
PENALTY NOTICES

CODE OF CONDUCT

Derbyshire County Council

Children's Services

DERBYSHIRE COUNTY COUNCIL

CHILDREN AND YOUNGER ADULTS

PENALTY NOTICES

Code of Conduct under the Provisions of the Education (Penalty Notices) Regulations 2007 (as amended) and Section 23 of the Anti-Social Behaviour Act 2003 (as amended)

CONTEXT

1. Parents have a legal obligation to ensure that their child receives efficient full-time education suitable to the child's age, ability, aptitude and to any special educational needs the child may have. Derbyshire County Council therefore has a statutory obligation to challenge parents who are failing in their duty and this includes a wide range of legal powers to intervene. The principal aim of these interventions is to ensure that children attend school regularly and punctually so that they can benefit fully from the educational opportunities presented by their school.
2. Where attendance is not regular or punctual, Derbyshire County Council's Education Welfare Service (EWS) will intervene to support parents and, as a last resort, apply legal remedies including prosecution. The EWS works in close partnership with schools, the police and other key stakeholders to promote inclusion and to ensure that relevant and purposeful measures are taken to reduce absence. This Code has been developed on the basis of that continuing partnership.
3. New legislation has increased the range of intervention available. The Anti-Social Behaviour Act 2003 has introduced additional remedies including the power to issue penalty notices to the parents/carers of pupils who take unauthorised absence from school. Penalty notices offer the opportunity for swift intervention to combat parentally condoned absence before it becomes entrenched.

PURPOSE

4. The purpose of this Code of Conduct is to ensure that:
 - The powers available under the legislation are applied fairly and consistently across the county and
 - Suitable arrangements are in place for the smooth administration of the penalty notice scheme

This Code sets out the principles on which the Local Authority (LA) will operate these powers.

LEGISLATION AND GUIDANCE

Legal Basis for Issuing Penalty Notices¹

5. The Anti-Social Behaviour Act 2003, section 23, sub-section (1) adds two new sections (444A and 444B) after section 444 of the Education Act 1996. These new sections introduce penalty notices as an alternative to prosecution under section 444 and enable parents/carers to discharge potential liability for conviction for that offence by paying a penalty. The offence of irregular attendance under section 444 of the Education Act 1996 has not changed.
6. The parent/carer cannot be prosecuted for the particular offence for which the notice was issued until after the final deadline for payment has passed (28 days² after receipt of the notice) and cannot be convicted of that offence if they pay a penalty in accordance with the notice.
7. The penalty 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. (A notice served by post is deemed to have been received on the second working day after posting if sent by first class, or by delivering it to the parent/carer, or by leaving it at the parent/carer's usual or last known place of residence). If the penalty is not paid in full by the end of the 28 days, the LA must either prosecute for the offence to which the notice applies or withdraw the notice (which can only be done in limited circumstances). Unlike other penalty notice schemes, the prosecution is not for non-payment of the notice. If there is a prosecution, it will follow the usual procedures of a prosecution for irregular attendance. Prosecutions will be brought by the LA under section 444 of the Education Act 1996.

Definitions

8. For the purpose of the Code, the following legal definitions will apply:

Compulsory School Age

A pupil is of compulsory school age from the beginning of the school term commencing on or after a child's fifth birthday until the last Friday in June of the school year in which the pupil becomes sixteen years of age.

Parent

A parent is:

- Any natural parent, whether married or not

¹ Parental responsibility measures for school attendance and behaviour. Statutory guidance for maintained schools, academies, local authorities and the police – November 2013

² "days" refers to calendar days within this document unless otherwise indicated

- Any parent who, although they are not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person
- Any person who, although not a natural 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 in education law.

References to 'parent' within the Code mean each and every parent coming within this definition, whether acting jointly or separately.

Unauthorised Absence

Unauthorised absence is any absence that does not fall within the prescribed reasons for authorisation³. One unauthorised absence refers to a half-day session or part of a half-day session, where the child either fails to attend or arrives after the close of registration.

Other Provisions

9. In addition to the Anti-Social Behaviour Act 2003, a wide range of other legal provisions applies to the issuing of penalty notices. The Code takes account of these provisions, which are set out at **Appendix 1**. Those persons authorised to operate this Code must have regard to these legislations and guidance set out at Appendix 1.

CIRCUMSTANCES WHEN A PENALTY NOTICE MAY BE ISSUED

10. A penalty notice may be suitable for use in circumstances of parentally condoned absence, where the parent is judged capable of securing their child's regular attendance but is not willing to take responsibility for doing so. It will be particularly useful as a sanction at an early stage before attendance problems become too entrenched and where the LA considers that a prosecution would be too heavy handed. It may be issued in the following circumstances:
 - As a result of any term-time holiday not authorised by the school
 - As an alternative to court prosecution
 - As a result of a truancy sweep where there is other evidence that meets the LA's criteria for unauthorised absence

The EWS has the discretion to identify other circumstances where a penalty notice may be used as a suitable intervention as part of its ongoing casework.

