



HILLINGDON

LONDON

LONDON BOROUGH OF HILLINGDON

POLICY & PROCEDURES

IN RESPECT TO:

**CODE OF CONDUCT
FOR ISSUING PENALTY NOTICES IN RESPECT OF UNAUTHORISED
ABSENCE FROM SCHOOL, UNAUTHORISED LEAVE OF ABSENCE FROM
SCHOOL AND THE PRESENCE IN PUBLIC OF EXCLUDED PUPILS DURING
THE FIRST FIVE DAYS OF EXCLUSION**

*** Parenting Contracts - Truancy or Exclusion**

*** Parenting Orders - Exclusion**

**London Borough of Hillingdon
Policy/Procedures and Code of Conduct in respect of the Provisions of
The Anti-Social Behaviour Act 2003**

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Hillingdon Code of Conduct

CODE OF CONDUCT FOR ISSUING PENALTY NOTICES IN RESPECT OF UNAUTHORISED ABSENCE FROM SCHOOL, UNAUTHORISED LEAVE OF ABSENCE FROM SCHOOL AND THE PRESENCE IN PUBLIC OF EXCLUDED PUPILS DURING THE FIRST FIVE DAYS OF EXCLUSION

This Code of Conduct is agreed between:

- The London Borough of Hillingdon Local Authority
- Governing Bodies and Headteachers of Hillingdon Schools, Academies and Free Schools located within Hillingdon (known as schools within this document).
- The Metropolitan Police Service

Legal Framework

Section 23 of the Anti-Social Behaviour Act 2003 amends the Education Act 1996 to empower authorised officers of the local authority to issue Penalty Notices to the parents of children who have unauthorised absence from school. Section 105 of the Education and Inspections Act 2006 also allows Penalty Notices to be given to a parent guilty of the offence of failing to ensure that their child is not present in a public place within the first five days of exclusion. Reference in this Code of Conduct to the “Authorised Person” applies to all persons authorised to issue Penalty Notices.

The Education (Penalty Notices)(England) Regulations 2007 require the local authority to develop a Code of Conduct, in consultation with Schools and Police, when issuing Penalty Notices. Any person issuing a Penalty Notice must do so within the terms of this Code of Conduct (“the Code of Conduct”).

The rules governing the implementation of these powers and the factors that should be taken into account when issuing a Penalty Notice are outlined in:

The Education Act 1996;

The Education & Inspections Act 2006;

The Education (Penalty Notices) (England) Regulations 2007; and

The Education (Penalty Notices) (England) (Amendment) Regulations 2013 also amends the 2007 Regulations to reduce the timescales for paying a penalty notice. Parents must, from 1st September 2013, pay £60 within 21 days or £120 within 28 days.

The above legislation applies to all parents who fall within the definition of a “parent” as set out in Section 576 of the Education Act 1996. This (the Education Act 1996) defines “parent” as:

- all natural parents, whether they are married or not;
- any person who has parental responsibility for a child; and any person who, although not a natural parent, has care of a child.

Having care of a child means that a person with whom a child lives and who looks after a child, irrespective of what their relationship is with that child, is considered to be a parent in education law.

In addition, the issuing of Penalty Notices must comply with other legislation, such as the Human Rights Act and all relevant Equal Opportunities legislation, in order to ensure that they are used in a fair and consistent manner.

RATIONALE

Section 7 of the Education Act 1996 states that:

“The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable ... to his age, ability and aptitude, and ... to any special educational needs he may have, either by regular attendance at school or otherwise.”

Therefore, regular and punctual attendance at school or alternative provision is a legal requirement, as well as being essential to enable children to maximise their educational attainments and opportunities.

CODE OF CONDUCT

Interim guidance issued by DfE during Covid-19 pandemic:

1) On 22nd March 2020 from the Secretary of State for Education to all Local Authorities:-

It is our expectation that no parent should be penalised for any Covid19 related absence. Therefore, all institutions are asked to suspend any penalty notice action or prosecutions for Covid-19 related absence with immediate effect. Local authorities should update their Code of Conduct for issuing penalty notices to make this clear. New cases should not be taken forward and any cases from 16th March should be withdrawn. This approach should also be applied to prosecutions for non-attendance.

The above direction takes precedence over all other provisions within this document and will be reviewed upon further advice from the Department for Education.

2) On 2nd July 2020, DfE issued a new guidance on schools' full reopening in September. The new guidance supersedes the March interim advice. The new guidance recognises that the circumstances have changed and it is vital for all children to return to school to minimise as far as possible the longer-term impact of the pandemic on children's education, wellbeing and wider development.

