

# Penalty Notice Information Handbook

September 2013

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## 1. Introduction

Section 23 of the Anti- Social Behaviour Act 2003 introduced amendments to Section 444 of the Education Act 1996 to empower designated LA officers, Head teachers (and Deputy or Assistant Head teachers authorised by them), and the Police to issue Penalty Notices (PNs) in cases of unauthorised absence from school of children of compulsory school age. PNs supplement the existing sanctions currently available under Section 444 of the Education Act 1996 to enforce attendance at school where appropriate.

PNs are an effective tool as an alternative to prosecution under section 444. The offence that a PN is seeking to penalise parents for is a **“failure of their child to attend regularly at the school where the child is a registered pupil”** (section 444 Education Act 1996). Parents may discharge their potential liability for conviction for an offence under section 444 by paying a penalty. The Admissions and Access to Education Service will be responsible for the issuing of all PNs on behalf of the Kensington & Chelsea and Westminster Council until the end of July 2018, after which it will transfer to the Early Help Service.

There is no statutory right of appeal against the issue of a PN.

### **Relevant Legislation:**

Education Act (1996) – Section 444 as amended by the Anti-Social Behaviour Act (2003).

### **Regulations:**

Education (Penalty Notice) (England) Regulations (2007).

The Education (Penalty Notices) (England) (Amendments) Regulations 2012

Education (Penalty Notices) (England) (Amendments) Regulations 2013

### **Guidance:**

DCSF Guidance on Education Related Parenting Contracts, Parenting Orders and Penalty Notices (September 2007).

### **Policy/code:**

Code of Conduct for Penalty Notices revised September 2013.

## 2. Key Considerations

A Penalty Notice (PN) is a suitable intervention in circumstances where the parent/carer is failing to ensure that their child attends school on a regular basis. Sanctions of this nature are for use only where parental co-operation is either absent or deemed insufficient to resolve the problem and are used as a means of enforcing attendance where it is likely that their use will secure an improvement. The key consideration in deciding whether or not to make an application to issue a PN, will be whether it will be effective in improving a child's attendance.

A PN is an **alternative to prosecution** and will only be issued where the council is "**able and willing**" to prosecute (DCSF Guidance on Education Related Parenting Contracts, Parenting Orders and Penalty Notices, September 2007, para 186). Before a PN can be issued, Head Teachers and the LA must be satisfied that the particular episode of unauthorised absence, looked at in the context of the individual child and his/her family, warrants **criminal proceedings** against the parents. They must also have considered alternative methods of securing attendance. The Bi-Borough PN Code of Conduct in the Royal Borough of Kensington & Chelsea and City of Westminster allows only authorised officers of the Admissions and Access to Education Service to issue PNs. Police and Head Teachers should not issue PNs except in exceptional circumstances.

If accepted, the usual response to a first offence might be a warning letter rather than a penalty. However, authorised officers have the discretion to issue a PN for the first offence in circumstances. Once issued, a PN will incur a fine of £60.00 per child if paid within 21 days of receipt of the notice, rising to £120.00 per child if paid after 21 days but within 28 days of receipt. If the penalty is not paid in full by the end of the 28 day period, the Local Authority (LA) reserves the right to prosecute the parent(s) for the original offence of *failing to secure the regular attendance of their child at their registered school*, not for non-payment of the fine.

The Bi-borough's PN Code of Conduct recommend issuing no more than "*one Penalty Notice resulting from the unauthorised absence of an individual child in any twelve month period*". However there may be cases where it is appropriate to issue more than one PN to a family during a 12-month period and these will be assessed on a case-by-case basis.

### 3. Circumstances in which a Penalty Notice May Be Issued

- (1) Persistent unauthorised absence from school
  - Persistent unauthorised absence over a 6 week period. For leave taken during term time, where the absence has not been authorised by the school.
  - For leave taken during term time, where an authorised leave has been taken but the child fails to return by the agreed date.
  
- (2) Persistent lateness following the close of the school register, i.e in cases where the U code is used
  
- (3) Excluded Children
  - Where a child has been excluded from school (fixed-term or permanent), and is found in a public place during school hours without reasonable justification within the first five days of the exclusion period.

