



# **PENALTY NOTICES**

# **CODE OF CONDUCT**

Revised October 2019

**Derbyshire County Council  
Children's Services**

## **DERBYSHIRE COUNTY COUNCIL**

### **CHILDREN'S SERVICES**

#### **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 (DCC) therefore has a statutory obligation to challenge parents who are failing in their duty, and this includes a 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. The Anti-Social Behaviour Act 2003 introduced legislation for local authorities to issue penalty notices to the parents of pupils who have unauthorised absence from school. Penalty notices offer the opportunity for early intervention to prevent parentally condoned absence before it becomes entrenched.

#### **PURPOSE**

3. 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 DCC operates these powers.

## LEGISLATION AND GUIDANCE

### Legal Basis for Issuing Penalty Notices<sup>1</sup>

4. The Anti-Social Behaviour Act 2003, section 23, sub-section (1) added two new sections (444A and 444B) after section 444 of the Education Act 1996. These new sections introduced penalty notices as an alternative to prosecution under section 444 and enable parents 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.
5. The parent cannot be prosecuted for the particular offence for which the notice was issued until after the final deadline for payment has passed (28 days<sup>2</sup> after receipt of the notice) and cannot be convicted of that offence if they pay a penalty in accordance with the notice.
6. The penalty is £120 if paid within 28 days of receipt of the notice, reducing to £60 if paid within 21 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, or by leaving it at the parent'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

7. 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

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<sup>1</sup> School attendance - parental responsibility measures. Statutory guidance for local authorities, school leaders, school staff, governing bodies and the police – January 2015

<sup>2</sup> "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 authorisation<sup>3</sup>. 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**

8. In addition to the Anti-Social Behaviour Act 2003, a range of other legal provisions apply to the issuing of penalty notices. The Code takes account of these provisions, which are set out at **Appendix 1** and must be adhered to.

### **CIRCUMSTANCES WHEN A PENALTY NOTICE MAY BE ISSUED**

9. A penalty notice may be issued under any of the following circumstances:
  - If a child is absent from school, during term-time, in order to take leave without the permission of the headteacher
  - If a child has unauthorised absence from school, meets the referral criteria and their parent has failed to improve the situation
  - If a child is persistently late for school, after the close of register, and this absence is marked as unauthorised.
  - If a child, who has been excluded from school, is seen in a public place, without adult supervision, in school time during the first 5 days of a fixed period of exclusion or a permanent exclusion.

Education Welfare managers have the discretion to identify other circumstances where a penalty notice may be used as a suitable intervention.

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<sup>3</sup> School attendance - Guidance for maintained schools, academies, independent schools and local authorities – July 2019

### Unauthorised leave in term-time

10. The Education (Pupil Registration) (England) 2006 Regulations (as amended by the Education (Pupil Registration) (England) (Amendment) Regulations 2013) states that headteachers cannot grant leave of absence during term-time, including holidays, unless there are exceptional circumstances. If leave is granted, headteachers should determine the number of school days a child can be away from school. All schools and academies should have a published policy statement which outlines the schools expectations for attendance.
11. Headteachers should consider each request for leave on a case-by-case basis and use the information provided at the time to determine if the reason given meets their criteria for exceptional circumstances.
12. In declining any request for leave of absence to be taken in term-time, the headteacher should formally notify parents that not only will the absence be categorised as unauthorised but also that each parent may be served with a penalty notice for each child.
13. Headteachers are expected to abide by the regulations and request the issue of a penalty notice when a child takes leave of absence from school without prior permission.
14. The education welfare service can serve a penalty notice for any period of leave during term-time that has not been authorised by the headteacher. This is regardless of a child's wider school attendance.
15. There is no requirement for the LA to issue a formal warning in advance of a penalty notice for leave in term-time being issued.
16. Where there is more than one person liable for the offence, a separate notice may be issued for each person.

### Unsatisfactory School Attendance

17. Where the issue of a penalty notice is being considered by a school or academy for unsatisfactory school attendance, parents must be issued with a warning letter stating that failure to improve attendance will result in a penalty notice and may lead to prosecution. The warning letter will indicate the period of time over which improvement is expected (minimum 15 school days) in a prescribed format and will advise on how to make representations to the school. **Note: These procedures will not apply in cases of unauthorised leave of absence taken during term-time.**
18. Prior to issuing a penalty notice warning letter schools and academies must ensure that the persistent absence threshold is met with the child's attendance register showing at least 5 sessions of unauthorised absence in the previous 5 weeks

