KENT COUNTY COUNCIL

EDUCATION PENALTY NOTICES

CODE OF CONDUCT

Revised April 2017

1. Introduction

1.1 Regular and punctual attendance at school or alternative education provision is both a legal requirement and essential for pupils to maximise their educational opportunities.

1.2 Kent County Council is committed to reducing persistent absences from school by providing a wide range of Early Help support and interventions so that children benefit fully from the education provided to them. As part of Kent Education and Young People Services' Vision and Priorities for Improvement 2015-18, timely and relevant support will be provided by schools and Kent Early Help and Preventative Services to children who do not have maximum access to education due to family circumstances and other authorised reasons.

1.3 If support has not improved attendance and absences have not been authorised, leading to a period of unauthorised absence of 10 missed sessions in a period of 50 school days, the situation will be addressed rigorously through legal measures including Penalty Notices. Sanctions of any nature are for use only where parental co-operation in the effort to support regular attendance is either absent or deemed insufficient to resolve the presenting problem.

1.4 Schools have the first responsibility to take effective action to improve attendance. They are supported in this by their School Liaison Officer, who is part of the Local Authority's Inclusion and Attendance Service. When the school has done all it can, over a period of time, to improve attendance and there is little or no improvement, two options are available.

1.5 One option, where there is clear evidence of underlying problems in the family that require more intensive support, will be to make a Notification to the Early Help and Preventative Service. This will lead to an assessment of the child's and family's needs and an Early Help Plan to support the family to make changes that will improve school attendance and other outcomes.

1.6 The second option for the school, where there is evidence that the issue is a straightforward case of unauthorised absence, is to work with the Inclusion and Attendance Service after the school's own interventions have not succeeded in improving the pupil's attendance. This may lead to further legal action if the absence from school does not improve.

1.7 The Local Authority prosecutes parents under Section 444 of the Education Act 1996, where unauthorised absences are most serious and the parents have failed their legal duty to ensure their children's attendance at school.

1.8 Under Section 23 of the Anti-Social Behaviour Act 2003 local authority officers, Headteachers and the Police have the discretionary power to issue Penalty Notices in the appropriate cases of unauthorised absence from school.

1.9 Penalty Notices may also be issued when parents have taken their children out of school for holidays in term-time without the school's authorisation. From 1st September 2013, Headteachers are unable to agree leave of absence during term-time unless they are satisfied that there are exceptional circumstances.

1.10 **Exceptional circumstances could include**:

- Service personnel returning from a tour of duty abroad where it is evidenced the parent will not be in receipt of any leave in the near future that coincides with school holidays.
- Where an absence from school is recommended by a health professional as part of a parent's or child's rehabilitation from a medical or emotional issue.
- The death or terminal illness of a person close to the family.
- To attend a wedding or funeral of a person close to the family
- Or where the school has evidence that there are other pressing personal issues for a family that would warrant a short break from school.

Any examples provided are illustrative rather than exhaustive. It is acceptable to take a pupil's previous record of attendance into account when the school is making decisions. The fundamental principles for defining 'exceptional' are rare, significant, unavoidable and short. And by 'unavoidable' it implies that an event could not reasonably be scheduled at another time.

It is important to note that Headteachers can agree the absence of a child in exceptional circumstances and this discretion can be used also to determine the length of the authorised absence.

1.11 Sanctions are used as a means of enforcing attendance where there is a reasonable expectation that their use will secure improvement.

1.12 Support to a family through Early Help is not withdrawn as long as it is needed, even if there is a prosecution or Penalty Notice process in place. The needs of the family are assessed and the appropriate service offered.

2. Penalty Notice

2.1 The power of issuing a Penalty Notice provides an alternative to the prosecution of parents under Section 444 of the Education Act 1996 and enables parents to discharge the potential liability for conviction for that offence by paying a penalty of £60 per parent, per child, if paid within 21 days or £120 per parent, per child, if paid within 28 days.

2.2 Kent County Council's Inclusion and Attendance Service discharges the responsibility for issuing Penalty Notices in Kent and taking other legal actions against parents or carers when appropriate.

2.3 Should the Penalty Notice remain unpaid or have been paid only in part at the end of the 28 day period Kent County Council will prosecute the parents for the offence to which the notice relates, or, in specified circumstances (see section 6.1 below), withdraw the notice.

2.4 Penalty Notices may only be issued in Kent in accordance with the terms of this Code of Conduct. The purpose of the Code of Conduct is to ensure that the power is applied fairly and consistently across the County and that suitable arrangements are in place for the effective and efficient administration of the scheme.