#### 4. Absence from School - Leave in term time

Under the Education (Pupil Registration) Regulations 2006 (amended by the Education (Pupil Registration) (England) (Amendment) Regulations 2013, head teachers have the authority/discretion to **authorise absence of a pupil due to exceptional circumstances only. It is not a parental right to take leave during term time**, the decision lies solely with the head teacher of the registered school. Parents must make a request for leave during term time giving the exceptional circumstances for the request and it is at the head teacher's discretion to determine whether that request should be granted.

The head teacher must use their discretion, sparingly, and each request must be judged on a case-by-case basis. Head teachers should not fetter their discretion by applying policies (ie. blanket bans) which prevent assessment of each application on its individual merits. In the majority of cases, exceptional circumstances will be deemed to be emergency situation. The head teacher in making a decision whether to grant leave during term time should consider all the circumstances surrounding the request.

Where the child's attendance is below 95% the school should only authorise term time absences in exceptional circumstances. If a child has been genuinely ill or had authorised absences other than for leave in term time however, these factor should be taken into account when considering an application.

Parent/carers should be advised about the school's policy in relation to leave during term-time The school should also implement procedures where parents/carers must apply for permission for a term-time absence in advance, wherever possible, as it is not good practice to grant permission retrospectively. All requests should be made within an appropriate timeline and all decisions recorded. Schools can make make use of the standard leave request form (Appendix A). Schools should inform parents/carers of the process for applying for exceptional leave in term-time through the usual communication channels .

The following guidelines are suggested for considering applications for leave during term time:

- Any parent requiring an absence for their child, for an exceptional reason other than for the purpose of a leave, should make their application in writing at least two weeks prior to the time they wish to have leave.
- The school should invite parents in to discuss the reasons for the application, especially when the reasons are unclear.
- The school should reply to all applications in writing stating whether or not the absence has been agreed by the school within 5 days of receiving the application.
- The reason for not authorising a request must be clearly stated and evidence given. If leave is granted, the length of authorised absence must be clearly stated and dates included so that the parent is informed of what date the pupil should be back in school. The school must indicate the consequences should these times not be adhered to, including the possibility that the parent may receive a PN.
- Changes to this process should only be made in exceptional circumstances (i.e. emergencies).

Should a child fail to return to school following a period of leave, the school may, with the agreement of the LA, and following all statutory checks, delete from roll a pupil who meets the following conditions:

- i. The child must have been granted leave of absence for an exceptional circumstance and
- ii. Failed to attend for a period of ten days immediately following the date of which he/she was due to return and
- iii. The school does not have reasonable grounds to believe that he/she is unable to attend school by reason of sickness or other unavoidable cause.
- iv. The school and LA must have failed, after reasonable enquiry, to ascertain their whereabouts.

(from Regulation 8(f) Education (Pupil Registration) (England) Regulations 2006 as amended by the Education (Pupil Registration) (England) Regulations 2013).

If a pupil does not meet all of the above conditions he/she **may not** be legally removed from the school roll. Please contact the designated Attendance Officer (AO) for further advice on this matter.



## 5. Making a Penalty Notice Referral – Leave in Term Time

The conditions in which a PN application could be made are as follows:

1. Where a family has taken leave without permission and the school is satisfied that the parent knew the procedures, providing the leave is equal to or more than **8 sessions** (4 days).
2. Where leave of absence has been agreed and the pupil arrives back equal to or more than **8 sessions** (4 days) after the agreed time without explanation.
3. Where no application for leave has been made, providing the period of absences equal to or more than **8 sessions** (4 days).

A PN will only be considered for unauthorised absence where the LA is able and willing to prosecute and satisfied that there is sufficient evidence to show that an offence under Section 444 has been committed and no PN has been issued in relation to the child within the previous twelve months. A parent may receive a separate PN for each child taken out of school.

The normal response to a first offence would be to issue the family with a PN warning rather than a penalty, especially in cases with irregular pattern of attendance. However, PNs may be issued for the first offence where the family take leave during term time without authorisation. In cases where a child has been absent for **less than 8 sessions** (4 days), the AO will issue the family with a warning letter.

