

**Penalty Notice Code of Conduct
For failure to ensure regular attendance at
School of a registered pupil**



1. The Local Authority

The Anti-Social Behaviour Act 2003 came into effect on 27 February 2004. Under Section 23 of this Act, the Education Act 1996 was amended with the introduction of two new subsections under Section 444 (subsections 444A & 444B) which made it possible for Penalty Notices to be issued for truancy offences. They are subject to the Education (Penalty Notices) (England) Regulations 2007 as amended (“the Regulations”).

The Regulations require each Local Authority to draw up a local Code of Conduct which sets out measures to ensure consistency in the issuing of Penalty Notices and that suitable arrangements are in place to administer the scheme.

The issuing of Penalty Notices must conform to all requirements of the Human Rights Act 1998 and all equalities legislation. When deciding whether to issue a Penalty Notice or prosecute under the relevant provisions of the Education Act 1996, those concerned should always have regard to both the Public Interest and Evidential tests.

Penalty Notices are an alternative to the prosecution of parents for failing to ensure that their child of compulsory school age attends the school where they are registered or at a place where alternative educational provision is provided. The purpose is to offer swift intervention for cases of unauthorised absence before the problem becomes too entrenched.

A Penalty Notice can only be issued in cases of unauthorised absence or in certain cases where a child or young person is subject to an exclusion from their education provision. It is important to note that it is the Head Teacher’s responsibility to decide whether or not to authorise an absence.

The definition of “parent” under Section 576 of the Education Act 1996 includes all biological parents, whether they are married or not and includes any person who, although not a biological parent, has the parental responsibility and/or any person who, although not a biological parent, has care of a child or young person. Having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent.

NB: Throughout this document, references to parent mean each and every parent coming within the definition, whether acting jointly or separately.

2. Rationale

Regular and punctual attendance of children and young people at school is both a legal requirement and essential in order for students to maximise the opportunities available to them.

The welfare of the child is paramount. Schools should take all reasonable steps to ensure good attendance without the use of Penalty Notices and attempts must always be made to contact the parent/carer in order to try and resolve any difficulties. If a warning and offer of support does not result in significant improvement in attendance, the school and the Local Authority will work together to consider every aspect of a pupil's circumstances before deciding whether to issue a Penalty Notice.

3. Issuing Penalty Notices

Under this policy, Penalty Notices may be requested by Head Teachers and will be issued by the Local Authority. The Local Authority is responsible for this administration and it is for them to make such arrangements for the operation of the scheme (not provided for in the government guidance or associated Regulations) as it sees fit, in consultation with its partners. Any person issuing a Penalty Notice in BCP must have regard to this Code of Conduct.

The Local Authority can only issue notices in respect of a pupil registered at a school in the area of the authority or for whom the authority has made arrangements for alternative educational provision (whether or not in the area of the authority) or who is not, at the time the notice is given, a registered pupil at any school but resides in the area of the authority. A Penalty Notice should be addressed to only one parent but a Penalty Notice can be issued to each parent/carer liable for the offence regarding each of their children.

4. Criteria for issuing a Penalty Notice

The circumstances in which a Penalty Notice can be issued are listed below. In these cases, save for clause 4.2 and 4.3 the parent must receive a formal warning of the possibility of a Penalty Notice being issued and given no less than 15 school days to effect an improvement.

4.1. General Non-School attendance (repeated absences) and unauthorised lates.

All unauthorised absence, including unauthorised lates, should be addressed by the school with the parent. Where a parent fails to engage or fails to provide an explanation for a pupil's failure to attend school regularly and attendance does not improve, legal action may be considered.

A Penalty Notice may be issued when a pupil has at least 10% unauthorised absence over the specified warning period. The absences do not need to be consecutive.

Where a pupil is required to attend alternative education provision at a named site, school or pupil referral unit, the criteria in section 4 remain. If a pupil transfers directly from school to alternative provision, the absences in both places of education will be taken into account when deciding whether to issue a Penalty Notice.

4.2. Leave of Absence taken in term time

Regulation 7 of the Education (Pupil Registration, England) 2006 Regulations was amended to prohibit a Head Teacher granting leave of absence to a pupil except where an application has been made in advance and the proprietor considers that there are exceptional circumstances relating to the application.

Under the amended regulations, a Head Teacher can agree to a leave of absence in term time only where there are 'exceptional circumstances'. No leave of absence should be agreed unless the Head Teacher is satisfied that there are such exceptional circumstances. The school should make the parents aware of this possibility as far as possible. This possibility should also clearly be stated in the school's attendance policy and in other information the school provides for parents such as the school's handbook provided to parents, student planners, school website, newsletters, open day and new starter information packs.

When a leave of absence is taken and the school has not authorised the absence, the school may request that the Local Authority issues a Penalty Notice. Before requesting this, the school must ensure that, as far as possible, the parent was aware that this may occur.

Requests for Penalty Notices should be made by the school and signed by the Head Teacher or nominated Deputy as soon as possible after the unauthorised absence has occurred.

Although parents will have been warned that a Notice may be issued if they choose to continue with the leave of absence, no caveat regarding a warning period to effect an improvement will be given.

