



Bracknell Forest Council

Code of Conduct & Protocol for the Issuing of Fixed Penalty Notices

This Code of Conduct and Protocol applies to all schools within the geographical jurisdiction Bracknell Forest Council, including Academy Trust Schools where they have adopted the provisions and effect of the same.

This Code of Conduct and Protocol is set in consideration and consequence of the provisions of the following;

- *The Education Act 1996*
- *The Education (Pupil Registration) (England) Regulations 2006, as amended by The Education (Pupil Registration) (England) (Amendment) Regulations 2013*
- *The Education (Penalty Notice) (England) Regulations 2007, as amended by The Education (Penalty Notices) (England) (Amendment) Regulations 2012 and The Education (Penalty Notices) (England) (Amendment) Regulations 2013*
- *Department For Education Guidance as from time to time issued in respect of school attendance matters*

Rationale

The Government has made it clear that it expects Local Authorities to have a Code of Conduct in place so that the full range of measures for improving attendance are available to schools. Regular and punctual attendance at school are both a legal requirements and essential if the children of Bracknell Forest are to achieve better outcomes in education and to maximise the opportunities available to them.

The impact of non-attendance at school is now clearly demonstrated in terms of low attainment, and risk of involvement in crime. DfE studies show:

- Only 10% of persistent truants achieve 5 A*-C GCSEs compared with 38% of occasional truants and 58% of non-truants.
- 21% of persistent truants had no qualifications, as opposed to only 3% of non-truants.
- Truants are more likely to offend and, of the group of young people offending, $\frac{2}{3}$ had truanted.

- Unauthorised absence from school can be cause for concern in relation to child welfare and protection.

In law, an offence occurs if a parent / carer fails to secure a child's regular attendance at a school where the child is a registered pupil and if any absence is not authorised by the school. The Court has determined that "Regular" attendance means that which is *"in accordance with the rules prescribed by the school"*.¹

Penalty Notices are intended to be used as an early intervention strategy in order to deter patterns of unauthorised absence. They do not replace the use of wider powers under the Education Act 1996. They are suitable for use when there is a realistic expectation that the parent can cause an improvement in a child's attendance or in circumstances where a parent is not co-operating with measures being offered or recommended.

Legal basis

In February 2004, the Anti-Social Behaviour Act 2003, S.23, Sub-section1 added sections 444A and 444B after S.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 S.444 by paying a financial penalty to the Local Authority.

The regulations governing the issuing of Fixed Penalty Notices and the requirements upon the Local Education Authority to draw up a code of conduct setting out measures to ensure consistency in the issuing of them are to be found under The Education (Penalty Notices) (England) Regulations 2007 (as amended).

Circumstances in which a Penalty Notice may be issued

A Fixed Penalty Notice can only be issued in cases of unauthorised absence.

A Penalty Notice may be an appropriate intervention in the following circumstances:

- Where there is a minimum of 10 school sessions of unauthorised absence (5 school days) in any 10 week period (these do not need to be consecutive)
- Where term time leave is taken without obtaining authorisation from the school
- Unwarranted delayed return from term time leave without authorisation
- Persistent late arrival after the register has closed (U code) on 10 or more occasions in a 10 week period
- Parents' or carers' failure to make arrangements to ensure that children who have been excluded from school are not in a public place at

¹ Isle of Wight Council v Platt (6th April 2017) [SUPREME COURT] [2017] UKSC 28 (on appeal from [2016]EWHC 1283 (Admin))

prescribed times during the first five school days of any exclusion, without reasonable justification*

*It is incumbent upon the parent(s) in such circumstances to provide proof of reasonable justification, for example, that the child or young person needed to attend a pre-arranged medical appointment, or a medical emergency requiring the child to be supervised elsewhere than at home. A Penalty Notice will be issued on the first occasion if appropriate.

The first response to a “first offence” might be a written Formal Warning. This allows a parent fifteen school days to improve the attendance of their child. If an authorised absence occurs within that period a Penalty Notice may be issued.