The new guidance further states that missing out on more time in the classroom risks pupils falling further behind. Those with higher overall absence tend to achieve less well in both primary and secondary school. School attendance will therefore be mandatory again from the beginning of the autumn term. This means from that point, the usual rules on school attendance will apply, including: parents' duty to secure that their child attends regularly at school where the child is a registered pupil at school and they are of compulsory school age;

schools' responsibilities to record attendance and follow up absence

the availability to issue sanctions, including fixed penalty notices in line with local authorities' codes of conduct

While this code of conduct must have regard to the Guidance issued on 2nd July 2020, it recognises that returning to school for all pupils will initially be a huge logistical challenge for both schools and some parents.

Any person issuing a Penalty Notice shall do so in accordance with a code of conduct drawn up by the Local Authority, and which sets out measures to ensure consistency in the issuing of Penalty Notices, including:-

- a) Means of avoiding the issue of duplicate notices
- b) Measures to ensure that a notice is not issued when proceedings for an offence of non-attendance at school, under section 444 of the Education Act 1996, are contemplated, or have been commenced by the Local Authority.
- c) The occasions when it will be appropriate to issue a Penalty Notice for an offence.
- d) A maximum number of Penalty Notices that may be issued to one parent in any twelve month period.
- e) Arrangements for co-ordination between the Local Authority, neighbouring Local Authorities where appropriate, the Police and authorised officers.

In preparing the Code of Conduct, the Local Authority consulted Governing Bodies, Head Teachers and the Chief Officer of Police regarding guidance issued by the Secretary of State.

HILLINGDON PROVISIONS

A Means of Avoiding the Issue of Duplicate Notices:-

- i) The Participation Service provides a database for storing pupil data, and arranges to produce Penalty Notices.
- ii) Data entry will be undertaken by the Participation Service, in respect of Data Entry Forms received from Headteachers or the Police.
- iii) Penalty notices will only be issued following specific confirmation from the Participation Service, that no other notice has been requested or issued, in respect of the event in question.

B Measures to ensure that a notice is not issued when proceedings for an offence under Section 444 of the Education Act 1996 are contemplated, or have been commenced by the Local Authority:-

- i) The database in Section A above, will also contain details of cases where legal intervention is a likely outcome
- ii) The Participation Service will check the database against Data Entry Forms received, and advise the sender of any possible legal intervention in progress

C Before Referring Cases for Penalty Notices

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

- 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.
- 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.
- 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 Hillingdon Participation Team to issue a Penalty Notice.

D The occasions when it will be appropriate to issue a Penalty Notice for an offence

i) The key consideration in deciding whether to issue a Penalty Notice, will be whether it can be effective in helping to get the pupil back into school.

ii) The school has previously referred the pupil to the Participation Service, and casework is in progress. For example:- where attendance has failed to improve without reasonable justification during a review period following an Attendance Panel held by the Participation Service. (for exceptions see Para. iv below)

iii) A Penalty Notice is a suitable intervention in circumstances where the parent is judged capable of securing their child's regular attendance; but is not willing to take responsibility for doing so, for example where the parent has failed to engage with any voluntary or supportive measures proposed. It is particularly useful as a sanction at an early stage, before attendance problems become entrenched and persistent; and where the Local Authority considers that a prosecution would be too heavy-handed. A Penalty Notice may be issued to each parent, in respect of each of their children who meet the criteria set out in this section.

iv) The normal response to a first offence should be a warning rather than a penalty. However, the Authorised Officer (see E i below) has the discretion to issue a Penalty Notice for a first offence, in exceptional circumstances. This could be where the unauthorised absence was for an extended period, and condoned by the parent; for example, where the parent has chosen to take their child out of school during term time, without authorisation; or for parentally condoned absence identified in the course of a Truancy Sweep. Schools will need to be able to evidence that as far as possible, the parents were informed that the particular absence would not be authorised and that a Penalty

Notice might be the result. The possibility of a Penalty Notice issue must be a feature of schools' Attendance Policies for such action to be carried out.

v) **Unauthorised Absence/Unauthorised Planned Leave of Absence:**
Where a child's attendance falls below 90% in a given period (6 school weeks), without reasonable justification and where the following considerations have been taken into account:

- The family's circumstances and the likely benefits to the child and family, taking into account social, emotional and cultural reasons;
- The child concerned and the family are not emotionally or mentally affected by Covid-19 pandemic;
- The absence is not directly or indirectly caused by transport or other public service disruption due to Covid-19 pandemic;
- The likely detrimental impact on the child's social, emotional and intellectual development, attainment level and any SEN.
- Meeting parents to explore exceptional circumstances such as bereavement, funerals abroad, unavoidable cause (illness/flight delays) to determine the reasonableness of delay to return and allow parents the opportunity to provide appropriate evidence. This is to reduce the need for subsequent Local Authority Penalty Notice withdrawals based on retrospective evidence;
- Siblings in other Hillingdon schools. Liaise with other schools in individual cases to agree a consistent approach in considering term time holiday request and penalty notice;
- The child's previous attendance record;
- Consider exceptional circumstances put forward by the parent, explicitly setting out considerations taken by the school in a letter to the parent confirming when requests are unauthorised.
- Notices can be issued without warning where schools can show that a leave of absence was taken during term time without the consent of the Head Teacher and the parent was made aware in writing of the decision to unauthorise the period of absence, the reasons why (including details of any evidence), and the possible consequences, including the issuing of a penalty notice.