A Penalty Notice may be issued:

- Where a parent has taken the pupil on a leave of absence during term-time without the school's authorisation and there are unauthorised absences of at least 10 sessions (5 school days), or
- If more than one period of absence is taken during term-time within any 12 month period without the school's authorisation and there are unauthorised absences of at least 10 sessions (5 school days) overall, or
- Where the school has agreed to a specific number of sessions of leave during term-time due to exceptional circumstances, and any additional sessions of unauthorised leave have been taken outside of the agreed period.

A Fixed Penalty Notice can be issued in lieu of prosecution in cases where there is persistent unauthorised leave in term time within any 12 month period (3 or more periods of absence, regardless of number of sessions missed).

4.3. In the case of an excluded pupil

A Penalty Notice may be issued where a pupil is found by the school, Police or Local Authority service in a public place*, in school hours** without reasonable justification during the first 5 days of a fixed term or permanent exclusion. The Local Authority will carefully consider reasons given by the parent if a child is found in a public place, prior to issuing a Penalty Notice.

** Public Place means any highway or any place to which the public has access*

*** School hours is defined as 'a school session or a break between sessions on the same school day'*

5. Procedure for withdrawing a Penalty Notice

- There is no statutory right of appeal against a Penalty Notice.
- A Penalty Notice may be withdrawn in any case in which it is determined that:
 - It ought not to have been issued, or;
 - It ought not to have been issued to the person named as the recipient;
 - It appears that the notice contains material errors.
- A Penalty Notice may be withdrawn in accordance with the above whether or not the period for payment referred to in the notice has expired, and whether or not the penalty has been paid.
- Where a Penalty Notice has been withdrawn in accordance with the above a notice of withdrawal must be given to the recipient and any amount paid by way of penalty in pursuance of that notice must be repaid to the person who paid it.
- Except as provided below no proceedings may be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued.
- Where a Penalty Notice was issued and was withdrawn proceedings may be continued or instituted for the offence in connection with which that Penalty Notice was issued if both the following conditions are met,
 - A further Penalty Notice in respect of the offence was issued at the same time as the first Penalty Notice was withdrawn; and
 - The penalty has not been paid pursuant to that further Penalty Notice in accordance with the requirement of the regulations.
- Where
 - The Penalty Notice is not paid in full before expiry of the period for paying it; and
 - The Local Authority named in the notice has neither instituted proceedings against the recipient for the offence to which the notice relates, nor is it contemplating such proceedings,
 - The authority must withdraw the notice.

6. Payment of Penalty Notices

The fine is £60 if paid within 21 days of receipt of the notice; rising to £120 if paid within 28 days. The payment must be made in full – part payments will not be accepted - details of how to pay are printed on the Penalty Notice (an invoice served by post is deemed to have been received on the second day after posting it by first class post).

Fines issued are payable to the Local Authority:

“Money received by a Local Authority under this process may be used by the authority for the purposes of any of their functions which may be specified in regulations namely issuing or enforcing Penalty Notices and prosecuting recipients who do not pay but, to the extent that they are not so used, must be paid in accordance with the regulations, to the Secretary of State for Education

7. Failure to pay (Penalty Notice for School Absence)

If a parent/carer has not paid the Penalty Notice in full before the 28 days allowed, the Local Authority can look to commence legal proceedings in the Magistrates Court for the original offence of failing to ensure a child attends school regularly unless there are reasons for withdrawal as stated in Section 6 above. Prosecutions will be brought by the Local Authority under section 444 of the Education Act 1996 which provides for two truancy offences. If found guilty of the basic truancy offence under Section 444(1), the parent could receive a fine of up to £1,000.

8. Failure to pay (Penalty Notice for Exclusion)

If a parent/carer has not paid the Penalty Notice in full before the 28 days allowed, the Local Authority is required to commence legal proceedings in the Magistrates Court for the original offence of failing to ensure a child is not in a public place during the ‘specified days of exclusion’ unless there are reasons for withdrawal as stated in Section 6 above.

If found guilty under Section 103 of the Education and Inspections Act, the parent carer could receive a fine of up to £1,000

9. Right of Appeal

Under the Regulations, parents have no right of appeal against the Penalty Notice but if they believe it to be wrongly issued or need further information and advice, they should immediately contact the Local Authority.

10. Review arrangements

This Code of Conduct will be reviewed regularly and amended when necessary.

11. Supplemental

- If a Penalty Notice is not paid or not paid in full within twenty-eight days, the fact that the Penalty Notice was offered in lieu of a prosecution will be brought to the courts attention.
- Prosecution in such cases would be for the period to which the Penalty Notice relates, but could also include other periods of absence as appropriate. In this way, BCP will have the means to avoid the issue of duplicate notices.
- The Service will manage a central database for storing pupil data and details of Penalty Notices issued. The service will also keep details of all payments made, court dates, whether the recipient was prosecuted or whether the notice was withdrawn and on what grounds.
- Although a parent/carers may receive a Penalty Notice for each child/young person for whom they are responsible, no parent will be issued with more than 3 Penalty Notices per child/young person in a school year). If there are further absences, meaning that this limit is exceeded, then the parent/carers is liable for prosecution.
- Local Authorities have no powers in relation to privately funded schools.