However, in the following circumstances a Penalty Notice can be issued without a Formal Warning having been issued previously:

- ten sessions or more of absence comprise of unauthorised absence (holiday or suspected holiday) in term time in any ten week period,
- where the pupil has been referred to the Education Welfare Service by the school due to ongoing attendance concerns and there is an open referral

No more than two Penalty Notices will be issued per pupil per academic year. When two Penalty Notices have already been issued in an academic year the matter will be referred directly for prosecution for a third offence in the same year or in the following academic year.

Penalty Notices may be issued to parents of children of compulsory school age

- who are registered at a maintained school, academy, free school , pupil referral unit or special school in Bracknell Forest
- who are at special school outside the authority by virtue of a statement of special education needs or EHCP.
- For whom the authority has made alternative educational provision (whether or not in the area of this authority)
- Who are not, at the time the notice is given, a registered pupil at any school (whether due to permanent exclusion or otherwise) but resides in the area of this authority

Who can be issued with a Penalty Notice

Anyone defined as a parent under Section 576 Education Act 1996 is a parent for the purposes of these provisions. This means:

- all natural parents, whether they are married or not
- any person who, although not a natural parent, has parental responsibility (as defined by 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 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.

A parent means 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. As with prosecutions under Section 444 Education Act 1996, a separate Penalty Notice may be issued (per parent, per child) to each parent liable for the offence.

Procedure for issuing Penalty Notices

Bracknell Forest Council as the Local Education Authority will receive requests to issue Penalty Notices through liaison with schools and by request from Thames Valley Police and/or neighbouring Local Education Authorities. These requests will be actioned providing that:

- All information deemed necessary by Bracknell Forest Council as the Local Education Authority is provided in the specified manner
- The circumstances of the pupil's absence meets all the requirements set out in this protocol
- The issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.

Penalty Notices will be issued by Bracknell Forest Council as the Local Education Authority and not by individual Headteachers or Thames Valley Police. The Penalty Notice will be issued by first class post and not in person or as an "on the spot" action.

The Team Leader, Education Welfare, will undertake investigations to ensure that the request to issue is valid and that all reasonable steps have been taken by the referrer.

Withdrawal of Penalty Notices

A Penalty Notice, once issued, can only be withdrawn in the following circumstances:

- When it ought not to have been issued, i.e. where it has been issued outside of the terms set out in this protocol, or where no offence has been committed
- Where it has been issued to the wrong person
- Where it appears to the authority that the notice contains material errors
- The Penalty Notice has not been paid and the LA has not, and does not intend to, instigate proceedings

Representations

Only a Headteacher, or person authorised by the Headteacher to do so, can authorise a child's absence from school. If the school maintains that a child's absence was unauthorised then, where above stated criteria for the issuing of such Fixed Penalty Notices are met, a uniquely and separately numbered Fixed Penalty Notice may result and such Penalty Notices may be separately issued to, and thus separately payable by, each parent in respect of each child's irregular attendance at school.

There is no statutory right of Appeal against the Local Education Authority's decision to issue a Fixed Penalty Notice.

Any parent believing that a Fixed Penalty Notice has wrongly been issued to them, or has been issued to them not in accordance with the terms of this Code of Conduct and Protocol for the issuing of such Fixed Penalty Notices, must contact the Local Education Authority, as soon as possible, to ask for such Fixed penalty Notice to be withdrawn, stating why the parent believes that the Fixed Penalty Notice was incorrectly issues. The Local Education Authority will consider the parent's request and notify the parent of whether or not the Fixed Penalty Notice is withdrawn.

If the Fixed Penalty Notice is not withdrawn and the parent fails to pay the Fixed Penalty amount within the prescribed time limit stated on the Fixed Penalty Notice, the parent will be liable for prosecution for the substantive offence of failing to ensure the child's regular attendance at school. In the event of such a prosecution being instigated, the parent, upon receipt of the Court Summons, will have the opportunity to make any desired representations to the Magistrates' Court in respect of the alleged offence.