NB: requests for Penalty Notice to be issued will only be progressed with evidence that the above has been satisfied.

vi) Where Parenting Contracts or Orders have been unsuccessful, or not complied with.

vii) **Present in a public place:** Where an excluded pupil (fixed term or permanent) is found present in a public place during school hours without reasonable justification during the first five days of any exclusion. Schools must have been given notice to the parent of their duties under section 104 of the 2006 Education & Inspections Act before the specified days of exclusion. A record must be provided of where the offence took place and the exact time at which the pupil was observed. (A school is not a public place for this purpose).

viii) There is no right of Appeal but where a parent contests the issuing of a Penalty Notice they can submit any complaints to the Participation Service and/or opt to face proceedings in the Magistrates' Court under Section 444 of the Education Act 1996 in relation to absences or under section 103 of the Education and Inspections Act 2006 in relation to excluded children, where all of the issues relating to their Penalty Notice can be fully debated.

ix) *Academies that do not commission the Participation Service are entitled to request the issue of Penalty Notices and Prosecutions under 1996 Education Act sec.444.1 and 444.1.A at no charge.*

Participation Service will provide this function when non-commissioning Academies provide appropriate evidence and the 'public interest' threshold is met.

Evidence includes all original documents such as any letters from school to parents/carers, letters from parents/carers, the annually reviewed published School Attendance Policy and any other documents relative to the time of the absences. Evidence of home visits and actions to support attendance also need to be provided as part of the evidence pack to justify a Penalty Notice. If the matter results in a prosecution at Uxbridge Magistrates Court, school staff including the Headteacher may be called as witnesses.

If leave has been requested or taken Headteachers should invite the parents in to discuss the reasons for the leave and confirm the decision not to authorise in writing to the parents/carers.

If leave is requested so late that Headteachers do not have an opportunity to reply before the period of travel, evidence of a verbal conversation to decline permission should be submitted. This needs to be followed up with a letter/email to parents.

Requests for Penalty Notices to be issued should be made within 4 weeks of the absence in order for there to be time to implement Court proceedings for the offence if the Penalty Notice is not paid within the statutory period of time.

A Witness Statement must be completed by the Headteacher and all appropriate persons in school who have been involved with the matter. This statement satisfies the requirement that Court proceedings will be taken in the event of non-payment of the Penalty Notice.

All of the above is delivered by the Participation Service when commissioned.

E. Exceptional circumstances

The 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 recent 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.

FA maximum number of Penalty Notices that may be issued to one parent in any twelve month period

- The Authority has to have regard to the ability to pay and other factors. Multiple Penalty Notices may be issued by agreement with its partners, but generally no more than one Penalty Notice to each parent per child, will be issued during each School Year.

G Arrangements for coordination between Hillingdon Local Authority, neighbouring Local Authorities where appropriate, and the Police:-

- i) The Authorised Officer for the purpose of Section 444(1) of the Education Act 1996, shall be the Participation Service Officer with responsibility for managing & issuing Penalty Notices; or in their absence, the Team Manager.
- ii) Hillingdon Participation Service will adhere to the Pan London protocol for cross border work.
 - iii) An Annual Review will be constituted to monitor the operation of the Regulations; and to modify and adapt the Code of Conduct, in the light of experience and changes in legislation. Representatives of Headteachers, Governors and the Police will be invited to comment.

H Withdrawal of Penalty Notice:-

The Authority may withdraw a Penalty Notice, in any case in which the Authority determines that:

- i) it ought not to have been issued,
or
- ii) it ought not to have been issued to the person named as the recipient,
or
- iii) the Penalty has not been paid in full before the expiry period, for payment; but it is not appropriate to prosecute the recipient for the offence, in connection with which the notice was issued.

Where a penalty notice has been withdrawn in accordance with the previous paragraph

- iv) notice of the withdrawal shall be given to the recipient
- v) except where the notice is withdrawn (under grounds iii above), any amount paid by way of penalty, in pursuance of that notice, shall be repaid to the person who paid it, and no proceedings shall be continued or instituted against the recipient for the offence, in connection with which the withdrawn notice was issued; or for the offence under Section 144(1a) of the Education Act 1996, arising out of the same circumstances.

The designated officers within The London Borough of Hillingdon Participation Service will be the only individuals permitted to issue Penalty Notices in the London Borough of Hillingdon area. This will ensure consistent and equitable delivery, to allow schools to maintain good relationships with parents and ensure that they reinforce other enforcement sanctions.

