PENALTY NOTICE CODE OF CONDUCT 2020

1. Rationale

This Code of Conduct is written by the London Borough of Camden in accordance with section 444A of the Education Act 1996 and the Education (Penalty Notices) (England) Regulations 2007, authorising the local authority to issue penalty notices where parents and/or carers are considered capable of, but unwilling to, ensure their child's regular attendance at school.

Penalty Notices are part of the government's initiative to tackle poor school attendance. Under current legislation, parents/carers commit an offence if their child fails to attend school regularly and the absences are unauthorised.

Depending on the circumstances, parents/carers may be prosecuted in the local magistrate's court, under Section 444 of the Education Act 1996; if a parent/carer is found guilty this will result in a criminal conviction.

A Penalty Notice aims to improve a child's attendance at school and is an alternative to prosecution. Parents/carers do not need to go to court unless they do not pay an issued penalty notice within the maximum 28 days. Full payment of the Penalty Notice means parents/carers are no longer liable to conviction for the stated period of any offence, and the matter closed.

Regular and punctual attendance of pupils at school is a legal and essential requirement in order for students to maximise the opportunities available to them. It is recognised that most parents and carers want to comply with the law and the service will provide advice and assistance where possible to help parents / carers meet their legal obligations. Camden's *minimum* attendance expectation for all its students is 95.6% (the National average) although all of Camden's schools will always strive for 100% attendance from all its students.

At a Supreme Court hearing in January 2018 the Court agreed with the Isle of Wight local authority's argument, backed by the Education Secretary, that a child's unauthorised absence from school "for even a single day, or even half a day" can amount to a criminal offence.

The Department for Education informed parents immediately after this case, that children missing just a few days in the classroom can both damage their education and their GCSE results.

Camden;s Pupil Attendance Service will investigate cases of regular nonattendance from school and, following appropriate casework, instigate legal action if applicable for all parents / carers of pupils who attend Camden schools irrespective of their home borough of residence. They work closely with schools, learning mentors, social services, health and other professionals who are responsible for dealing with other activities associated with attendance. Enforcement activities may also require an inter-agency approach with the Metropolitan Police and other local authorities in relation to truancy patrols or sweeps. The Pupil Attendance Service focuses on raising community awareness of the importance of attendance, and initiating preventative strategies to promote good attendance in schools. These include punctuality campaigns, parent meetings, and classroom and whole school assemblies, where staffing will allow.

Prior to a referral to the Pupil Attendance Service, schools are encouraged, wherever possible, to make contact with the parent to discuss attendance concerns. Parents should receive a letter from the headteacher warning them that failure to improve their child's attendance may result in the case being referred to the Pupil Attendance Service. It is also good practice for the headteacher or a senior member of staff to meet with parents before a referral is made to the service, to ensure that they are included in the process.

The exception is when referrals are made for exceptional leave taken without permission. If the school is not informed it is not then possible to meet.

The Pupil Attendance Service remit when monitoring good attendance will take into account the following

- o Receipt of a referral from a school or a self referral by the parent / carer
- Contact with the parent / carer by letter, telephone, at their home, at the Pupil Attendance Service office or on school premises.
- Review of contact with parent / carer on at least two occasions where progress is unsatisfactory.
- Letters / certificates to children and parents where attendance has improved.
- Issue of a warning letter where there has been no improvement in attendance or where four attempts to contact a parent/ carer has been made and has been unsuccessful.
- Convene a Court Assessment Meeting to discuss reasons for nonattendance with the LA court officer and designated School Attendance Officer if staffing levels permit.

Since 1st March 2004, the law has decreed that certain cases of unauthorised absence from school can be dealt with by way of a Penalty Notice.

Penalty Notices will involve the recipient paying a fine, currently £60 if paid within 21 days or £120 if paid within days 21-28. These Notices are issued per parent per child with each individual parent and child dealt with as a separate offence.

Where payment of a Penalty Notice is made it enables the parents to discharge potential liability for conviction for that offence, and the offence period and no criminal record is given to the parent. If a parent fails to pay within the timescales the LA must decide to either withdraw the notice or to take court proceedings.

