

Code of Conduct

Issuing Penalty Notices for unauthorised absence from school.

Education Act 1996 (as amended by)

Anti-Social Behaviour Act 2003

Update September 2018

Legislation

Section 7 of the Education Act 1996 places a duty on parents to ensure that their children of compulsory school age receive a suitable full time education.

Once a child is registered at a school, the parent is responsible for ensuring that the child attends regularly and punctually. If a parent fails to ensure the child attends school regularly and the absence is not approved by the Headteacher, they may be guilty of an offence under section 444 of the Education Act 1996.

Section 444 has two separate but linked offences.

- **Section 444 (1) where a parent fails to secure the child's regular attendance:** A person found guilty of such an offence is liable on summary conviction to a fine of up to £1000.
- **Section 444 (1A) where a parent knows that the child is failing to attend regularly at the school and fails without reasonable justification to cause them to do so.** A person found guilty of such an offence is liable on summary conviction to a fine of up to £2,500 and / or up to three months imprisonment

Section 23 of the Anti-Social Behaviour Act 2003 introduced new powers for the designated Local Education Officers, Headteachers (and Deputy or Assistant Headteachers authorised by them) and the police to issue penalty notices for unauthorised absence from school.

The Education (Penalty Notices) (England) Regulations 2004 came into force on 27th February 2004. These were updated with The Education (Penalty Notices) (England) Regulations 2007.

Under previous legislation, parents of a registered pupil whose child failed to attend school regularly and whose absence was unauthorised committed an offence for which prosecution was the only available sanction. With the Education (Penalty Notices) Regulations 2007, Penalty Notices were introduced as an early intervention strategy and as an alternative to the previous sanction by allowing parents an opportunity to discharge potential liability for conviction for the offence.

The Education (Penalty Notices) (England) (Amendment) Regulations 2013 (statutory Instrument No 757) explains a Penalty Notice is a fine of £60 if paid within 21 days and increased to £120 if paid after this but within 28 days.

If the fine remains unpaid after 28 days, the Local Authority must consider the commencement of legal proceedings for the offence to which the notice relates. The prosecution is not for the non-payment of the penalty notice but is for failure to ensure regular attendance at school.

The Local Authority can also prosecute parents for irregular attendance without issuing a Fixed Penalty Notice.

The instigation of legal proceedings for unauthorised absence from school under Section 444 (1) or Section 444 (1A) of the Education Act 1996 may be considered where it is deemed to be appropriate. In these circumstances, the school would be required to provide the Local Authority with a signed school attendance record and in some circumstances a witness statement to be used as evidence in the prosecution.

For the purposes of the protocol, the legal definitions of ‘parent’ are:

- Any natural parent, whether married or not
- Any parent who, although 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

Rationale

Regular and punctual attendance of pupils at school is both a legal requirement and essential for pupils to maximise their educational opportunities.

Missing out on lessons leaves children vulnerable to falling behind. Children with poor attendance tend to achieve less in both primary and secondary school.

Schools are expected to monitor the attendance of all pupils on their roll and act early to address patterns of absence.

Penalty notices should be used as an early deterrent to prevent patterns of unauthorised absence developing. They should be used where a parent is capable of securing an improvement in their child's school attendance but where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem.

Penalty notices supplement existing sanctions currently available under Sec 444 of the Education Act 1996.

They can only be used for periods of unauthorised absence and the defences in law replicate those already in place for enforcement actions under the provisions of Section 444 of the Education Act 1996.

Circumstances where a penalty notice may be issued

A Penalty Notice can only be issued where a pupil of compulsory school age has been absent (or late after the register has closed) for 10 half day sessions or more over any two consecutive half terms and the absence has not been authorised by the school.

The issuing of a Penalty Notice is considered appropriate in the following circumstances:

- Truancy from school, with or without parents knowledge (including pupils caught on truancy sweeps)
- Parentally-condoned absences
- Leave of absence in term-time without approval
- Delayed return from a period of leave of absence which has been approved by the school
- Unexplained absence i.e. no reason given for absence
- Persistent late arrival at school (after the Register has closed)
- Excluded pupil present in a public place during the school hours of the school where the pupil is on roll

Warning letters to parents

Other than in the circumstances '*family holiday NOT agreed*' the liable parent will receive a formal warning letter from the school.

This warning letter will be sent after a minimum of five sessions of unauthorised absence have occurred over the period of two consecutive half terms.

This will advise parents of the unauthorised absence and inform them that further absences may result in a penalty notice being issued. A warning letter will be sent to each parent.

If a further five sessions of unauthorised absence occurs following the warning, a penalty notice request may be submitted to the local authority.

No formal warning is given in the case of unauthorised leave of absence (family holiday)

Prior to requesting a penalty notice, the school should:

- consider the attendance record of any other siblings, including siblings from other schools of statutory school age children and whether co-ordination of warning letters or penalty notices is required
- consider whether the process conflicts with other intervention strategies in place by the Local Authority or other agencies
- ensure the Headteacher / schools attendance leader has given approval.

It is important that any school actions are accurately recorded on the pupils file. This will aid completion of the penalty notice request form and may be used to provide evidence to the courts at a later date.

Persistent late arrival at school

When a pupil persistently arrives late, schools should investigate the reason for this and offer support where appropriate to rectify the situation. Where the arrival time is after the close of registration period the late mark, code U, an unauthorised absence should be recorded. If a pupil is persistently late after registration has closed (i.e. 10 or more times over two consecutive half terms) and serious efforts

have been made by the school to resolve the situation to no avail, then a penalty notice may be considered.