Full information must be provided by schools before the AO can consider issuing a PN. A **fully completed** referral form should be forwarded to the AO with all the required evidence attached. (Appendix B). Once this information has been received then the request will be considered by the AO. All referrals will normally be actioned within 10 working days of receipt and a response will be provided to the referring school. Please see appendix C for a flow-chart of action following referral.

Once a PN has been issued, parents often contact the AO with a variety of reasons why it should not have been issued. Providing in-depth referral information would assist our service with managing these issues.

A parent will not normally receive more than one PN resulting from the unauthorised absence of an individual child in any twelve month period. If unauthorised absence persists after the issue of the first PN, it would normally be appropriate to prosecute or address the attendance using an alternative intervention.

Once a PN has been issued, it may only be withdrawn by the AO on behalf of the Local authority in the following circumstances:

- The Notice has been issued to the wrong person.
- The Notice should not have been issued (for example where evidence has been provided after the notice being issued, which covers the period of absence under the conditions of medical absence or unavoidable cause).
- Where the Notice contains material errors (eg: wrong address)
- In the circumstances of exclusion, reasonable justification has been made out by the parent.

There is no specific sanction for the non-payment of a PN, and no specific means of enforcement. However, where the penalty has not been paid at the expiry of the period, the LA has to consider whether to prosecute the parents for the original offence of *“failure of their child to attend regularly at the school where the child is a registered pupil”*. In the vast majority of cases proceedings would be initiated, however in consultation with borough Legal Services a number of factors would be considered when taking the decision to prosecute. The most common reason for not continuing with proceedings is incorrect/inconsistent information being provided on the referral form. For this reason it is important to ensure that information provided to the AO is correct and up to date.

## 6. Penalty Notice Referrals for Persistent Absenteeism

PNs are an **early** intervention strategy that can be used as an alternative to referring a case to the Early Help teams for pupils who are persistently absent from school and where *attendance is the only concern*. In cases where attendance issues are more entrenched or complex a referral to Early help team should be made.

A PN for persistent absenteeism would only be issued where a pupil has failed to attend school regularly over a six-week period (when his/her attendance has fallen below 87%). This may comprise a series of single or half-day unauthorised absences or a block of unauthorised absences for reasons such as illness where no evidence has been provided.

As with PN referrals for leave during term time, detailed information is required on all applications in order for the AO to make an informed decision on whether a PN should be issued. A fully completed form should be forwarded to the AO with all the required evidence.

Once this information has been received then the request will normally be actioned within 10 working days of receipt and a response will be provided to the referring school.

The response to a PN referral for persistent absenteeism is generally to issue a PN Warning, whereby a 15-day monitoring period would be established in order to give the parent an opportunity to improve their child's attendance and avoid a subsequent fine. Should the child have **4 or more sessions** of unauthorised absence during the 15-day monitoring period, a PN will be issued. Please see Appendix C for a flow-chart of action following referral.

A parent will not normally receive more than one PN resulting from the unauthorised absence of an individual child in any twelve month period. If unauthorised absence persists after the issue of the first PN, it may be appropriate to prosecute or address the attendance using an alternative intervention.

## **7. Penalty Notices for Excluded Children**

Section 105 of the Education and Inspections Act 2006 enables PNs to be issued to parents of excluded children who breach the duty to ensure that their child is not present in a public place during the first five days of exclusion without reasonable justification. Reasonable justification will be assessed on the individual circumstances of each case but may include medical emergency of parent or child or pre-arranged medical appointment. Revised regulations and guidance relating to Penalty Notices in cases of truancy and exclusions came into force on 1<sup>st</sup> September 2007.

There is no limit to the number of PNs that may be issued within a twelve month period for excluded children.

Should you have any questions or concerns please contact the Bi-borough Attendance Officer who will be pleased to advise on these matters.