Payment of Penalty Notices

The penalty is payable to Bracknell Forest Council. With effect from September 2013 the penalty amounts are as follows:

- £60 if paid within 21 days of receipt of the notice
- £120 if paid after 21 days but within 28 days of receipt

Payment of a Penalty Notice cannot be made in instalments.

Non Payment Of Penalty Notices

If the penalty is not paid at the end of the 28 day period, Bracknell Forest Council as the Local Education Authority will either prosecute for the substantive offence to which the notice applies or (in accordance with the limited circumstances described above) withdraw the notice and not proceed to prosecution.

If an issued Fixed Penalty Notice is not paid within the prescribed time limit for payment, each parent may be liable to prosecution at the Magistrates' Court for an offence contrary to Section 444 Education Act 1996, (failure to secure regular attendance at school of a registered pupil of compulsory school age), in the same way as if the Fixed Penalty Notice had never been issued.

The purpose of the Fixed Penalty Notice, where it is considered appropriate for such Notice to be issued, is to give a parent the time limited opportunity to avoid prosecution for a substantive offence contrary to Section 444 Education 1996.

Any such prosecution following non payment of an issued Fixed Penalty Notice will be for a substantive offence contrary to S. 444 Education Act 1996, rather than for non payment of an issued Fixed Penalty Notice.

However, the fact that a Fixed Penalty Notice had previously been issued but not paid may be used in evidence during the prosecution.

Prosecution for the substantive offence, if proved, may, in respect of the less serious offence contrary to S. 444(1) Education Act 1996 (being the parent of a child of compulsory school age who fails to regularly attend school), result in each such parent receiving a criminal conviction and /or Sentence by way of a Fine not exceeding £1,000.00.

Prosecution for the substantive offence, if proved, may, in respect of the more serious offence contrary to S. 444 (1A) Education Act 1996 (where the parent knows that the child is failing to attend regularly at the school and the parent fails without reasonable justification to cause that child to regularly attend school), result in each such parent receiving a criminal conviction and / or Sentence by way of a Fine not exceeding £2,500.00 and / or to a term of imprisonment not exceeding three months, or else any such community based Sentence as deemed appropriate by the Court.

In addition, in all cases where one of the substantive offences is proved, the Prosecution will seek an Order for the Defendant to pay a contribution towards the Prosecution Costs of the case, including investigation costs, the application for which will be served upon the Defendants at the time of the relevant Court proceedings.

In addition, when a Court passes a sentence, it must also order that the relevant "Victim Surcharge" be paid by Defendants. Revenue raised from the Victim Surcharge is used by Central Government to fund victim of crime services through the "Victim and General Fund". The amount of the Victim Surcharge to be paid by Defendants depends on the type of Sentence imposed and, in the case of an adult offender receiving the maximum level of Sentence applicable for the type offences covered by this Code Of Conduct and Protocol, may result in a Victim Surcharge of up to £115.00 per Defendant / parent.

In addition to any other Sentence imposed, the Court has the ancillary power to impose a “Parenting Order”, not exceeding 12 months in duration, on parents, where the Court considers such an Order appropriate. Any person found guilty of failing without reasonable excuse to comply with the requirement of a “Parenting Order” or with a direction of the nominated Responsible Officer in respect of it is liable to Breach proceedings and, in the event of conviction for the same, to a fine, not exceeding £1,000.00, and or any other non-imprisonable Sentencing option available to the Court in such case.

Allocation Of Revenue Received By Bracknell Forest Council As A Consequence Of Issuing Fixed Penalty Notices

In accordance with Regulation 23 of The Education (Penalty Notices) (England) Regulations 2007 and section 444A (6) (A) of The Education Act 1996, as inserted by Section 110 of The Education and Inspections Act 2006, and in accordance with Section 105(5) of The Education and Inspections Act 2006, all revenue received in payment of Fixed Penalty Notices will be retained by Bracknell Forest Council as the Local Education Authority and used towards the cost of issuing and enforcing such Penalty Notices and towards the cost of prosecuting recipients who do not pay.