³ School attendance, Departmental advice for maintained schools, academies, independent schools and local authorities – November 2013

Term-time Holidays

11. The Education (Pupil Registration) (England) 2006 Regulations (as amended by the Education (Pupil Registration) (England) (Amendment) Regulations 2013) made changes to leave during term time by removing references to family holiday and extended leave, including the removal of the headteacher's discretion to grant leave not exceeding ten school days. The amendments make it clear that headteachers cannot grant leave of absence during term time unless there are exceptional circumstances. If leave is granted, headteachers should determine the number of school days a child can be away from school. It is for headteachers to make known the school's expectations for attendance (for example, in the school prospectus and attendance policy), and to determine whether or not a leave request is exceptional.
 12. Each request should be judged on a case-by-case basis and headteachers should be sparing in the use of their discretion. It is important that headteachers do not fetter their discretion by applying policies (for example, blanket bans) that might suggest that each application has not been considered on its own merits. Separate guidance published by the LA sets out the factors to be taken into account in exercising this discretion.
 13. The EWS will serve a penalty notice for any period of unauthorised leave of absence for the purpose of a family holiday during term time that has not been authorised by the headteacher. Moreover, the EWS may do so without any further recourse to assessment or casework with the pupil or family. There will be no requirement for:
 - The EWS to offer support
 - Any formal warning
 - The absence threshold to be met
- The Regulations say 'Where there is more than one person liable for the offence, a separate notice may be issued for each person'.
14. In declining any request for leave of absence for the purpose of a family holiday to be taken in term-time, the headteacher should warn parents that not only will the absence be categorised as unauthorised but also that each parent will be served with a penalty notice for each child without any further warning or intervention.
 15. Where parents take unauthorised leave of absence for the purpose of a family holiday during term-time without notifying the school, or where a request has been made but leave is refused, the absence may be marked as unauthorised. In doing so, the headteacher will send all details of relevant information and communications to the EWS at County Hall, Matlock.

Other Circumstances

16. With the exception of unauthorised leave of absence for the purpose of a family holiday in term-time, all other identified cases will need to meet at least one of the following minimum criteria for unauthorised absence before a penalty notice is issued:

- Two consecutive weeks of unauthorised absence
OR
- Secondary schools: 10 sessions of unauthorised absence in a 5 week period.
- Primary schools: 5 sessions of unauthorised absence in a 5 week period, or 10 sessions of authorised absence in a 5 week period where no medical evidence has been received.
- Persistent absence threshold met within the last 12 months and where there is some current unauthorised absence.

These criteria constitute the LA's threshold for unauthorised absence and, with the exception of unauthorised leave of absence for the purpose of a family holiday in term-time, will trigger consideration on whether or not a penalty notice should be issued.

17. The criteria above will be applied in considering any referral from a school, other agency (e.g. Police or Social Care) or other local authority. The EWS will accept the referral and, before taking action, will check to see whether:

- The threshold criteria on unauthorised absence has been met
- The school has made reasonable attempts to contact the parent/carer and has evidence to show this
- The parent/carer has been unwilling to engage with the school and/or the LA and the school and/or the LA has evidence to show this
- There has been no improvement in attendance
- The parent/carer has given unsatisfactory reasons for the absence and there is an up-to-date attendance record available.

Whatever the source, the referral will have to be properly documented in the form provided, which will be in a prescribed format common to all partner agencies.

PROCEDURES

Issuing Penalty Notices

18. The procedures for issuing penalty notices fall within the well-established framework operated by the EWS. The procedures ensure systematic intervention to the point where the threshold for statutory action has been reached. These interventions include:

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- Close partnership working with schools to enable relevant and purposeful action to be taken at school level
- Careful assessment of referrals to agreed standards with appropriate documentation
- Relevant levels of external support, including action planning, governed by a service level agreement with schools
- Fast tracking where the agreed criteria are met
- Escalation to management for consideration of statutory action including education supervision order, penalty notice or adult prosecution.

19. Where the criteria for unauthorised absences have been met, statutory action will be taken unless:

- The parent is able to evidence that one or more of the following circumstances apply:-
 - The child's absences are authorised
 - The child was sick and satisfactory medical evidence is provided
 - The day is set apart for religious observance
 - The designated school is not within walking distance of the child's home and no transport has been provided by the LA
 - Other unavoidable cause
- There is some improvement in attendance and confidence that further improvement is likely
- There is evidence of child protection issues
- There is evidence of bullying
- Other agencies are involved, requiring further investigation
- The child is in statutory public care.

