996. This means all natural parents, whether married or not and includes any person who, although not a biological parent, has parental responsibility or has care of the child or young person.

- 3.12 The Headteacher or authorised person must provide to LCC a copy of the attendance register for the period covered by the Penalty Notice.
- 3.13 Other authorised LCC staff and the police, Headteachers, community support officers and accredited persons may also issue Penalty Notices subject to adherence to this Code of Conduct, for example as a result of truancy patrols and/or in relation to the whereabouts of excluded pupils in the first 5 days of exclusion.

#### **4. Circumstances for Issuing a Penalty Notice**

- 4.1 The Headteacher may consider requesting the issue of a Penalty Notice in relation to the parents of children of compulsory school age in the following circumstances:
- Early intervention to address unauthorised absence (where that unauthorised absence would meet the criteria for a prosecution under s444, 1996 Education Act)
  - Unauthorised holidays in term time (see paragraph 3.7 and attached guidance documents)
  - Unwarranted delayed return from an extended holiday (without school agreement); and
  - Persistent late arrival after the register has closed.
- 4.2 Authorised personnel may also issue a Penalty Notice in relation to an excluded pupil under Section 103 of the Education and Inspections Act 2006. A parent must be clearly informed in writing that they should ensure their child is not present in a public place (which does not include school premises) during school hours in the first five days of each and every fixed period or permanent exclusion without reasonable justification. A record of the exact time and place at which the pupil was observed is required.

#### **5. Payment and non-payment of a Penalty Notice (with effect from 1<sup>st</sup> September 2013)**

- 5.1 Payment of a Penalty Notice within 21 calendar days of receipt of the notice is £60 and payment after this time but within 28 calendar days of receipt of the notice is £120. Payment in full discharges parent/carer liability for the period in question and they cannot be prosecuted under other enforcement powers for the period covered by the Penalty Notice.
- 5.2 Non-payment will trigger a prosecution for non-attendance under Section 444(1) of the Education Act 1996. LCC will undertake the prosecution using a period of complaint including the period highlighted within the Penalty Notice. The school/externally employed attendance agency will need to prepare a Section 9 statement of witness. The Headteacher (or representative) may also be called to give evidence.

#### **6. Withdrawing a Penalty Notice**

- 6.1. When considering legal proceedings for non-payment of a Penalty Notice, LCC may request it be withdrawn if it determines that the Penalty Notice:



- ought not to have been issued i.e. it was outside the terms of this Code of Conduct; or
- has been issued to the wrong person; or
- contains material errors.

## **7. Administration of the Penalty Notice Scheme**

- 7.1 All financial penalties will be made payable to LCC and the resources will be used to cover the costs of administering legal proceedings resulting from non-payment of Penalty Notices.

## Annex 4

### **Process for Requesting Penalty Notice(s) in Respect of Unauthorised Family Holidays**

- Headteacher receives request from parent to grant permission for leave during term time as a result of a proposed family holiday OR Headteacher is notified that a family has taken a family holiday without seeking prior permission;
- Headteacher considers whether the request could be considered to fall under the heading of 'exceptional circumstances'. If request is not being made as a result of 'exceptional circumstances' OR family have already taken a holiday without seeking the prior approval of the Headteacher, Headteacher must notify the parent, in writing, of their decision to refuse to grant permission for leave/code the absence as unauthorised, and warning them that this refusal places the parent(s) at risk of being issued with Penalty Notice(s), as per Leicestershire County Council's policy/Code of Conduct.

N.B. A sample letter has been provided as a tool for Headteachers (Annex 5).

- Headteacher to await the response of parent(s) and, if the family holiday goes ahead, during term time, then the period of absence (**of 5 days or more**) must be clearly recorded as 'G' on the official attendance register (thus ensuring that it is recorded as an unauthorised family holiday);
- Once the student has returned to school, Headteacher to complete the relevant 'Penalty Notice Request Form and attach:
  1. The letter sent to parent(s) notifying them that the absence would not be authorised and warning them that the matter would now be passed to the Local Authority;
  2. A copy of the student's registration certificate which clearly shows the period of absence which has been coded as G (unauthorised family holiday)

Upon receipt of the relevant documentation, the Court Team will issue a Penalty Notice to each parent in respect of the unauthorised family holiday. Each parent will be given 21 days to pay £60, at which point the fine will double to £120 and parents will be given a further 7 days to make payment in full.

Parents failing to pay £60 within 21 days/£120 within 28 days will face prosecution under section 444 Education Act 1996.

Where court proceedings are instigated as a result of non-payment, the Pupil Services Court Team will be responsible for providing a section 9 witness statement and the Headteacher of the relevant school, will be required to provide a signed statement of attendance, a proforma of which will be provided to the Headteacher, as individual cases enter the court process.

**If you have any queries/questions in relation to this process, please do not hesitate to contact the Court Officer for the Pupil Services Court Team, on 0116 3057522.**

## **Annex 5 – Sample Letter**

Dear Parent/Guardian

### **Re: Formal Warning in relation to your family holiday request.**

I write in response to your recent request to be permitted to take your son/daughter on a family holiday during term-time from [DATE] to [DATE].

New government guidelines, which came into effect on 1<sup>st</sup> September 2013, prevent Headteachers from granting any leave of absence during term time, unless there are exceptional circumstances. A family holiday during term-time does not fall under the category of 'exceptional circumstances' and I am therefore unable to grant leave of absence for your family holiday request.

As a result I must inform you that, should you disregard my decision and your son/daughter has absences recorded as a result of an unauthorised family holiday, Leicestershire County Council will be advised of this matter and will be requested to issue Penalty Notices in line with their policy.

The parent(s) of any child who has absences recorded as a result of an unauthorised family holiday will each be fined £60 which must be paid within a 21 day period.

Failure to pay the fine(s) within this timescale, will result in the fines being doubled to £120 which will need to be paid within 28 days of the original fine being issued. If the fine(s) remain unpaid after the full period of 28 days has expired, parents may face legal action under section 444 of the Education Act 1996. If found guilty of an offence under this Act, parents will receive a criminal record and could be fined up to £1000.

It is hoped that you will take serious consideration of the information outlined above and reconsider your plans to take a family holiday during school term-time.

Headteacher