19. Before the education welfare service considers a request for the issue of a penalty notice for unsatisfactory school attendance from a school or academy they must satisfy themselves of the following:

- The threshold criteria was met at the point the penalty warning letter was issued
- There is evidence to show that a school or academy has made reasonable attempts to contact the parent to offer support to improve the situation prior to issuing the penalty notice warning letter.
- The parent has been made aware of their legal responsibilities in relation to school attendance.
- There is evidence to show that the parent has failed to engage meaningfully with the school or academy.
- There has been no significant improvement in the child's attendance, during the period of time stipulated in the penalty notice warning letter, calculated on the basis of unauthorised absence only.
- The school or academy has consulted with other agencies supporting the family about the possibility of legal proceedings
- There is an up-to-date attendance record available which shows that the absences have been marked as unauthorised and indicates the reason why.
- There are no current legal proceedings which would preclude the issue of a penalty notice.

### **Excluded Child Found in a Public Place**

20. Before the education welfare service considers a request for the issue of a penalty notice in respect of a child found unsupervised in a public place during school hours, during the first 5 school days of a fixed term or permanent exclusion, they must satisfy themselves of the following:

- The parent has been made aware, by letter, of their duty to ensure their child is not present in a public place
- There is a signed statement from the referrer clearly detailing the circumstances of the case

### **Other Circumstances**

21. Where a request for the issue of a penalty notice is received for other circumstances education welfare managers will require evidence to show that the reason for issue is appropriate.

## **PROCEDURES**

### **Issuing Penalty Notices**

22. The procedures for issuing penalty notices fall within an established framework operated by the education welfare service who undertake careful assessment of referrals to agreed standards with appropriate documentation.

23. Where the criteria for unauthorised absence has been met, a penalty notice will be issued unless:
- The parent is able to evidence that one or more of the following circumstances apply:
    - The child's absence is authorised
    - The child was sick and satisfactory medical evidence is provided
    - The day is set apart for religious observance
    - Other unavoidable cause
24. The issuing of penalty notices is a central administrative function. This avoids the possibility of parents receiving penalty notices from more than one source for the same period of unauthorised absence. Also, as the LA must retain the revenue generated by the scheme to fund its operation, it would be unreasonable to expect schools or the police to bear the burden of responsibility for issuing notices and the associated costs.
25. Penalty notices will be issued by first class post.
26. No parent will be issued with more than two penalty notices per child in any one twelve month period. Thereafter, parents may be liable to other statutory action.

### **Monitoring and Taking Legal Proceedings**

27. The education welfare service will monitor all cases where penalty notices have been issued to ensure that:
- There is no duplication
  - The maximum number to be issued, i.e. two per child per parent in any twelve month period, is not exceeded.
28. The education welfare service will keep a record of:
- All penalty notices issued
  - 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 education welfare service will notify schools and academies of the outcome.

29. 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 may be instigated. Prosecution will be brought under Section 444 of the Education Act 1996.

30. The education welfare service will be responsible for managing the processes required for statutory action.
31. 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-attendance payment.
32. 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
  - It is necessary to contradict a false impression given by the defendant
  - The defendant attacks the character of another person.

## Revenue

33. Penalty notices are issued in a prescribed format. Parents 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 Finance division.
34. There is:
  - No reminder of non-payment
  - No opportunity to pay in instalments and
  - No right of appeal.

Failure to pay may result in prosecution.

35. The education welfare service will produce an annual audited statement of revenue collected from penalty notices. The revenue will be used to cover the costs of administering the scheme or bringing a prosecution arising from non-payment. Regulation 23 of the Education (Penalty Notices) (England) Regulations 2007 states that revenue not so used must be paid to the Secretary of State.

## WITHDRAWAL

36. 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. 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**

37. The LA will monitor the procedures for issuing penalty notices to ensure that they are applied fairly and consistently in accordance with the Human Rights Act 1998 and the Equality Act 2010 as well as other relevant legislation, regulations and statutory guidance.

## **APPENDIX 1**

### **LEGISLATION AND GUIDANCE**

Children Act 1989

Education Act 1996

Crime and Disorder Act 1998

Human Rights Act 1998

Anti-Social Behaviour Act 2003

Criminal Justice Act 2003

The Education (Pupil Registration) (England) Regulations 2006  
The Education (Penalty Notices) (England) Regulations 2007  
Equality Act 2010

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

School Attendance – parental responsibility measures. Statutory guidance for local authorities, school leaders, school staff, governing bodies and the police - January 2015

Data Protection Act 2018

School Attendance – Guidance for maintained schools, academies, independent schools and local authorities - July 2019