20. Where a penalty notice is being considered, parents will receive one written warning (issued by the EWS) that failure to improve attendance will result in a fine and may lead to prosecution. Depending on the circumstances of the case, the warning will indicate the period of time over which improvement is expected (minimum 15 days) and will be given in the prescribed format together with advice on how to make representations to the LA. These procedures will apply in all cases with the exception of unauthorised leave of absence for the purpose of a family holiday in term-time.

21. The authorised officer of the EWS will be responsible for issuing all penalty notices. This will avoid the possibility of parents receiving penalty notices from more than one source for the same period of unauthorised absence and will ensure there is no conflict with current legal proceedings or ongoing casework. Also, as the LA must retain the revenue generated by the scheme to fund its operation, it would not be reasonable to expect

schools or the police to bear the burden of responsibility for issuing notices and the associated costs.

22. Penalty notices will normally be issued by first class post.

23. No parent will be issued with more than two penalty notices per child in any one twelve month period. Thereafter, parents will be liable to other statutory action including prosecution.

Monitoring and Taking Legal Proceedings

24. The EWS will monitor all cases where penalty notices have been issued. This will include monitoring to ensure that:

- There is no duplication
- Penalty notices are not issued when court proceedings are pending
- The maximum number to be issued, i.e. two per child per parent in any twelve month period, is not exceeded.

25. The EWS will keep a central record of all notices issued, including:

- A record of all payments made and on what dates
- Whether the notice was withdrawn and on what grounds
- Whether or not the recipient was prosecuted for the offence for which the notice was issued.

The EWS will inform the school when a penalty notice is issued and keep the school notified of the outcome.

26. Payment of a penalty notice will discharge liability for prosecution for the offence to which the notice relates. Where, however, a penalty notice is not paid within the prescribed period in the notice, prosecution will be instigated. Prosecution will be brought under Section 444 of the Education Act 1996.

27. The EWS will be responsible for managing the processes required for statutory action, including:

- Preparing court proceedings
- Marshalling evidence (including Section 9 Statements)
- Assembling documentation

If a penalty notice is not paid, the LA will use the fact that a notice was issued and unpaid in any prosecution arising from the non-payment.

28. The LA will not use evidence of penalty notices that have been issued and paid except as permitted by sections 101 to 106 of the Criminal Justice Act 2003. This includes, for example, the use of such evidence where:

- It has been agreed by all parties

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- It is necessary to contradict a false impression given by the defendant
- The defendant attacks the character of another person.

Revenue

29. Penalty notices will be issued in a prescribed format. Parents/carers will be able to make payment through a variety of methods specified in the notice. The revenue will be collected and managed by the LA's Treasurer's division.

30. Within this Code, there is:

- No reminder of non-payment
- No opportunity to pay in instalments and
- No right of appeal.

Failure to pay will result in prosecution.

31. The EWS will produce an annual audited statement of revenue collected from penalty notices. The revenue will only be used to cover the costs of administering the scheme or bringing a prosecution arising from non-payment. Any surplus revenue will be surrendered to the consolidated fund.

WITHDRAWAL

32. The LA will only withdraw a penalty notice in the following circumstances:

- Where it ought not to have been issued (i.e. where it has been issued outside the terms of this Code or where no offence has been committed); or
- Where it has been issued to the wrong person; or
- It appears to the LA that the notice contains material errors.

If a parent believes that one or more of these circumstances apply, then the parent should contact the LA immediately with evidence to that effect. A senior officer, taking legal advice if necessary, will review the evidence. If the evidence clearly demonstrates that the penalty notice was issued in error, then the LA will issue a Notice of Withdrawal.

The LA will issue a Notice of Withdrawal to the recipient and any amount paid by way of penalty in pursuance of that notice shall be repaid to the payee. No proceedings shall be instituted or continued against the recipient for the offence in connection with which the withdrawn notice was issued or for an offence under section 444(1) of the Education Act 1996 arising out of the same circumstances.

EQUALITIES

33. The LA will monitor the procedures for issuing penalty notices to ensure that they are applied fairly and consistently. In particular, it will ensure that the procedures do not discriminate against:

- Minority groups or any other individual in accordance with its obligations under the Human Rights Act 1998 and the Equality Act 2010
- Pupils with a protected characteristic under the Equality Act 2010
- Penalty notices are not issued to Traveller families where a parent would have a defence to prosecution under section 444(1) of the Education Act 1996.

Revised April 2014

LEGISLATION AND GUIDANCE

Children Act 1989

The Education (Pupil Registration) (England) Regulations 2006
(as amended)

The Education (Penalty Notices) (England) Regulations 2007 (as
amended)

The Education (Pupil Registration) (England) (Amendment) Regulations
2013

Education Act 1996

Crime and Disorder Act 1998

Data Protection Act 1998

Human Rights Act 1998

Equality Act 2010

Anti-Social Behaviour Act 2003

Criminal Justice Act 2003

Department for Education 'School Attendance – Departmental advice for
schools, academies, independent schools and local authorities –
November 2013'