



**PENALTY NOTICE
CODE OF CONDUCT
EXCLUDED PUPILS**

1. Rationale

- 1.1. Section 103 of the Education and Inspections Act 2006 (hereinafter referred to as 'the Act') places a duty on parents in relation to an excluded pupil. A parent must ensure that their child is not present in a public place during school hours without reasonable justification to be so during the first five days of each and every fixed period or permanent exclusion, or where that exclusion is for a fixed period of five days or less, any of the days to which the exclusion relates.
- 1.2. "Parent" is defined as per s576 Education Act 1996 and includes any person who is not a parent but who has parental responsibility of a child or who has care of the child.
- 1.3. "School hours" means any time during a school session or a break between sessions on the same school day. A "public place" means any highway or any place to which the public have access.
- 1.4. The days of exclusion when this duty applies are known as the "specified days of exclusion" and will be detailed in a Notice given to the parent under section 104 of the Act, hereinafter referred to as "the Notice". The Notice will also specify what the arrangements are for the excluded child's full-time education. The parent is responsible for their child during the specified days upon receipt of the Notice.
- 1.5. Sections 100 and 101 of the Act place a duty on the school or Local Authority to make provision for the excluded child's full-time education from the sixth day of any fixed period exclusion in a school year or from the sixth day of each permanent exclusion. Once the provision is made, the parent's duty is to ensure that their child regularly attends the provision from the sixth day.
- 1.6. Section 105 of the Act allows an "authorised officer" to issue a Penalty Notice to a parent who they believe has committed an offence under section 103 of the Act (failing to ensure that their child is not present in a public place on the days specified in the Notice given to them). At the time of excluding the pupil, the school must notify the parent of their duty and the days to which it relates.
- 1.7. "Authorised officer" is a constable, an officer of the Local Education Authority who is authorised by the authority to issue Penalty Notices, or an authorised staff member, being a Headteacher or a member of school staff authorised by the Headteacher to issue Penalty Notices.

- 1.8. Any Penalty Notice issued pursuant to section 105 shall currently be in the sum of £60.00 if paid within 21 days of receipt of that Notice, rising to £120.00 if paid between 22 to 28 days. If the Penalty Notice is paid within the specified period, the parent cannot be convicted of the offence to which the notice relates.
- 1.9. In compliance with Human Rights legislation, it is essential that Penalty Notices are issued in a fair and consistent manner. They must also be issued in strict accordance with section 106 of the Act, with suitable administrative arrangements in place. This Code of Conduct seeks to ensure this practice and will govern the issuing of Penalty Notices for Torbay Council.

2. Procedure for issuing Penalty Notices

- 2.1. In Torbay, it is intended that Penalty Notices will be issued by the Attendance Improvement Service (AIS). The AIS will ensure that the issuing of Penalty Notices is closely monitored and that recipients pay the relevant fine. In any case where the Penalty Notice is not paid within the specified period, the AIS will, where appropriate, initiate criminal proceedings through the Courts.
- 2.2. No one parent will receive more than one Penalty Notice resulting from an individual child being in a public place during the first five days of each fixed period or permanent exclusion, in any two year period. If a parent who receives a Penalty Notice for an offence contrary to s103 of the Act commits a further offence within the next two years this will result in the parent being summonsed to Court.
- 2.3. The AIS will receive requests to issue Penalty Notices from schools/colleges/academies in Torbay and from Officers of Devon and Cornwall Constabulary. The AIS will action these requests providing:
 - The circumstances of the case meet the criteria for the issue of a Penalty Notice which are specified in this Code of Conduct; and
 - All necessary information is provided to the AIS in order to establish that an offence under section 103 of the Act has been committed.
- 2.4. In cases requiring the issue of a Penalty Notice, each parent will receive a separate Penalty Notice. Should a parent fail or refuse to pay the Penalty Notice, then the evidence provided by the school/college/academy or Police Officer will be the only information laid before the Court. The provider/author of that evidence may be required to attend Court where a not guilty plea is entered.

3. General Criteria for the issuing of a Penalty Notice

- 3.1. The AIS recognises that, in some circumstances, it may be necessary for a child to be in a public place during school hours on a day when they are excluded. For example, the child may have a pre-arranged medical appointment or there may be a medical emergency which needs immediate attention. Similarly the parent may need urgent medical assistance and it would be inappropriate to leave the child alone. In all cases

it will be for the parent to prove reasonable justification. A justification which is capable of being reasonable will depend upon points of fact and proof and will be determined by the AIS and ultimately the Courts, where necessary.

3.2. Within the Code of Conduct a parent is defined as per section 576 Education Act 1996.

4. Procedure for withdrawing Penalty Notices

4.1 A Penalty Notice may be withdrawn by Torbay Council in any case in which the authority determines that:

- It ought not to have been issued, or
- It ought not to have been issued to the person named as the recipient, or
- 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 initiated against the recipient for the offence in connection with which the withdrawn notice was issued.

5. Payment of Penalty Notices

5.1 The arrangement for the paying of penalties will be detailed on the Penalty Notices.

6. Consultation

6.1 In accordance with Regulation 15 of the Education (Penalty Notices) (England) Regulations 2007, this Code of Conduct was adopted by Torbay Council on the 26th May 2017 following consultation with Governing Bodies, Head Teachers and the Chief Police Officer for the area of the Local Authority.

Dated: 26th May 2017

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Andy Dempsey – Director of Children's Services