Payment of Penalty Notices

Arrangements for the payment will be detailed on the Penalty Notices themselves. Penalties are to be paid to London Borough of Hillingdon. If paid within 21 days of receipt of the Penalty Notice, the Penalty is £60. If not paid within 21 days the Penalty is automatically increased to £120 if paid within 28 days. Any revenue resulting from payment of Penalties will be retained by the Local Authority to help cover the costs of issuing and enforcing Penalty Notices. Payment of a Penalty discharges a parent's liability for the period in question and means that they cannot subsequently be prosecuted under any other enforcement powers for the period covered by the Penalty Notice.

Non-payment of Penalty Notices

The non-payment of a Penalty Notice regarding unauthorised absence within the prescribed period of time will automatically lead to a prosecution under section 444, Education Act 1996 (unless the Penalty Notice must be withdrawn for either of the reasons given in section F above). The prosecution cannot be for the non-payment of the Penalty Notice.

Present in a public place:

The non-payment of a Penalty Notice regarding presence in a public place within the first five days of an exclusion without reasonable justification will automatically lead to a prosecution under s103 of the Education and Inspections Act 2006.

The prosecution cannot be for the non-payment of the Penalty.

The Human Rights Act 1998 and all Equal Opportunities Legislation

The issuing of Penalty Notices must conform to all requirements of the Human Rights Act 1998 and all Equal Opportunities legislation. Hillingdon Council has the primary responsibility for developing the protocol within which all partners named in the Education Act 1996 must operate.

EVIDENCE

The normal response to a first offence should be a warning rather than a penalty. However, the Authorised Officer has the discretion to issue a Penalty Notice for a first offence, in exceptional circumstances. This could be where the unauthorised absence was for an extended period, and condoned by the parent; for example,

where the parent has chosen to take their child out of school during term time, without authorisation; or for parentally condoned absence identified in the course of a Truancy Sweep.

Usually, evidence in support of court proceedings for non payment of a Penalty Notice will be in the form of a statement from school staff, with support from the Participation Service. This is because the Offence relates to the school absence and not the non-payment of the Penalty Notice. All witnesses will need to make themselves available for the court hearing if necessary.

The Local Authority will only issue Penalty Notices requested by a school in response to a holiday related unauthorised absence where the school has provided the necessary paperwork.

This paperwork should comprise:

A copy of the newsletter or letter sent to all parents during the current Academic year which clearly states that parents may receive a Penalty Notice for an unauthorised holiday in term time.

If received by the school, a copy of a Holiday Request submitted by parent, and a copy of the response sent to the parent by school. In the event the holiday request is being denied the school's response should state the reason why the holiday is unauthorised and should again advise parents that they may receive a Penalty Notice if they take their child out of school.

A copy of the letter sent by school to the parent advising that the school has referred the matter to the Local Authority and that a Penalty Notice will be issued.

Relevant pupil Attendance or Registration Certificate.

Signed certificate from the Head Teacher - or their nominated deputy – confirming that non-attendance during the period was unauthorised.

In the case of an excluded child, a copy of the warning letter required to be sent to parent(s) pursuant to s.104 of the Education and Inspections Act 2006 warning them to ensure that the child is not permitted to be present in a public place in a public place in the first five days of exclusion.

Evidence includes all original documents such as any letters from school to parents/carers, letters from parents/carers, the annually reviewed published School Attendance Policy and any other documents relative to the time of the absences.

If Leave has been requested or taken Headteachers should invite the parents in to discuss the reasons for the Leave and confirm the decision not to authorise in writing to the parents/carers.

If the concern is general poor attendance, the parent/carer should be invited into the school to meet and discuss the issues and a period of time to show improvement is given. All agreements should be followed up in writing. (These documents will be required in evidence if a Penalty Notice is to be issued subsequently)

Requests for Penalty Notices to be issued for unauthorised leave should be made within 4 weeks of the absence in order for there to be time to implement Court proceedings for the offence if the penalty notice is not paid within the statutory period of time.

Note: The Anti-Social Behaviour Act 2003 does not require Local Authorities to have a Code of Conduct, in respect of Parenting Contracts or Parenting Orders; but it seems sensible to include them.

Parenting Contracts for Truancy or Exclusion

A Parenting Contract is a two-sided formal agreement, between a parent and either the Local Authority, or the Governing Body of a School; and relates to the child's truancy or behaviour (see 'b' below)

Neither parents, nor Local Authorities or Governing Bodies, are compelled to enter into a Parenting Contract. It is a voluntary arrangement. Courts will, however, have regard to whether or not Parenting Contracts have been tried, before granting an application for a Parenting Order.