The same process applies when requesting and issuing a penalty notice and a formal warning letter should be sent to the parents notifying them of the absence and possible statutory action.

Family holidays in term time

In 2013 amendments were made to The Education (Pupil Registration) (England) Regulations 2006. These amendments removed 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 should determine the number of school days a child can be away from school if the leave is granted. Schools need to consider each request individually, making allowances for exceptional circumstances.

A penalty notice may be issued where a Headteacher has refused to authorise a family holiday/leave of absence and the number of sessions absent reaches the minimum evidential requirement of 10 sessions (5 school days).

In these instances a formal letter of warning is not required by the school prior to requesting a penalty notice, however if a request for leave of absence has been submitted then school should inform the parents in writing that the request has been refused and the possibility of statutory action being taken.

Repeated absence due to unauthorised family holiday (either within the same academic year or over different academic years) may result in legal action being taken in the Courts for an offence under Section 444 of the Education Act 1996, rather than further Penalty Notices being issued.

Excluded pupils

Section 105 (1) of the Education and Inspections Act 2006 empowers designated Local Authority Officers, Headteachers (and Deputy and Assistant Headteachers authorised by them) and the Police to issue penalty notices in cases where an excluded pupil is in a public place during school hours at any time during the first five days of any period of exclusion from school without justifiable cause.

In cases where an excluded pupil is found to be out in a public place during the first five days of an exclusion from school, the Local Authority would issue a warning notice to the pupil's parents/carers. If the pupil was subsequently to be found out in

a public place again either during the same period of exclusion or during a further exclusion within the same academic year then a penalty notice may be issued.

Non-payment of a penalty notice issued where a parent allows an excluded pupil during the first five days of any period of exclusion to be present in a public place without justifiable cause may result in a prosecution under Section 103 (3) of the Education and Inspections Act 2006.

Issuing penalty notices

Before a penalty notice can be considered, there must be a minimum evidential requirement of 10 sessions of unauthorised absence over any two consecutive half terms.

The Local Authority may receive requests to issue penalty notices from Bolton schools, Greater Manchester Police and schools in neighbouring Local Authorities only if:

- A penalty notice request form is completed with all necessary information and supporting relevant documentation
- The period of absence is not being considered for proceedings according to Section 444 (1) or (1A) of the Education Act 1996
- The issue of a penalty notice does not conflict with other interventions strategies in place by the Local Authority or by other agencies where the circumstances are known to the Local Authority.

Requesting a penalty notice

Schools should complete the Local Authority penalty notice request form and return it, along with the required documentation to the Child Employment and Enforcement Officer.

The request should not be sent to the Local Authority until 10 sessions or more of unauthorised absence have been reached (over two consecutive half terms) or until the pupil **returns** from unauthorised leave of absence.

Considering penalty notice requests

The Local Authority will consider each request and may deem it appropriate to take one of the following actions:

- Advise schools to refer to supporting agencies
- Advise schools to monitor for a further period
- Issue a penalty notice
- Instigate legal proceedings for an offence under sec 444 of the Education Act 1996.

Issuing a penalty notice

The Local Authority will issue penalty notices in line with the code of conduct where absence from school meets the minimum evidential requirement and it is deemed appropriate.

In Bolton, penalty notices for non-attendance will be issued by the Early Intervention Service. The Service will ensure that the issuing of penalty notices is closely monitored with recipients paying the relevant fine. In cases where the penalty is not paid within the appropriate period, the Local Authority will consider instigating action through the court as required by legislation.

The Local Authority will issue the notice and notify schools of the outcome in relation to payment and any legal action taken.

A separate penalty notice will be issued to each parent for every child who is not attending school.

All penalty notices will be issued by first class post.

Payment of penalty notices

Payment of a penalty notice is £60 if paid within 21 days from the date of issue, rising to £120 if paid after this but within 28 days.

The arrangements for the paying of penalties will be detailed on the penalty notice

Payment of the penalty in full enables parents to discharge potential liability for conviction for the period the penalty notice was issued. Prosecution might be considered for further periods of unauthorised absence from school.

Payment of the penalty notice in part or by instalments is not an option.

Non-payment of penalty notices

If the penalty remains unpaid by the end of 28 days, the Local Authority will consider the commencement of proceedings for the offence to which the notice relates. The prosecution is not for the non-payment of the penalty notice but is for failure to ensure regular attendance at school.

It is anticipated that prosecutions following failure to pay a penalty notice could involve the Early Intervention Service in a large amount of work. It follows therefore that before a penalty notice is issued in the first place, the procedures contained in this document must have been followed and that all the appropriate evidence is in place to support a successful prosecution.

Procedure for withdrawal of penalty notices

Once a penalty notice has been issued it may only be withdrawn in the following circumstances:

- If it ought not to have been issued, in other words the absence has been subsequently authorised by the school or
- It ought not to have been issued to the person named as the recipient or
- It contains “material errors” or
- If after the expiry of 28 days the penalty notice remains unpaid and the local authority decided not to prosecute the parent.

Where a penalty notice has been withdrawn in accordance with the above, notice of the withdrawal shall be given to the recipient and any amount paid by way of penalty in the pursuance of that notice shall be repaid to the person who paid it. No proceedings shall be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued or for an offence under Section 444(1A) of the Education Act 1996 arising out of the same circumstance.

For more information about penalty notices for poor school attendance contact the Child Employment and Enforcement Officer on 01204 338173.