## Appendix A

### Model Application for Leave During Term Time

Name of School \_\_\_\_\_

Parents/guardians must ask permission, where the situation is exceptional or urgent, for their child to be absent during term time, and it is at the Head teacher's discretion to decide whether or not the absence will be authorised. If leave is taken without permission, or no application is made, parents risk being issued with a Penalty Notice or being prosecuted on their return. Parents wishing to apply for their child to have leave from school should complete this form and return it to school for authorisation where possible, 2 weeks before the proposed leave.

PARENTS SECTION (to be completed first)				
<b>Surname of child</b>			<b>First name</b>	
<b>Date of birth</b>		<b>Year</b>		<b>Class</b>
<b>Full Name of parent/guardian</b>				
<b>Address of child</b>				
<b>Postcode</b>		<b>Telephone number</b>		
<b>Reason for request:</b>				
<b>Departure Date</b>	From (date)		To (date)	
<b>Would your child miss any national tests or examinations?</b>				<b>Yes / No</b>
<b>Is his/her attendance above 95% over the past 12 months?</b>				<b>Yes / No</b>
<b>Has (s)he had leave during term-time in the last 12 months? (If so, please give dates, reasons, and number of school days leave)</b>				<b>Yes / No</b>

#### SCHOOL SECTION

Leave in Term Time	(i) <b>approved</b> _____ school days	(ii) <b>not approved</b> _____ school days
Reasons:		
Date of Meeting with Parent		
Headteacher's signature		Date:

**Please return a copy of this form to the parent after consideration.**

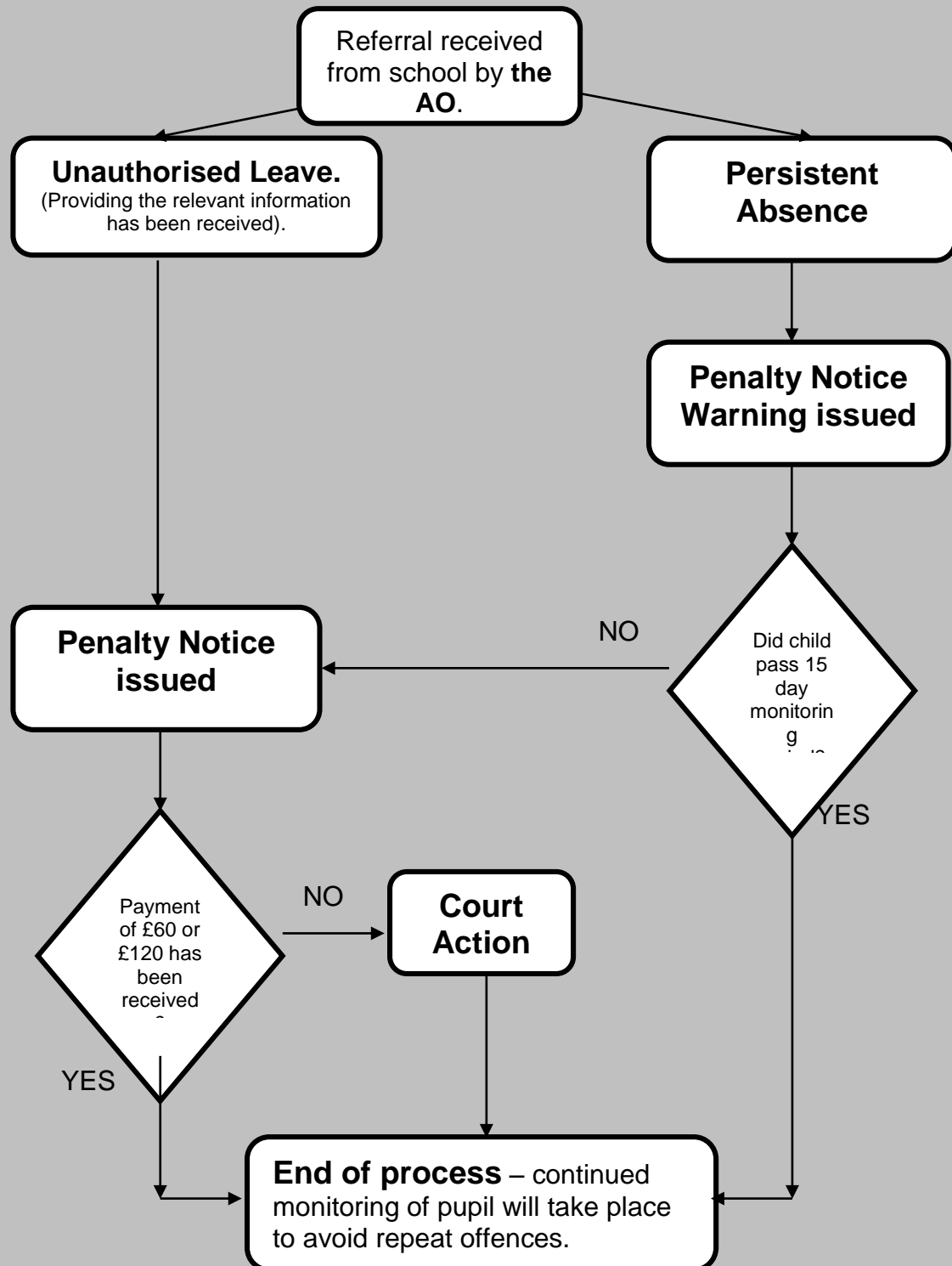
## Appendix B

### PENALTY NOTICE REFERRAL FORM

<b>1. NAME and DESIGNATION OF REFERRER</b>			
<b>2. SCHOOL</b>			
<b>3. CHILD'S FULL NAME</b>			
<b>4. CHILD'S DATE OF BIRTH</b>			
<b>5. Ethnicity</b>		<b>6. Year Group:</b>	
<b>7. ADDRESS</b>			
<b>8. FULL NAME OF MOTHER (OR CARER)</b>			
<b>9. FULL NAME OF FATHER (OR CARER)</b>			
<b>10. Do parents live in the same address?</b>	Yes: <input type="checkbox"/>		No: <input type="checkbox"/>
<b>11. If 'No' to 10 above, the other address if known</b>			
<b>12. Parent(s) phone number</b>			
<b>13. PERIOD OF ABSENCE FOR WHICH PENALTY NOTICE IS REQUESTED (this should be within 6 weeks to the date of referral unless before summer holidays)</b>	<b>From:</b> (pick date) 30/08/2017	<b>To:</b> (pick date) 30/08/2017	
<b>14. Checklist of information for referral to Attendance Officer for consideration of the issuing of a penalty notice</b>			<b>Tick</b>
a. Referral meets the threshold for consideration for issuing of a Penalty Notice in terms of Penalty Notice Code of Conduct? (Section 3)			<input type="checkbox"/>
b. Attendance printout for previous & current years attached			<input type="checkbox"/>
c. Referral for Penalty Notice is in relation to a persistent absence rate of below 85% unauthorised absence over a six week period			<input type="checkbox"/>
d. Parent/carer has taken child out of school for leave in term time without the permission of school staff			<input type="checkbox"/>
e. School considered history of previous leave taken in term-time and previous attendance rate			<input type="checkbox"/>
f. Evidence of action undertaken by school staff to resolve the attendance issues to be attached – including copies of any communication to and from parents, original application for exceptional leave from parent/carers where applicable, letters/documents from parents, attendance contracts, etc..			<input type="checkbox"/>
g. Evidence attached of consultation with other professionals involved should be attached			<input type="checkbox"/>
h. Attendance details of siblings- where appropriate.			<input type="checkbox"/>
i. Please provide summary of action school took before & after pupil returned to school, e.g. phone conversation or meeting with family:			
j. Please provide summary of Parent/Guardian response:			

**The Attendance Officer will respond to requests within 10 school days of receiving the request for consideration of a penalty notice.**

## Penalty Notice Flow Chart



**Appendix D(i)**  
**Letter Proformas**  
**Approval of Authorised Leave Application Letter**

xxx School,  
xxx  
London  
Xx xx  
Tel:  
Fax:  
e-mail:

XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

Date:

Dear xxx,

Thank you for your letter regarding permission to take xx out of school for the purposes of ..... from xx to xx.