A Parenting Contract is a written document containing:

- a) A statement by the parents or guardians that they agree to comply for a specific period, with whatever requirements are specified in the contract; and
- b) A statement by the Local Authority or Governing Body, agreeing to provide support to the parents or guardians, for the purpose of complying with the contract. The statement should be made by whoever is in a position to commit any additional resources necessary.

Circumstances in which a Parenting Contract might be pursued

A Parenting Contract will be a more appropriate course of action where the parent is willing, but in need of support from the school, to address their child's truancy or poor behaviour.

A Parenting Contract may be used in cases of truancy, where a pupil has failed to attend regularly at the school at which they are registered.

A Parenting Contract may be used in cases of exclusion from school, when a pupil has been excluded from school on disciplinary grounds, either permanently or for a fixed period.

At what point should the Contract be arranged?

In cases of truancy, schools should assess attendance over a period of not less than 6 weeks, during term time; before a Parenting Contract is arranged by the School, or by referral to the Participation Service.

In cases of Permanent Exclusion from school, the LA, through Hillingdon Tuition Centre, could arrange a Parenting Contract on or after the date on which the Exclusions review process, has been completed.

In the case of permanent exclusions, this would be:

- The date by which it is known that the parent does not wish to lodge a review against the Headteacher's decision to exclude; which has subsequently been upheld by the Governing Body Discipline Committee, or other such committee that may have been given delegated powers. This would be the date set out in the letter sent to the parent, by the Discipline Committee (covered in existing guidance dated 2012), informing the parent of their decision to uphold the permanent exclusion; as the date by which time the parent must have notified the Authority or Academy, that they wish to lodge a review; or
- The date upon which the Independent Review Panel, endorses the decision to exclude

In the case of Fixed Term Exclusions, the date on which the review process is complete would be:

- The date upon which the Governing Body Discipline Committee, or other such Committee that may have been given delegated powers, endorses the Headteacher's decision to exclude; or
- If the Discipline Committee does not consider the exclusion, the date on which the exclusion began

No Parenting Contract will be entered into, without clearly documented agreement as to who will provide the support element.

Parenting Orders only in cases of Exclusion from School

OVERVIEW

Parenting Orders are available upon application to the courts, only in cases of exclusion from school. Their purpose is to help engage parents who have been unwilling to engage on a voluntary basis; and will support them in addressing their child's poor behaviour in school.

Parenting Orders available in cases of exclusion from school, are Civil Parenting Orders. Civil Parenting Orders may be applied for directly to the Court; and are not imposed by the Court as a result of a prosecution for a criminal offence.

The Parenting Order consists of two elements:

- A requirement on the parent to attend counselling or guidance sessions, where they will receive help and support to enable them to improve their child's behaviour. This is the core of the Parenting Order, and lasts for 3 months;
- A requirement on the parent to comply with such requirements, as are specified in the Order. This element can last up to 12 months

The Authority is responsible for making an application for a Parenting Order. A Parenting Order can be imposed on one or both parents; and their consent is not required.

No applications will be made on behalf of schools, unless evidence is provided that the pupil has been excluded; and that the exclusion was made in response to serious misbehaviour at school.

(Appendix 1)

Responsible Officer

A Parenting Order must specify a Responsible Officer, who could most likely be a member of staff from Hillingdon Tuition Centre, an officer of the Authority, a Headteacher or person nominated by the Headteacher. A Headteacher may only nominate a member of school staff, to be the Responsible Officer of a Parenting Order.

Hillingdon Council will assign one of its officers, to be the Responsible Officer for maintained schools only unless:

- The Headteacher accepts responsibility for acting as a Responsible Officer (either themselves or through a member of the school staff), where they have consulted and received, the backing of the school's Governing Body. Authorities may only designate a Headteacher, or a person nominated by the Headteacher, to be the Responsible Officer; if they are satisfied that the School's Governing Body is supportive of this arrangement, and has agreed to

meet the costs of the counselling or guidance sessions. (see 'Costs' section below); or

- The order for exclusion should also cover criminal conduct and anti-social behaviour, under Section 26 of the Anti-Social Behaviour Act 2003. In the latter case, the Youth Offending Team would usually be the Lead Agency; depending on the circumstances of the case and local arrangements.

Role of the Responsible Officer

See Appendix 2

Circumstances in which a Parenting Order might be pursued

The Authority may apply to a Magistrate's Court for a freestanding Parenting Order when:

- A pupil has been excluded from school for a second fixed-term within a period of 12 months; or
- After a pupil has been permanently excluded from school

Assessing when a Parenting Order is appropriate

A Parenting Order is only appropriate where the exclusion has been made in response to serious misbehaviour.

Serious misbehaviour would include serious assault (including sexual assault), significant damage to school property, major theft from an individual or from the school, supplying an illegal drug, and carrying an offensive weapon. Bullying could also constitute serious misbehaviour.