Reimbursement Of Late Payment Of Penalty Notices

The Penalty Notices must be paid within the prescribed timescales. All Payments received after the end of the 28 day period will be reimbursed to the payee, by Bracknell Forest Council as Local Education Authority (via its Finance Department).

Late or part-payments will not be accepted as satisfaction of Fixed Penalty Notices.

Records

The Local Education Authority will keep pertinent records for all Fixed Penalty Notices requested and/or issued. Records are archived once a pupil reaches the end of their compulsory education. These records will then be destroyed in line with the local retention policy.

Reporting & Review

The Education Welfare Service team Manager will report at regular intervals on the use and outcomes of Penalty Notices. Information will be shared with Senior Managers within the Children, Young People & Learning Department and with schools via the termly Attendance Network Meetings.

The Department for Education (DfE) annual census return (PRMA) will be completed by the Team Manager EWS in respect of the issuing of warnings and Penalty Notices.

Code of Conduct

The public is entitled to expect the highest standards of conduct from all employees who work for Bracknell Forest Council.

Bracknell Forest Council officers will serve only the public interest and will never improperly confer an advantage or disadvantage on any person. They will make decisions on merit and shall be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Bracknell Forest Council officers will promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They will uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Revised by: Team Manager, Education Welfare
Date: September 2017
Review due: July 2018

Frequently Asked Questions Regarding Term Time Holidays

Q. Am I entitled to take my child out of school for a family holiday?

A. No. Parents have a legal duty to ensure that their child attends school or the alternative provision on a regular basis. The Education Act 1996 makes it a criminal offence for a parent to fail to ensure their child regular attendance at school.

Q. Why do some schools authorise absence and another does not?

A. The Headteacher, or person authorised by the Headteacher to do so, is the only person who can authorise absence. Headteachers are only able to authorise requests for absence where exceptional circumstances exist for granting such authorisation and each set of circumstances will be individual and likely to receive a different response.

The regulations give parents no entitlement to take their child out of school for a holiday in term time. The Head Teacher and Governing Body will determine what exceptional circumstances are as there is no official definition.

Q. If I wish to take my child on a term time family holiday what should I do?

The parent/guardian with whom the child resides must apply in writing to the school on a leave of absence form. The application must explain the exceptional circumstance surrounding the request for leave of absence.

Q. What will the school do then?

The Headteacher will determine whether the request can be considered as exceptional circumstances or not. If not, the application will be declined.

Only the Headteacher, or person authorised by the Headteacher to do so, has the power to approve leave of absence applications. When making the decision the protocols and criteria laid down in the school's attendance policy must be followed.

Schools inform parents/carers via their websites, newsletters and on the leave of absence form that they may receive a Fixed Penalty Notice if their child has unauthorised absences during term time.

The parent / guardian with whom the child resides will receive a written response from the school's Headteacher (or Deputy) confirming whether the application for leave of absence has been granted or not.

If no such application is submitted, or the term time holiday goes ahead without the Headteacher's authorisation in any event, then such absence will be recorded as unauthorised and each / every parent/guardian with parental responsibility for the child, whether the child resides with them or not, may, in accordance with this Code of Conduct and Protocol, be liable to receive a separate Fixed Penalty Notice, and thus each be liable to prosecution for the substantive offence of failing to ensure the child's regular attendance at school in the event of such Fixed Penalty Notice(s) not being paid within the prescribed time limit.

Q. My Child has never had unauthorised absence before so can authorisation be given on this one-off occasion due to their previous excellent attendance?

The decision to issue a Fixed Penalty Notice is based upon the referral criteria which meets the threshold test for irregular attendance at school. School attendance is crucial to children and their attainment and any school absence may have a detrimental impact upon a child's education. The Headteacher will base the decision on whether or not to authorise any absence purely upon whether or not the absence is due to exceptional circumstances rather than basing the decision on consideration of the child's previous level of school attendance.