I have considered your application for leave for xx days and this absence will be authorised for the following reasons:

Whilst I have authorised this leave for a period of xx days please note that any absence beyond the xx days will be considered unauthorised and you may be subject to a Penalty Notice issued by the Local Authority on your return, incurring a fine of £60 per child. I have included a leaflet about this which has been issued by the Local Authority in response to parents who take their children out of school during term time.

I hope you enjoy your leave and look forward to seeing xx back in school on xx.

Yours sincerely,

Xxx xxx  
Head teacher  
Xxx School.



**Appendix D(ii)**  
**Refusal of Leave of Absence Application Letter**

xxx School,  
xxx  
London  
Xx xx  
Tel:  
Fax:  
e-mail:

xxxxxxx  
xxxxxxx  
xxxxxxx

Date:

Dear xxx,

Thank you for your letter regarding your permission to take xx out of school for the purposes ..... From xx to xx.

I have considered your application and regret to inform you that your application for leave has not been granted for the following reasons:

- Your child's/children's attendance is below 95% this academic year.
- It is in the school's attendance policy not to authorise leave during term time except in **exceptional circumstances**. I am unable to authorise this leave as the reasons stated on your application form are not deemed as exceptional.
- xxx has already taken 10 days leave this academic year.
- Your request is for an important time of the academic year where students in your child's year group will be sitting exams.

I must warn you if you decide to take your children out of school for this period you may be issued with a Penalty Notice.

- £60.00 – if paid within 21 days of issue,
- £120.00 – if paid within 28 days of issue I have included a leaflet about this which has been issued by the Local Authority in response to parents who take their children out of school during term time.

Yours sincerely,

Xxx xxx  
Head teacher  
Xxx School.

## Appendix D(iii)

### PN Letter to Parents following Unauthorised Leave

xxx School,  
xxx  
London  
Xx xx  
Tel:  
Fax:  
e-mail:

XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

Date:

Dear xxx,

I write regarding your child's recent unauthorised absence from xx to xx. As you are aware, leave in term time is not permitted without the permission of the Head teacher as taking children out of school during term time disrupts their school routine and learning.

Despite being informed of the school's policy and consequences for doing so you chose to continue to take xx on leave during term time without authorisation. As such you are now being referred for a Penalty Notice under Sec. 444a. of the Education Act (1996) for failing to ensure the regular attendance of your child(ren).

The Penalty Notice is being requested in line with the Code of Conduct administered by (name of Council). If accepted, the notice will be sent to you in due course at which time details regarding the payment will be explained.

We thank you for your support in ensuring that your child is not absent from school during term time in future.

Yours sincerely,

xxx  
Head teacher

**Appendix D(iv)**  
**Persistent Absenteeism**

xxx School,  
xxx  
London  
Xx xx  
Tel:  
Fax:  
e-mail:

Date:

Dear Parent / Carer,

The Registers at xx 'school' show that your child has missed more than a day of school each week on average, without good reason, over the last half term. You, as parent, are legally responsible under Section 444(1) of the Education Act 1996, for ensuring that your child attends school regularly. As such you are now being referred for a Penalty Notice under Sec. 444 of the Education Act (1996) for failing to ensure the regular attendance of your child(ren).

The Penalty Notice is being requested in line with the Code of Conduct administered by the Local Authority. If accepted, a warning letter will be sent, whereby a 15-day monitoring period would be set in order to give you an opportunity to improve your child's attendance and avoid a subsequent fine. Should your child have **4 or more sessions** of unauthorised absence during the 15-day monitoring period, a Penalty Notice will be issued. Once issued, a PN incurs a fine of £60.00 rising to £120.00 per child if not paid within 21 days.

Please take steps to make sure your child gets to school on time every day, and to obtain a Medical Certificate if he/she is too ill to attend. Any other reason for absence should be discussed with the school and it is the School's decision whether to authorise any absence that is not covered by medical evidence.

We thank you for your support in ensuring that your child is not absent from school during term time.

Yours sincerely,

xxx  
Head teacher