In deciding whether a Parenting Order might be appropriate, the Authority must make a judgement about whether Parenting is a significant factor in the child or young person's misbehaviour, whether a parenting programme could remedy this; and if so, what form it should take.

An application for a Parenting Order, can be made in respect of one or more persons, who come within the definition of 'parent'.

Timing of any application for a Parenting Order

Any application for a Parenting Order must be made, after the date upon which the exclusion review process ends.

In the case of Permanent and Fixed Term Exclusions, the date on which the review process is complete, would be the same as for the Parenting Contract provisions, on page 5 of this document.

In cases of Permanent Exclusion, any application for a Parenting Order must be made within 2 months of the date on which the review process ended, unless a Parenting Contract has first been entered into. In which case, the application must be made within 6 months of the date of the contract.

In cases of Fixed Term Exclusions, an application for a Parenting Order may only be made, where the pupil has been excluded for two Fixed Term Exclusions within the last twelve months.

Providing this condition is met, any application for a Parenting Order must be made within 2 months of the date on which the review process for the second Fixed Term Exclusion ends, unless a Parenting Contract has first been entered into. In which case, the application must be made within 6 months of this date.

In the case of Fixed Term Exclusions, where the child remains a registered pupil at the school, the Headteacher, with the backing of the Governing Body; may wish to make a case to the Authority as to why a Parenting Order might be appropriate and helpful. In such an instance, the Authority may agree to apply for a Parenting Order on behalf of the School. This applies to maintained schools only unless academy schools commission this work from the Local Authority.

Making any application for a Parenting Order, in cases of exclusion from school, will require collaborative working between school and the Authority.

Costs

The Authority is under no obligation to apply for a Parenting Order, in cases of exclusion from school.

Where an application for a Parenting Order is made, at the instigation of the Local Authority, the Authority will always cover the costs of making the application.

The school will be expected to meet the cost of the application for a Parenting Order, when the LA apply for an Order at the request of a school.

The Authority will usually meet the costs of the counselling or guidance programme, provided through a Parenting Order.

The school will be expected to meet the costs of the counselling or guidance programme where:

- An application is made by the Authority at the request of a school, or
- The Order names, with the agreement of the Governing Body, a Headteacher or person nominated by the Headteacher, as the Responsible Officer

Appendix 1

Making the Application for a Parenting Order

Evidence that the pupil has been excluded, and that the exclusion was made in response to serious misbehaviour at school.

Evidence that the pupil has been excluded from school, should take the form of:

- A statement by the Headteacher of the school
- The minutes of the Discipline Committee (in the case of exclusions lasting longer than 5 school days), and,
- In the case of Permanent Exclusions, where the parent lodges a review, the minutes or decision letter of the Independent Review Panel hearing

Supporting evidence might include Witness Statements, from witnesses who saw the incident, or physical evidence where appropriate.

Evidence that making the Order would be desirable, in the interests of preventing any further poor behaviour in school, which may lead to exclusion.

The Court has discretion to consider all the circumstances of the case, in deciding whether it is desirable to make a Parenting Order; including the evidence of parents and other witnesses in Court. The assessments of the child or young person, and their parents or guardians, by the Authority, and details of the Authority's ability to deliver the commissioned parenting programme, should be presented to support the application.

The Authority should also provide evidence of any experience of trying to engage the parents, through a Parenting Contract. Magistrates are obliged to take into account any parental refusal to enter into it; or failure to comply with, a Parenting Contract. This evidence is relevant to the consideration of whether the order is desirable, in the interests of preventing further poor behaviour in school; which may trigger exclusion. If parents will fully engage with support offered, on a voluntary basis, a Parenting Order would not usually be desirable.

Procedural Points

Providing information about family circumstances.

Before making a Parenting Order where the child or young person is under the age of 16, the court must obtain and consider information about the parent or guardian's family circumstances; and the likely effect of the Order on those circumstances.

The Authority should be prepared to provide information about the parent or guardian's family circumstances. The Authority could submit a report, along with the

application for the Parenting Order. Alternatively, the Court could rely on an oral report in court (e.g. where the family circumstances are known to the Authority), or ask questions of the parent or guardian, or of the child or young person, if they are present in court. The format in which this information should be presented, will be for the Court to determine; and will depend on the circumstances of the case. It is to be expected that staff from schools will be called as expert witnesses.

Children in the Care of the Local Authority, or Living in Local Authority Accommodation

Parenting Orders in cases of exclusion from school, apply only to parents as individuals, and not to corporate bodies. Therefore, this type of Parenting Order does not apply to children in the care of the Local Authority, or living in Local Authority accommodation.

Parental Attendance at Court

Magistrates Courts, including Youth Courts, have powers to enforce parental attendance at Court, where appropriate, by issuing a Summons. It is essential to ensure both parents attend court; and that both parents are involved in any parenting intervention.