If court proceedings are undertaken, and proven, a parent may be fined up to £1000 and receive a criminal conviction for a s.444 (1) offence. If convicted of a s.444 (1A) offence (the higher offence) they could receive a fine of up to £2500 up to 3 months in prison and a criminal record.

Both offences could also have a parenting order attached to any additional conditions the court may direct.

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 the London Borough of Camden and will link to The LA Whole School Attendance Policy as well as the Enforcement Protocol.

2. Definitions

2.1. Definition of a parent

This is set out in Section 576 of the Education Act 1996

This defines parents as:

- o All natural parents, whether they are married or not
- Any person who although not a natural parent has parental responsibility as defined in the Children Act 1989 for a child or young person
- Any person although not a natural parent, has day-to-day or regular custodial care of child or young person. This means that a person with whom the child lives and who looks after the child, irrespective of what their legal relationship is with the child, may be considered to be a parent in education law.

2.2. Definition of a child

A person of compulsory school age who is registered pupil at a school.

In the case of Reception pupils who not all will be of statutory school age at the same time, a child of compulsory school age will be as below.

A child is of compulsory school age at the beginning of the 1st term after their 5th birthday, so:

- Children who turn 5 between 1st January and 31st March will be of compulsory school age at the beginning of the school term after 1st April;
- Children who turn 5 between 1st April and 31st August will be of compulsory school age at the beginning of the school term after 1st September:
- Children who turn 5 between 1st September and 31st December will be of compulsory school age at the beginning of the school term after 1st January.

We cannot issue a Penalty Notice to a parent unless a child is of compulsory school age.

2.3 Definition of a school

Any maintained school, academy or Pupil Referral Unit.

3. Procedure for issuing Penalty Notices

In Camden, the Pupil Attendance Service will issue Penalty Notices. The Service 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 at the end of the 28 days, the Pupil Attendance Service may refer the matter for court prosecution. This is done by withdrawing the Penalty Notice and prosecuting for the initial offence

Penalty Notices are issued per parent per child, with each case being a separate offence.

No parent will receive more than **two** separate Penalty Notices for the same child resulting from the unauthorised absence of an individual child without a prosecution being considered. Although court action should always be considered for a third, or subsequent, Penalty Notice requested for the same parent, it is not automatic that such action should be sought.

Discussions should be held between the school, the legal department and the Pupil Attendance Service, and this should be done on a case by case basis. This is a policy supported by our legal department.

The reason for a prosecution must be recorded in the case file and will follow discussions with the court officer and Camden's legal services.

Neighbouring LAs will issue Penalty Notices to the parents of pupils enrolled at their local authority schools irrespective of the home borough of residence.

Neighbouring LA's issuing Penalty Notices are required to inform Camden in order for siblings in LA schools to be monitored, and Camden will do likewise.

The Pupil Attendance Service is able to receive requests to issue Penalty Notices from schools/colleges in Camden and the Metropolitan Police, for all students of statutory school age.

The Pupil Attendance Service may 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 match those detailed in this Code of Conduct.

An example of the referral form to request a penalty notice to be issued is at **Appendix 1**

In the case of all Penalty Notices, persistent absence (PA) Unauthorised Lates (UA) or Exceptional Leave (EL), when a request has been made, parent/s will have to have received at least one written warning if their child has been persistently absent or late. These are in accordance for the procedure associated with each offence. Without any warning letter having been sent NO Penalty Notice can be issued.

It will tell you how many school sessions your child has missed and ask you to improve your child's attendance. If there is no lasting improvement, you *may* be invited to a Court Assessment Panel Meeting (CAP) or a Legal Advisory Meeting (LAM) as an alternative to a PA PN or a UA PN.

If a parent/s is unable to provide a satisfactory reason for not ensuring their child's regular attendance, a Penalty Notice may then be issued.

In addition if there is no significant improvement in attendance after a CAP a Penalty Notice may also be issued.

In particular cases a Penalty Notice may be issued without convening such a meeting. This decision will be at the discretion of the Pupil Attendance Service.

