

PENALTY NOTICE CODE OF CONDUCT

September 2020



Introduction

Regular and punctual school attendance is both a legal requirement and essential in ensuring that all children maximise their educational opportunities and future life chances. In addition, there is evidence to suggest that truancy can lead to anti-social behaviour and youth crime. Section 23(1) of the Anti-Social Behaviour Act 2003 and Section 103 of the Education and Inspections Act 2006 introduced powers to Sections 444 of the Education Act 1996 that empowers authorised officers of the Local Authority Headteachers (and Deputy and Assistant Headteachers if authorised by them) and the Police, (including community support officers and accredited persons) to issue Penalty Notices in cases of unauthorised absence from school. Persons authorised to issue Penalty Notices are referred to in this Code of Conduct as 'Authorised Person'.

The Education (Penalty Notices) (England) Regulations 2004 (as amended) require the Local Authority, to consult with governing bodies, headteachers and the Chief Officer of Police to develop a Code of Conduct for use when issuing Penalty Notices. Any person issuing a Penalty Notice must do so within the terms of this Code of Conduct. Penalty Notices can be used as an alternative to prosecution under Section 444 and enable parents to discharge potential liability for conviction for that offence by paying a penalty. A Penalty Notice can only be issued in respect of the unauthorised absences of a statutory school aged child.

These provisions apply to all parents who fall within the definition of a 'parent' as set out in section 576 of the Education Act 1996. By virtue of this section 'parent' includes: all natural parents, whether they are married or not; any person or body who has parental responsibility for a child (as defined by the Children Act 1989) 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.

The Inclusion, Attendance and Welfare Service will act as the School's agent in carrying out the duties of the Authorised Person as detailed within this Code of Conduct for all Plymouth Schools who subscribe to the Enhanced Inclusion, Attendance and Welfare Service.

The Penalty

The Penalty Notice is £60 if paid within 21 days of receipt of the Notice, rising to £120 if paid after 21 days but within 28 days of receipt of the Notice, (Notice served by post is deemed to have been received on the second day after posting if it was delivered by first class post).

If the penalty is not paid in full by the end of the 28-day period, the LA must either prosecute for the offence to which the Notice applies or withdraw the Notice.

NOTE: Unlike other Penalty Notice schemes, the prosecution would not be for non-payment of the Notice. If there is a prosecution, it would follow the usual Inclusion Attendance and Welfare Service legal procedures for prosecution under section 444 of the Education Act 1996 and section 103 of the Education and Inspections Act 2006.

The parent cannot be prosecuted for the particular offence for which the Notice was issued until after the deadline for payment has passed (28 days) and cannot be convicted of the that offence if they pay the penalty in accordance with the Notice.

If a penalty is not paid, the LA may use the fact that a Notice was issued and unpaid as evidence in a subsequent prosecution. The Penalty Notice Request Form submitted by either the Headteacher/Principal or Inclusion, Attendance and Welfare Service, if submitted with a certified record of attendance, will serve as an accurate record of the unauthorised absence and will be submitted as evidence to support the prosecution.

When is it appropriate to issue a Penalty Notice?

‘The Key consideration in deciding whether to issue a Penalty Notice will be whether it can be effective in helping the pupil who is truanting back into school’ (DFE).

A Penalty Notice is a suitable intervention in circumstances such as:

1. In the early stages of casework where the Authorised Person might form an opinion that issuing a Penalty Notice is appropriate e.g. where a parent has continually failed to engage with or respond to the school’s or Inclusion, Attendance and Welfare Service’s attempts to contact them or the parent continually fails to provide an explanation for a pupil’s absence in accordance with the school’s procedures.
2. Persistent late arrival at school (i.e. after the registration period has closed).
3. Following a Truancy Sweep when the facts have been established i.e. the school register has recorded the absence as unauthorised and there is a history of poor attendance. Due to the possible health and safety risk, Penalty Notices will not be issued during Truancy Sweeps. In addition, not all the relevant evidence will be available to prove the offence at that time.
4. Following a referral from Devon and Cornwall Constabulary in line with point 3 above.
5. A parent/carer of an excluded child may be committing an offence and could receive a Penalty Notice if the child is found in a public place during normal school hours within the first five days of fixed-term or permanent exclusion. Parents and carers must be notified of this in the school’s exclusion letter.
6. In cases of absence when the pupil has been taken on holiday during term time and the absence has not been authorised by the school or excessive delayed return from extended holidays without prior school agreement.