Requirements of Parenting Orders

The requirements specified in the Parenting Order, or in directions given under the Order, should as far as is practicable, avoid any conflict with the parents religious beliefs; and any interference with the times at which the parent normally works or attends an educational establishment. A balance will need to be struck between imposing requirements that address the problems, which led to the imposition of the Parenting Order, and these other issues.

Counselling or Guidance Programme

The core requirement of a Parenting Order is that the parent attends a counselling or guidance programme, as specified in directions given by the Responsible Officer; and must be imposed in all cases when an Order is made (except where the parent or guardian has previously received a Parenting Order). This can last for up to three months. The arrangements for meeting this requirement, should be as flexible as possible; not least to take account of the availability and timing to such a programme.

The counselling or guidance programme may be provided by the responsible officer, or by another provider, such as the Local Authority Social Care Department, or local voluntary sector organisation working with parents. The Local Authority should have clear arrangements in place for delivering Parenting Orders. In Hillingdon, this would be through a Service Level Agreement with Bell Farm Christian Centre.

The Court will decide the length of this requirement. It should be such as to allow for a sufficient number of weekly sessions. Experience suggests that this should be no less than 6 or 7 two-hour sessions. The period of up to three months for this requirement must run concurrently with the overall length of the Order, and any specific requirements; but taking account of the availability of an appropriate

counselling and guidance programme, does not have to run from the date the order is made.

If the only requirement to be included in the Order is to attend a counselling or guidance programme, then the Court could still make the Order last for twelve months. The Court may consider it reasonable to do so, in order to allow for the possibility of the Order being breached, and the Order being varied to require the parent to attend a new counselling or guidance programme. The responsible officer will need, in consultation with the provider of any parenting course or group where appropriate, to make an assessment about the nature of the counselling or guidance programme, in which the parent(s) should take part. This should cover such questions as:

- Who will administer the sessions
- Whether they should be group or individually based, and
- Whether there are particular cultural and social factors to be considered

During the course of the parent's attendance at the counselling or guidance programme, the parent, the responsible officer, and the programme provider (if different), will need to consider the progress which is being made. The frequency of this will depend on the extent to which the responsible officer is directly involved in the delivery of the programme. The parent might also find it helpful to be involved in some voluntary follow-up work when the Order has been completed; this might involve attending a Parent Support Group or similar activity.

Residential Requirement

A Parenting Order can include a residential course; but only if two conditions are met:

- a) That the attendance of the parent or guardian at a residential course is likely to be more effective, than their attendance at a non-residential course, in preventing their child from engaging in a repetition of the behaviour, which led to the making of the Order; and
- b) That any likely interference with family life is proportionate in all the circumstances.
- c) **NB It is not envisaged that Hillingdon LA would apply for residential courses as part of an Order.**

The intention of these conditions is to ensure that any residential component to a Parenting Order, would be proportionate under Article 8 of the European Convention on Human Rights - Right to respect for private and family life.

Specific Requirements

The Court may also include in a Parenting Order, a requirement for the parent to comply for a period of not more than 12 months, with such requirements as are specified in the Order.

The Authority should make a recommendation to the Court, as to how long the Parenting Order should be imposed for. This would depend on the circumstances of the case. In many cases, it will be desirable to recommend to the Court that the Parenting Order should last for the full 12 month period. The imposition of a Parenting Order for this time period is more likely to bring about a sustained improvement, as a consequence of the ongoing support and monitoring delivered through the Order.

The requirements specified in the Order may be such as the Court considers desirable, in the interests of preventing any repetition of the behaviour which led to the pupil being excluded from school in the first place. Although discretionary, it is likely to be appropriate to include requirements relating to the supervision of the child, in order to address their behaviour. The Authority should recommend to the Court, what these requirements should consist of. The requirements imposed under this element of the Order will need to be tailored, to address the problems which caused the Court to make the Parenting Order; and should, if possible, be linked to any work being undertaken by the Authority or school, with the child.

When deciding on specific requirements, it is important to consider that breach of the Order is a criminal offence. It is, therefore, vital to ensure that the requirements are clear enough for a parent or guardian to know when they are breaching them; and for the responsible officer to be able to monitor the parent's compliance.

Appendix 2

Role of the Responsible Officer

The Responsible Officer will provide or arrange for the provision of the counselling or guidance programme; and will supervise any other requirements included in the Order.

The Responsible Officer will also need to identify and liaise with other agencies involved with the pupil or family, (i.e. Social Care, the Youth Offending Team, any voluntary organisations), to ensure that all interventions fit together well, and are complementary.

In deciding who is best placed to act as the Responsible Officer for a Parenting Order, the Authority should take into account the time commitment required on the part of the Responsible Officer.