2.5 In implementing this Code of Conduct the County Council will liaise when appropriate with neighbouring education and police authorities.

2.6 In reviewing this Code of Conduct, Kent County Council is consulting with Kent Headteachers and the Chief Officer of Kent Police. This complies with The Education (Penalty Notices) (England) Regulations 2007.

3. Before Referring Cases for Penalty Notices

3.1 Schools should take all reasonable steps to ensure good attendance before the use of Penalty Notices.

3.2 Each Penalty Notice may potentially lead to prosecution which requires a case to pass the evidential and public interest tests. Therefore, in cases where a school has concerns about a pupil's attendance, the school's authorised person for attendance must ensure that contact has been made with the parent or carer in order to try to resolve any issues and difficulties to avoid having to proceed with a prosecution, which failing all other efforts should be used as a last resort. All the contacts and interventions must be recorded.

3.3 If the issuing of a Penalty Notice is under consideration the authorised person should, in most cases, arrange for a Penalty Notice warning letter, signed by the Headteacher, to be sent to the parent or carer. The letter should include:

- details of the pupil's absence
- an offer to meet with the parent to discuss the concerns and to provide advice and support in an attempt to resolve any difficulties
- a statement of the legal responsibilities of the parent regarding attendance
- the consequences for the parent in failing to ensure his or her child's regular attendance; in particular, warning that further unauthorised and persistent absence could result in a Penalty Notice or prosecution
- an expectation that, after receipt of the warning letter, the level of attendance will significantly improve and that this improvement will be maintained.

3.4 If this warning and the offer of support does not result in a significant improvement in attendance, the authorised person should consider every aspect of a pupil's circumstances before deciding whether to request Kent's Inclusion and Attendance Service to issue a Penalty Notice.

3.5 If a request for leave of absence is declined by the school and the unauthorised absence meets the thresholds in Section 4.2, the school should make parents aware that either a Notification will be made to the Early Help Service to work with the family or a Penalty Notice will be issued. In deciding whether to refer parents for issuing a Penalty Notice, the school should take into account the pupil's overall level of attendance and previous leave of absence in term-time.

4. Circumstances where a Penalty Notice may be issued:

A Penalty Notice can only be issued in cases of unauthorised absence or where an excluded child is found in a public place during school hours.

4.1 Unauthorised absences

4.1.1 Parents and pupils are supported by schools and alternative education provision and by Kent County Council to overcome barriers to regular attendance through a range of assessment and 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.

4.1.2 Sanctions are used as a means of enforcing attendance where there is a reasonable expectation that their use will secure improvement.

4.1.3 Penalty Notices can only be issued in cases where a pupil of compulsory school age has been absent or late for a period, or periods, of time and the absence or lateness has not been authorised by the school, or shown improvement as a result of actions taken by the school.

4.1.4 After a school has taken the steps set out in Section 3, the relevant case may be referred directly to Kent's Inclusion and Attendance Service to issue a Penalty Notice for any unauthorised absence where the pupil has been

- absent for 10 or more half-day sessions (five school days) without authorisation during any 100 possible school sessions or 50 school days – these do not need to be consecutive
- persistently late (coded U) for 10 or more sessions after the register has been closed
- unauthorised absence for any public examinations of which dates are published in advance
- unauthorised absence for any formal school assessments, tests or examinations where the dates have been published in advance

unless the issuing of a Penalty Notice in these circumstances would conflict with other intervention strategies in place, such as Early Help support, or other sanctions already being processed.

4.2 Unauthorised Term-Time Leave (including leave for family holiday): Any parent who takes a child out of school for term-time leave of 10 or more morning and afternoon sessions during any 100 possible school sessions or 50 school days , not authorised by the school (under exceptional circumstances), may receive a Penalty

Notice. The unauthorised term-time leave does not have to be consecutive for a parent to receive a Penalty Notice. In deciding whether to refer a case for the sanction of a Penalty Notice, the Headteacher should take into account whether there is known evidence of previous unauthorised term time leave taken in the last 3 years and evidence of parents being warned about a potential Penalty Notice.

4.3 Exclusion: Where a child is found in a public place during school hours of day one to five of any fixed term or permanent exclusion.

5 Procedure for Issuing Penalty Notices

5.1 Kent County Council's Inclusion and Attendance Service will issue all Penalty Notices within the administrative area of Kent County Council for all unauthorised absences and exclusions. This ensures consistent and equitable delivery, avoids duplication of Penalty Notices, helps to maintain good school and alternative provision relationships with the home and ensures that there is no conflict with other enforcement sanctions.