In cases 1 -5 listed above, a Penalty Notice will only be issued to the parent(s) if the pupil has had at least **eight unauthorised sessions** recorded against their name within a **twelve month period**.

In case 6 listed above, a Penalty Notice will only be issued to the parent(s) if the pupil has had at least 1 unauthorised session in addition to 11 unauthorised sessions relating to an unauthorised holiday within a 12 month period.

N.B. There are two sessions in each school day.

A parent shall not be issued with more than three Penalty Notices resulting from the unauthorised absence of an individual child within a twelve-month period.

Unauthorised Holidays in Term Time

Amendments to The Education (Pupil Registration) (England) Regulations 2006 remove references to family holiday and extended leave as well as the statutory threshold of ten school days. The amendments make clear that Headteachers may not grant any leave of absence during term time unless there are exceptional circumstances. Headteachers will determine the number of school days a child can be away from school if leave is granted.

The Authorised Person can request a Notice to be issued for unauthorised absence of a minimum of eleven sessions (5.5 school days) if they can provide evidence that the parent took their child on holiday knowing that it would be unauthorised and that they were advised, in writing, they could receive a Notice. In cases of absence where no application for leave in exceptional circumstance has been received, but it can be proved that the absence was due to holiday, the Authorised Person has the discretion to request the Inclusion, Attendance and Welfare Service issue a Penalty Notice without first formally warning the parent. However, it would be for the Authorised Person to provide the evidence that the absence was due to a holiday.

Schools should make parents aware of the following:

1. That holidays in term time are not an entitlement.
2. That requests for absence during term time will only be granted in exceptional circumstances
3. Parents will be expected to provide supporting evidence of the exceptional circumstances.
4. That they could receive a Penalty Notice if they take their child out of school for a holiday without authorisation.

A parent issued with a Penalty Notice for an unauthorised holiday during term time, who then takes their child on further unauthorised holiday(s) within a 12 month period will be considered by the Inclusion, Attendance and Welfare Service for prosecution under Section 444 of the Education Act 1996.

Procedure for issuing Penalty Notices not relating to an unauthorised holiday

The Inclusion, Attendance and Welfare Service will issue Penalty Notices in Plymouth. This will ensure consistent and equitable delivery and will retain home-school relationships. It will also ensure that other strategies or legal processes are not jeopardised and that duplicate Notices are not issued. The Service will ensure that the issuing of the Notices is closely monitored.

These procedures apply to the parent/carers of children of compulsory school age who are registered at a school.

As with prosecutions under section 444, a Penalty Notice may be issued to **each** parent liable for the offence.

The Inclusion Attendance and Welfare Service will respond to requests for Penalty Notices within 10 school days of receipt of a Penalty Notice Request form. However, before issuing a Penalty Notice, it is essential that the following criteria are met:

1. All the relevant information is supplied in the specified manner.
2. The circumstances of the pupil's absence meet all the requirements of the Code of Conduct.
3. The issuing of a Penalty Notice must not conflict with other intervention strategies in place or legal procedures that are already being processed.

The above criteria will be investigated by the Inclusion, Attendance and Welfare Service.

Whenever there is a possibility that a case could result in a Penalty Notice or prosecution, it is good practice to make sure that the parent is aware of and understands the consequences of failing to ensure their child's regular attendance. Therefore, when all the elements of the Code of Conduct have been met, the Authorised Person will send the parent a warning letter. This will enable the parent to make representations if they wish.

The warning letter will inform the parent of the unauthorised absences for which the Penalty Notice could be issued and advise them that a period of 15 school days will be given to allow them the opportunity to improve the situation. The letter will also include an information leaflet explaining Penalty Notices.

If there is no improvement in the situation after the 15 days have elapsed, a request for a Penalty Notice should be made by the Authorised Person to the Inclusion, Attendance and Welfare Service and the parent(s) should be issued with the Penalty Notice without further delay or notification. Any unauthorised absence within the 15-day period should be evidenced by a certified record of attendance and submitted to the Inclusion, Attendance and Welfare Service without delay.

A Penalty Notice warning letter must contain reference to the fact that any subsequent unauthorised absences following the review period could also result in a Penalty Notice without further warning. It will be for the Authorised Person to make the decision to request a Notice for subsequent unauthorised absences, this will involve consideration of how soon after the review period the absences occurred.

Serving Notice

A Notice may be served by:

1. giving it to the recipient;
2. leaving at the recipient's usual or last known address;
3. sending it to the recipient at that address by first class post.