Headteachers may only accept responsibility for acting as a Responsible Officer, (either themselves or through a member of the School staff), where they have consulted and received the backing of the School's Governing Body.

It is good practice for the initial contact between the Responsible Officer and the parent, to take place before the end of the next working day, after the Order is made. The initial meeting should be an opportunity for the Responsible Officer to explain further to the parent, the nature of the Parenting Order, (and provide him/her with a copy of the Order); its purpose, and how it will work in practice. The practical details of the requirements will need to be set out, the monitoring arrangements described; and the consequences of failure to comply with any requirements explained. If the counselling or guidance programme under the Order is to be provided by someone other than the Responsible Officer, a pre-meeting between the parent and that person should take place, no more than two weeks before the sessions are due to start.

The success of the relationship between the parent or guardian, and the Responsible Officer, will be a key feature of the successful completion of the Order. Whilst the requirements of the Parenting Order are in force, the Responsible Officer should maintain regular contact with the parent or guardian. This should enable the Responsible Officer to determine the extent to which the parent or guardian is complying with the requirements set by the Court. If the requirements are proving difficult to comply with, through no fault of the parent or guardian, the Responsible Officer may consider the need to apply to the Court for the Order to be varied. (See Appendix 3)

Appendix 3

Managing Parenting Orders and Further Court Involvement

Variation and Discharge

While a Parenting Order is in force, the Court which made the Order, may, on the application of the Responsible Officer or the parent or guardian, vary or discharge it. Under Rule 114 of the Magistrates' Court Rules 1981 (inserted by Rule 4(4) of the Magistrates' Courts (Miscellaneous Amendments) Rules 1998), application is by complaint. These are civil procedures, and are governed by Sections 51 - 57 of the Magistrates' Courts Act 1980, and Rules 4 and 98 of the 1981 Rules. These Sections and Rules deal with, amongst other things, the issuing of summonses and the non-appearance of the parties.

The Order can be varied either by inserting in the Order (in addition to, or in substitution for any of its provisions), any provisions that could have been included in the Order, if the Court had then had the power to make the Order and were exercising that power; or by cancelling any provision included in the Order. Parenting Orders may be varied for a number of reasons. For example, where the family moves to another area, or where the requirements are not proving effective.

Where an application for the discharge of a Parenting Order has been dismissed, no further application may be made without the Court's consent. This is largely to prevent spurious or repeat applications.

Dealing with Appeals and Breach of an Order

Appeals

Where a Parenting Order in a case of exclusion from school has been made, any appeal against the Order should be made to the Crown Court.

Breach

The Parenting Order is primarily designed to help and support parents or guardians, in addressing their child's behaviour. The Responsible Officer should be seeking to secure and maintain the parents' co-operation and compliance, with the requirements of the Order, to ensure that it is successfully completed; and will need to make a judgement about what is reasonable in all the circumstances of the case.

If the parent fails to comply with a requirement of the Order, it is good practise for the Responsible Officer to make contact with the parent within one working day; by visit, telephone or letter. If there is no acceptable reason for the non-compliance, the

Responsible Officer should give the parent a written warning, and if possible, a warning in person.

If the parent has good reason for the failure to comply with the requirements of the Parenting Order, it may be appropriate for the Responsible Officer to consider whether to apply to the Court, for the terms of the Order to be varied. In the event of more than one unacceptable failure to comply within a period of three months, the Responsible Officer should meet the parents to review the Order, and how it can be made to work. In the light of this discussion, the Responsible Officer should consider whether the failure to comply, should form the basis of a prosecution.

If a prosecution is brought, there will be a hearing to determine whether the parent is guilty of failing, without reasonable excuse, to comply with a requirement of a Parenting Order. In all cases, this will be heard in Uxbridge Magistrates' Court, except where the parent or guardian is under 18, where it would be more appropriate for the case to be heard in the West London Youth Court. The hearing will provide an opportunity for the parent to explain why a failure to comply with a requirement of the Order has occurred.

If the parent is convicted, he or she will be liable to a fine not exceeding Level 3 on the Standard Scale (currently up to £1,000). The Court will also have available to it, an Absolute or Conditional Discharge, Probation Order or Curfew Order; the imposition of a Community Sentence would be subject to the restrictions set out in Sections 6 and 7 of the Criminal Justice Act 1991. Courts cannot re-issue Parenting Orders in Breach Proceedings.

Under Section 127 of the Magistrates' Court Act 1980, there is a six-month time limit for bringing Breach Proceedings. Proceedings can be brought after an Order has expired. They will, however, be most effective when brought as soon as possible after the breach is discovered, and completed within the life of the Order. This will allow the Court more options, for instance, to vary the Order to require the parent to attend a new Parenting Programme; and fulfil specific requirements to exercise control over the child. The penalty for breach could be a fine or community sentence, depending on the parent attending a new programme, and meeting other requirements.