If a child has taken leave of absence in term time without the school's permission, their parent will receive a letter from the school informing them if the leave requested is authorised or unauthorised. If a request for leave is made by the parent and refused by the school, the school will write to confirm this.

The school will also write a second letter to a family upon their return from any such leave. In the event that parent takes their child out of school and **does not** request permission then only the second letter would be sent. In the case of an EL PN referral one or both of these letters should always be sent to parents.

Parents will also be given the option, within seven days of their return, to mitigate any absence and/or to provide evidence, to the issuing school, as to why the school may have made an error in its initial decision or its record keeping.

The school, and ultimately the head teacher of the school, reserves the right to stand by any decision it makes. As in all schools the head teacher is the sole arbiter of this. An appeal against the decision of the head teacher to unauthorise the absence can only be made to the governing body of the school.

There is no appeal against the Penalty Notice, only against the school's decision not to authorise or sanction any absence. The LA, in accordance with DfE and Government policy has no appeals procedure for Penalty Notices.

An example of a Penalty Notice and a copy of the Withdrawal of a Penalty notice are contained at **Appendix 2 and 3.**

4. Circumstances where a Penalty Notice will be issued

When the issuing of Penalty Notices is considered appropriate after following the local authority's protocol.

4.1 Holidays in Term Time

In cases of absence from school when the pupil has been taken on a holiday or journey away from home during term time and the absence has **not** been authorised by the school.

The Government advises head teachers to grant EL requests in exceptional circumstances only. Holidays, length and distance of trip, or cheaper travel during school terms are not considered as exceptional circumstances.

Parents are required to apply in advance for permission from each school where their child/children is/are enrolled. Where the school is aware that there is a sibling at another school, they should liaise with the head teacher of that school to try to coordinate a consistent response between schools. However in exceptional circumstances schools may make a different decision, given that the head teacher of any school retains the ultimate decision for unauthorised leave. Where this happens the court officer must be informed of the reasons why this decision was made. In considering whether to allow a holiday in term time each school, is not obliged to but may consider the following circumstances:

- The child's age.
- o The time and length of the holiday.
- The child's record of attendance.
- o The child's previous term time holiday leave.
- If a pupil is preparing or undertaking tests or SATs in Years 2 or 6, GCSE's or A Levels in secondary school.
- During their first year at a new school.
- At the beginning of the new school year.
- If a school can evidence where a pupil is underachieving academically and it would be of detriment for any further schooling to be missed.

In the majority of cases Camden would not issue a Penalty Notice for less than 4 days of unauthorised exceptional leave. There may however be some exceptions to this and the authority will always retain the discretion to do so.

In the case of a 4 day absence being a second offence, including a family that has already been subject to a LAM, consideration will always be given to issuing a Penalty Notice for such an occurrence. The only other instance that a 4 day offence would be considered is during the week of a Bank Holiday.

Where a school feels they are unable to grant a holiday in term time they must write to the parent to explain why this has not been agreed, or return to them a copy of the Leave Request Form, with the reasons for the leave not being authorised. They should also include information about a possible referral for a Penalty Notice or court action.

The Pupil Attendance Service has a standard leave request form and we strongly recommend that all schools use it.

Schools cannot impose a blanket ban to holidays in term time and they must consider every request and consider each case on its merits.

If permission is not granted and the parent takes the child/ren out of school the absences will be marked as unauthorised and a referral made to the Pupil Attendance Service.

When each Penalty Notice referral is received consideration will be given to the most appropriate action this may include (these are not listed in any priority order):

- A warning letter to the parent/s
- o An invitation to a meeting to discuss the absence
- o Issue of a penalty notice

If a previous Penalty Notice has been issued, and paid, although another can be issued it cannot include any of the dates included in the first Notice.

A period of offence can only be tried once and once a fine has been paid, a prosecution carried out, or the action withdrawn, this period is regarded as spent and cannot be revisited.

If a previous Penalty Notice was not paid, and it has been prosecuted previously, consideration should be given to proceeding with another prosecution in preference to another Penalty Notice.

