



## **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. Swindon Education Welfare will continue to investigate cases of regular non-attendance from school and, following appropriate casework, instigate legal action if applicable.

Under Section 444A of the Education Act 1996 and Section 105 of the Education and Inspections Act 2006, Local Authorities are able to issue a Penalty Notice for certain cases of absence from school. A Penalty Notice will involve the recipient paying a fine of £60.00 if paid within 21 days rising to £120.00 if paid between 22 and 28 days. A Notice served by first class post is deemed to have been received on the second working day after posting.

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

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

In Swindon, Penalty Notices will be issued by the Lead Officer for Legal Processes, Education Welfare. The Lead Officer will ensure that the issuing of Penalty Notices is closely monitored with recipients paying the relevant fine. In cases where the penalty is not paid within the appropriate period, Swindon Borough Council will instigate action through the courts as required by legislation.

For any person to be prosecuted the elements of s444 must be proven, the service cannot prosecute just because a notice has not been paid. The Rules of Evidence and Criminal Procedural Rules apply, any prosecution must meet the 'evidence test' and the 'public interest test' and must be proportionate otherwise a prosecution may not proceed.

The maximum number of Penalty Notices which can be issued to one parent for an individual child is three in any 12 month period.

Education Welfare will receive requests to issue Penalty Notices from the Head Teachers of Schools/Colleges/Academies in Swindon, the Wiltshire Constabulary and neighbouring LAs. Education Welfare will action these requests providing that the relevant information is supplied in the specified manner, and that the circumstances of the unauthorised absence from School/College/Academy match those detailed in this Code of Conduct.

Swindon Borough Council considers attendance between 90% -95% to be irregular attendance and an attendance rate below 90% would be considered persistent absence. Attendance includes all absences, authorised and unauthorised. The attendance rates for Penalty Notices will be calculated over a twelve school week period from receipt of the Penalty Notice request, which in some cases may include weeks from the previous academic year.

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

The issuing of Penalty Notices is considered appropriate:

1. In cases of absence from School/College/Academy when the pupil has been taken on a holiday during term time and the absence has not been authorised by the school.

**In such a case, each parent will receive a separate Penalty Notice for each child taken out of school and each will be responsible for the payment of that Notice.**

Should a parent fail or refuse to pay any Penalty Notice issued for this reason, then the evidence provided by the School/College/Academy will be the only information laid before the court. There will be no automatic Education Welfare Officer involvement.

2. Following a Truancy Watch Patrol enquiries will be undertaken with the School/ College/Academy of any pupil stopped. In cases where the School/College/Academy has recorded the absence of the pupil as unauthorised then a Penalty Notice may be issued.

Penalty Notices will not be issued during Truancy Patrols as further investigation may be required in order to obtain all the relevant evidence to prove the offence.

3. In the early stages of casework, a School/College/Academy might form an opinion that the issuing of a Penalty Notice is appropriate, e.g. in cases where a parent continually fails to provide an explanation for a pupil's absence in accordance with the school's procedures, and remains at an unacceptable level. This could include late arrival after registration has closed.

4. Following notification from a School/College/Academy to the LA that a pupil has had an unauthorised absence from School/College/Academy, the circumstances of which appear to have been totally avoidable (*e.g. too tired after a late night, a birthday treat, family friends/relatives visiting, shopping*). Where the number of avoidable absences equates to five or more days in a twelve week period, a Penalty Notice may be issued.
5. Following a referral from the Wiltshire Constabulary, procedures as at (2) above will be followed.
6. When a child is found to be in a public place during school hours without reasonable justification during the first five days of a fixed period or permanent exclusion from school. (Section 103 and 105 Education and Inspections Act 2006). Reasonable justification may include a pre-arranged medical appointment or a medical emergency

## Procedure for withdrawing Penalty Notices

A Penalty Notice may be withdrawn by Swindon LA in any case in which the authority determines that:

- a) it ought not to have been issued – i.e. it was issued outside the terms of the Code of Conduct; or where no offence has been committed; or
- b) it has been issued to the wrong person; or
- c) it is materially defective

Where a Penalty Notice 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 s.444(1A) of the Act arising out of the same circumstances.

## Payment of Penalty Notices

The arrangements for the paying of penalties will be detailed on the Penalty Notice.

There is no mechanism within either legislation or this code for the collection of non-payment neither is there an opportunity or 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 Act 1996.