5.2 Penalty Notices will only be issued by post and never as an on the spot action; this will satisfy that all evidential requirements are in place and meet Health and Safety requirements.

5.3 The Inclusion and Attendance Service will receive requests to issue Penalty Notices from schools and alternative education providers, Kent Police and neighbouring Local Authorities. These requests will be actioned provided that:

- the school has taken the necessary steps as detailed in Section 3
- all relevant information is supplied in the specified manner,
- the circumstances of the pupil's absence or presence in a public place or non-attendance meets all the requirements of this Code of Conduct,
- the issuing of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.

5.4 The Inclusion and Attendance Service will respond to all requests within 10 school days of receipt and where all criteria are met we will:

5.4.1 in cases of exclusion, issue a letter to parents or carers giving 10 school days in which to provide Kent County Council with a reasonable justification for their child's presence in a public place during school hours.

5.4.2 in cases of non-attendance, issue a further written warning to the parent or carer of the possibility of a Penalty Notice being issued; and in the same letter set a period of 15 school days within which the pupil must have no unauthorised absence;

5.4.3 issue a Penalty Notice through the post at the end of the 15 day period if there has been any further unauthorised absence.

5.4.4 in the case of a pupil's leave of absence in term-time that has not been authorised by the school or alternative education provider, a Penalty Notice may be issued without setting a period of 15 school days for attendance improvement. (Amendments to the 2006 regulations remove references to family holiday and extended leave as well as the statutory threshold of ten school days. The amendments make clear that Headteachers may not grant any leave of absence during term-time unless there are exceptional circumstances. Headteachers should determine the number of school days a child can be away from school if the leave is granted.)

5.5 Schools and alternative education providers should ensure that policies regarding Leave of Absence in Term-Time are widely and regularly publicised to parents and carers and that reasons for refusal to grant permission are confirmed in writing. Kent County Council will issue Penalty Notices, for unauthorised leave in term-time, where the supporting evidence provided clearly details the reasons permission has not been granted.

5.6 If a pupil with unauthorised leave of absence in term-time has a sibling (or siblings) attending another school, it is good practice that relevant schools co-ordinate their decisions in order to ensure a consistent approach.

5.7 If a Penalty Notice is considered to be appropriate for absence, the school should submit the Penalty Notice request as soon as 10 unauthorised sessions have been reached.

5.8 The use of Penalty Notices will normally be restricted to one per pupil per parent per academic year.

5.9 Not more than twelve may be issued per pupil per parent per academic year for being found in a public place whilst excluded.

5.10 In the case of a period of unauthorised leave for the purpose of a family holiday in term-time a Penalty Notice may be issued on more than one occasion.

5.11 A Penalty Notice may be issued to each parent liable for the offence or offences.

5.12 In cases where families contain more than one poor-attending pupil multiple issues of Penalty Notices may occur.

5.13 There is no restriction on the number of times a parent or carer may receive a formal warning of a possible issue of a Penalty Notice for unauthorised absences.

6. Procedure for Withdrawing Penalty Notices

6.1 Penalty notices can only be withdrawn in the following circumstances:

- where it has been established the Penalty Notice was issued to the wrong person or the Local Authority deems that the Penalty Notice should not have been issued;
- the Penalty Notice did not conform to the terms of this Code of Conduct;
- the Penalty Notice contains material errors.

7. Appeals

7.1 There is no statutory right of appeal against the decision to issue a Penalty Notice and the sole authority to authorise absences lies with the Headteacher and their decision is final.

7.2 The Education (Pupil Registration) (England) Regulations do not allow Headteachers to give retrospective authorisation for absence.

8. Payment of Penalty Notices

8.1 Arrangements for payment will be detailed on the Penalty Notice.

8.2 The payment of a Penalty Notice discharges the parent's or carer's liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the same period.

8.3 Payment of a Penalty Notice within 28 days is £120 reduced to £60 if paid within 21 days of receipt of the Notice.

8.4 Kent County Council retains any revenue from Penalty Notices for the administration of the scheme and its enforcement.

9. Non-Payment of Penalty Notices:

Non-payment of a Penalty Notice may result in prosecution under the provisions of Section 444 of the Education Act 1996 or prosecution under Section 103 of the Education and Inspections Act 2006.

10. Publicity:

All schools and alternative education provisions intending to use Penalty Notices must draw this to the attention of parents and carers on a regular basis and publish details of the scheme in their Attendance Policy.

11. Reporting and Review:

Review of this Code will take place every three years or more often if required by local strategic priority and legislative changes. A review may involve consultation where it is considered appropriate.