Where a parent has been issued with a letter instead of a Penalty Notice and there is a further request for a Penalty Notice Pupil Attendance Service will consider if they should be invited to a meeting or issued with a Penalty Notice.

In a case where a parent has been invited to a meeting previously, and there is a further request for a Penalty Notice, the Pupil Attendance Service will consider issuing a Penalty Notice.

Where a parent has received previous letters, and/or participated in meetings with the Pupil Attendance Service, and a further request for a Penalty Notice has been received, a Penalty Notice should be considered.

In the event that the total number of days referred for all previous referrals have totalled 11 days or more unauthorised absence, within a 13 month timeframe, the Pupil Attendance Service may consider court action.

Where a Penalty Notice is issued, each parent will receive a separate Penalty Notice for each child taken out of school.

If a parent does not ask for permission to take a holiday in term time then a Penalty Notice referral will be made by the school and assessed by the local authority for further action.

Schools are advised that once it becomes clear the child was on a holiday in term time, the absences are marked as unauthorised and a referral will be made.

There will be no automatic Pupil Attendance Service involvement with the request from the school. Each case will be individually assessed by the Pupil Attendance Service as to its viability to be a Penalty Notice

4.2 Persistent Absence PNs

The level of unauthorised absences any attendance below 85%, with 10% or more unauthorised absence will currently be considered for a PA Penalty Notice

In the early stages of School casework, the Pupil Attendance Service Court Officer 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.

The Pupil Attendance Service Court Officer will discuss this with the child's school and if approved, a Penalty Notice will be issued.

As previously stated this may be subject to change as a result of any court decisions.

The authority should also consider if an alternative enforcement option should be pursued e.g. prosecution in the Magistrates Court, an Education Supervision Order under Section 36 of the Children Act 1989 or Parenting Contract / Order. This would typically be where a Penalty Notice was not considered appropriate or for a family with an extensive history of poor attendance.

4.3 Lateness U codes

The school or the Pupil Attendance Service may issue a Penalty Notice where a pupil has a minimum of **eight late marks (U codes)** recorded as an unauthorised absence during any consecutive eight-week period of schooling. This does not include holiday periods. For example the last 2 weeks of term and the first 2 weeks of the next term would be seen as 4 consecutive weeks.

Schools must ensure that all pupils are aware when lateness will be recorded as an unauthorised absence. This is generally 20-30 minutes from the start of

registration and the pupil does not have an acceptable reason for being late. Each school must set a cut off time and can set whatever time they see as appropriate, as long as the time applies to the whole school and parents and pupils are aware of the change. The head teacher of any school is able to set this time as s/he sees fit, after getting this ratified by the school's governing body. These times must be included in any school attendance policy, as well as the school web site, and be available to parents.

Schools are expected to clearly record the date and time the pupil arrives at school e.g. 22/5/14 9.45am. This should be recorded in the school register. The absences after the close of registers should be marked as unauthorised in accordance with DfE guidance, with a U code.

4.4Truancy Patrols

Following a Truancy Patrol, 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 then a Penalty Notice may be issued.

A Penalty Notice will only be issued after due consideration in the event of a pupil being stopped on a truancy sweep in accordance with evidential requirements and cannot be an on-the-spot action.

If the pupil attends school outside of Camden the Truancy patrol information will be sent to the Pupil Attendance Service, or directly to the student's school, in the borough in which they attend school.

The Pupil Attendance Service should liaise with the pupil's headteacher and inform them of the reason the pupil gave for not being in school, where they were stopped, at what time and with whom. The headteacher is the person responsible for deciding if the absence is unauthorised and may change their view if a pupil is for example supposedly off sick and is found in the company of other pupils in a fast food restaurant or in an amusement arcade.

4.5 Penalty Notices during the first five days of an exclusions

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. The requirement applies whether or not the pupil is in the company of a parent. Failure to comply with the requirement may result in a Penalty Notice being issued.

Where an excluded pupil is stopped the truancy patrol recording sheets will be passed to the Pupil Attendance Service Court Officer and the Head of School

Inclusion Team who will make a decision if a penalty notice or a warning letter is issued.