Serving a Notice by post shall be deemed to have been effected, unless the contrary is proved, on the second working day after posting the Notice by first class post.

Penalty Notices issued to parents of excluded children

Section 103 of the Education and Inspections Act 2006 places a duty on parents in relation to an excluded pupil. A parent has to ensure that his or her child is not present in a public place during

school hours without reasonable justification during the first five days of each and every fixed period or permanent exclusion

School hours mean 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. A school is not a public place for this purpose.

The days of exclusion when this duty applies are known as 'specified days of exclusion' and will be detailed in a Notice given to the parent under section 104 of the 2006 Act. The parent is responsible for the child during the specified days upon receipt of the Notice.

Sections 100 and 101 of the Education and Inspections Act 2006 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 a fixed period exclusion in a school year and from the sixth day of a permanent exclusion. Once provision is made, the parent's duty to ensure that their child is not in a public place becomes a duty to ensure the child attends the provision i.e. the duty under sections 444(1) and 444(1a) of the Education Act 1996.

Section 105 of the Education and Inspections Act 2006 allows for a Penalty Notice to be issued to a parent committing an offence under section 103 (failing to ensure that their child is not in a public place on the days specified on the Notice given to them). The Notice allows the parent to pay a penalty as a way of discharging any liability for the offence. The parent must be notified by the school at the time of the exclusion of their duty and the days to which it relates.

Once a Penalty Notice has been issued, the parent cannot be prosecuted for the offence to which it relates until the final deadline for payment has passed (28 days after receipt of the Notice) and cannot be convicted of that offence if the penalty is paid in full.

If the penalty is not paid in full by the end of the 28-day period, the Local Authority must prosecute for the section 103 offence and not the non-payment of the penalty.

Although Authorised Persons are empowered to issue Penalty Notices, the offence under section 103 of the Act allows the excluded pupil's presence in a public place where there is reasonable justification for him being there. As such, there needs to be an investigation of evidence before a Notice is issued. It is not intended that Penalty Notices are issued as an 'on the spot' remedy, apart from in exceptional circumstances, schools should, in the first instance, report suspected breaches of section 103 to the Inclusion Attendance and Welfare Service so that appropriate steps can be taken.

The question of reasonableness is ultimately one for the courts to decide and will be decided on an individual case to case basis. However, there may be time when it is necessary for an excluded pupil to be in a public place e.g. on his or her way to a medical or dental appointment.

Consideration must be given to possible justification for the presence. Attempts should be made to speak to the child or the parents for an explanation. Where the child is unaccompanied by an adult or other responsible adult or is with his or her peers and is perceived to be 'hanging around,' it is more likely that an offence is being committed. It should also not be assumed that an excluded child accompanied by the parent is not in breach of section 103. Each case must be looked at on its own merits. To be justified there must be an element of unavoidable presence. It is for the parent to prove reasonable justification. A justification which is capable of being reasonable will depend on the facts supported by credible evidence. It is unlikely that any justification would be held to be reasonable unless it stood up on facts. Where there is doubt, the Inclusion Attendance and Welfare Service will seek legal advice.

It is common for excluded pupils to come to the school to meet friends. School premises are not themselves public places. An excluded pupil seen loitering in the vicinity of a school will almost certainly not have justification for being there.

Consideration should be given to the number of times an excluded child can be apprehended, the parents' action or inaction, the justification put forward and the parents' overall attitude towards their responsibilities.

Withdrawing Penalty Notices

There is no statutory right of appeal against the issuing of a Penalty Notice. Penalty Notices may only be withdrawn for the following reasons:

1. Where it ought not to have been issued i.e. where it has been issued outside the LA's Code of Conduct or where no offence has been committed.
2. Where it has been issued to the wrong person.
3. Where the Notice was materially defective.

Where a Penalty Notice has been withdrawn, a Notice of the withdrawal shall be given to the recipient and any amount paid will be refunded. No proceedings shall be continued or instigated against the recipient for the offence for which the withdrawn Notice was issued.

Payment of Penalty Notices:

Each penalty notice will included details of the dates by which the penalty must be paid and the payment methods available.

Payment must be made if full. Part payments will not be accepted in any circumstance. Services and agencies are respectfully requested not to contact the local authority on behalf of clients to request deferred payments or payment plans.

Further information can be obtained from the Inclusion and Attendance Manager or Senior Practitioner – Inclusion, Attendance and Welfare Service on 01752 307405.