A Penalty Notice will only be issued if the school has warned the parent that this is a legal possibility when sending the initial exclusion letter to the parent/s. If this warning has not been included then the LA will issue a warning letter to the parent. If the pupil is stopped again the Pupil Attendance Service Court Officer and the head of the School Inclusion team will decide if a Penalty Notice should be issued to the parents.

4.6 Schools issuing a Penalty Notice

Headteachers and their authorised deputy / assistant headteacher are empowered to issue Penalty Notices in respect of pupils at their school.

They should first seek agreement from their governing body before they begin to issue Penalty Notices and their school attendance policies must be revised.

Penalty Notices can only be issued in accordance with the local code of conduct and on the approved format shown in this protocol.

In order to avoid duplication of notices and to ensure notices are not issued when other legal proceedings are being planned or commenced, such as care proceedings or a prosecution, no school shall issue a Penalty Notice unless they have first checked the details with the Pupil Attendance Service and obtained authorisation to do so. Notification of dispatch and a copy of the completed Penalty Notice will always be sent to the school on the day it is sent to the parents.

Where a school fails to follow the correct procedures the Pupil Attendance Service will issue a notice to withdraw the penalty. Where a school consistently issues Penalty Notices that are not consistent with the code of conduct, the Service Manager of the Pupil Attendance Service will write to the head teacher and the chair of governors to inform them that they will not be permitted to issue further Penalty Notices. A copy of this letter will be sent to the Executive Director of Supporting People, Martin Pratt

Where a school has decided not to issue Penalty Notices themselves the Pupil Attendance Service will be able to do this on their behalf if the school requests they do so by making a referral to the service.

Following notification from a school to the L.A on the referral form (**Appendix 1**) that a pupil has had an unauthorised absence(s) from school, the circumstances of which appear to have been avoidable (e.g. too tired after a late night, a birthday treat, family friends/relatives visiting) schools must inform the Pupil Attendance Service of the full name of each parent / carer.

A Penalty Notice cannot be issued unless the full name of both children and parents are given. Nicknames for children or Mr, Mrs or Ms with a surname are not acceptable. Penalty Notices are legal documents and cannot be issued in this well

The Pupil Attendance Service will always retain the final say on any Penalty Notices they issue directly. If it is thought that a referral is inappropriate, incorrect or the requisite evidence has not been provided a Penalty Notice may not then be issued.

To date no Camden school has opted to issue a Penalty Notice directly, although the provision is there for them to do so.

4.7 Covid-19 related absence

In respect of the 2020 Covid-19 Pandemic, upon DfE instruction issued in March, all Penalty Notice or Court action have been immediately suspended,

No new referrals will be accepted until the DfE advises otherwise.

4.8 Police referral

Following a referral from the Metropolitan Police, procedures as at 4.2 above will be followed.

To date no police referral for Penalty Notice has been made directly in Camden although the provision is there for them to do so.

5. Service of Notices

Penalty Notices should always be issued by an authorised Officer and where a Penalty Notice is issued to each person known to be the parent of the child it will be served as a separate notice. The issuing of Penalty Notices will always be undertaken by Royal Mail and never as a face-to-face, action by the issuing officer.

In rare cases schools may hand a parent a copy of the Notice but this will always be as an appendage to a postal copy, and only as courtesy.

Where the Pupil Attendance Service does issue a Penalty Notice a copy of the Notice will always be issued to the school by the Pupil Attendance Service, usually via e-mail. This is for their records and information.

6. Procedure for withdrawing Penalty Notices

The Pupil Attendance Service Court officers may withdraw a Penalty Notice in any case in which the Court Officer determines that:

a) It ought not to have been issued.

- b) It ought not to have been issued to the person named as the recipient.
- c) The Notice was dispatched to the wrong address

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. This will be confirmed in writing by either the school or the Court Officer.

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 (1) or (1A) of the Act arising out of the same circumstances.

If the Pupil Attendance Service Court Officer decides that a Penalty Notice has been issued in error a letter will be sent to the school / requesting person to explain why this action has been taken.

Where a school fails to follow the correct procedures the Pupil Attendance Service will issue a notice to withdraw the penalty see **Appendix 3**. Where a school consistently issues Penalty Notices that are not consistent with the code of conduct the Service Manager of the Pupil Attendance Service will write to the head teacher and the chair of governors for the school to inform them that they will not be permitted to issue further Penalty Notices.

A copy of this letter will be sent to the Head of Camden School Improvement Service and Executive Director of Supporting People, Martin Pratt.

Where a Penalty Notice was issued to both parents and one or both parents claims they no longer live at that address we will require evidence that the person has moved address. To confirm this we will expect the parent who lives at the address to produce a rent book / rent agreement / lease / mortgage statement or council tax bill in their name only.

We will also need the parent who has no longer claims to live in the family home and/or no longer has day to day care of the child(ren) to produce the same for their new address and this evidence should indicate that the parent moved before the date the penalty notice was issued. No other evidence will be considered as acceptable.

Both sets of evidence must be dated within the last twelve months. A driving licence will not be appropriate unless it has been issued within the previous twelve month period. If documents are outside of the 12 month period or produced after the expiry date of the Penalty Notice, the Penalty Notice will not be withdrawn.

7. Payment of Penalty Notices

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

The Pupil Attendance Service is able to recoup its costs from the collection of Penalty Notices and any possible court cases that arise from them. Once this has been achieved all additional monies must be paid into the consolidated fund.

Payment by debit card, credit card, cheque or postal order will be accepted. You must have a copy of the Notice with you to do so. This can be done by telephone, either an automated service or via a customer service agent during office hours.

It is also possible to make payment of a penalty notice via Camden's website at the following address http://www3.camden.gov.uk/pay/?source=action-nav and clicking on the link for 'other fixed Penalty Notices'. You must have the Notice's unique reference number to do so.

Cheques or postal orders can be sent to The Cashier's Office, the Old Town Hall, Judd Street, WC1H 9JE. Details of all these payment options are contained within the Penalty Notice issued.

Payments are no longer accepted in person at the Town Hall or other council buildings.

The Pupil Attendance Service Office can only accept payment by cheque or postal order in exceptional cases only. The Pupil Attendance Service is unable to accept cash. This will only be as a last resort and payments should preferably be made by telephone or online.

All Penalty Notices are fixed and must be paid in full, as there is no entitlement to pay by instalments and/or part payments. The Pupil Attendance Service does not have the authority to reduce the amount of any Penalty Notice.

Schools should not accept payment of Penalty Notices in any form and must refer parents to the payment instructions on the Penalty Notice.

The Pupil Attendance Service is unable to accept late payments. Where a payment has been received late the Pupil Attendance Service will continue with court action and the money if accepted in error by Camden's financial systems, it will then be refunded.

The authority has a policy where it will endeavour to reinvest all monies (additional payments after costs) received from Penalty Notices to attendance initiatives such as funding projects, training events for attendance officers and rewards for students. It will not, and historically has not, typically been used for other facets of the service.

8. Effect of payment of Penalty Notice

Under Section 444A of the Education Act 1996 payment of a penalty enables the parents to discharge potential liability for conviction for that offence.

The parent cannot be prosecuted for the dates, or any part, of the offence for which the penalty notice was paid until after the 28 days have elapsed.

After 28 days the LA must either prosecute or withdraw the notice.

9. Appeal Process

There is no statutory right of appeal once a notice has been issued, however when parents / carers receive a formal written warning they can write or speak to the local authority about their situation.

10. Penalty Register

The Service Issuing Officer of the Pupil Attendance Service will record the details of Penalty Notices issued on the Pupil Attendance Service Penalty Notice Register.

11. Review of Protocol

The Pupil Attendance Service will review the protocol at the end of each academic year to ensure that the protocol is working and make any necessary changes.

12. Yearly Reports

Penalty Notice figures are published in August of each year (Appendix 4)

Pupil Attendance Service

Stevie Bennett Court Officer

Pupil Attendance Service

Date: 20.03.20

Ed Magee

Head of Service

Pupil Attendance Service

Date: 20.03.20

Martin Pratt

Executive Director Supporting People Date 20.03.20