



PENALTY NOTICES

CODE OF CONDUCT

Penalty Notice Code of Conduct

1. Legal Basis:

Section 444A and 444B of the Education Act 1996 (introduced by section 23 of the Anti-social Behaviour Act 2003) introduced penalty notices as an alternative to prosecution under section 444. Parents may discharge potential liability for conviction for an offence under section 444 by paying a penalty. There is no legal obligation to issue a penalty notice before proceeding to prosecution.

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 their 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. These days of exclusion 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. This notice will be combined with the notice the school must issue when a child is excluded. The parent is responsible for the child during the specified days upon receipt of the notice. Section 105 allows for a penalty notice to be given to a parent guilty of an offence under section 103. The school must have notified the parent at the time of the exclusion of their duty and the days to which it relates.

The education-related provisions of the Anti-social Behaviour Act 2003 apply to all parents who fall within the definition set out in section 576 of the Education Act 1996. ‘Parent’ means all natural parents, whether they are married or not; and includes any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person; and 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. Throughout this document, references to ‘parent’ mean each and every parent coming within the definition (whether acting jointly or separately).

2. School Attendance Legislation

Under section 7 of the Education Act 1996, parents are responsible for making sure that their children of compulsory education age* receive efficient full-time education that is suitable to the child’s age, ability and aptitude and to any special educational needs the child may have. This can be by regular attendance at school, alternative provision or by education otherwise.

If it appears to the LA that a child of compulsory education age is not receiving a suitable education, either by regular attendance at school or otherwise, then under section 437 of the Education Act 1996 they must begin procedures for issuing a School Attendance Order.

If a child of compulsory education age fails to attend regularly at a school at which they are registered or at alternative provision made for them then the parent may be guilty of an offence under section 444 of the Education Act 1996.

Under section 447 of the Education Act 1996 a LA must consider applying for an Education Supervision Order (ESO) under section 36 of the Children Act 1989 before prosecuting a parent under section 444. A LA may apply for an ESO instead of or as well as prosecuting the parent.

3. Circumstances where a Penalty Notice may be Issued:

The Education (Penalty Notices) (England) Regulations 2007 set the framework for the operation of the penalty notice scheme. The LA has the prime responsibility for developing the protocol within which all partners named in the Act will operate. The Education Legal Service delivers this LA responsibility and penalty notices will only be issued within this Code of Conduct. The issue of penalty notices must conform to requirements of the Human Rights Act 1998.

***Compulsory education age is defined as beginning from the start of the first term commencing after the child's fifth birthday. A child continues to be of compulsory education age until the last Friday of June in the school year that they reach sixteen.**

Parents and pupils are supported at school and by LA officers to overcome issues that prevent regular school attendance through a wide range of intervention strategies. Where this intervention fails penalty notices are an appropriate intervention to get pupils back into school or alternative education. They are also an appropriate sanction for a parent who has failed to ensure their child is not found in a public place while excluded; and, where a parent is judged capable of securing their child's attendance but is not willing to take responsibility for doing so.

A penalty notice can only be issued in cases of unauthorised absence. Use of penalty notices will be restricted to two per pupil per academic year. In situations where a parent meets the criteria for more than one penalty notice to be issued, because there is more than one child with irregular school attendance, multiple issue may occur.

Circumstances in which a penalty notice might be issued are:

- Irregular school attendance;
- Overt truancy (including pupils found during truancy sweeps);
- Parentally-condoned absences;
- Unauthorised holidays in term-time;
- Persistent late arrival at school (after the register has closed);
- Being in a public place during the first five days of an exclusion; and,
- Pupils on the "Fast Track to Attendance" scheme.

To ensure consistent service of penalty notices the following criteria will apply:

- Where there are at least 10 sessions (half days) recorded as unauthorised absence due to a holiday in term-time; or
- Where a child has at least 10 sessions (half days) lost to unauthorised absence during the previous six months period. A suitable circumstance is where a parent continually fails to provide a reasonable or acceptable explanation for a pupil's absence; or where a pupil has a record of unauthorised absence from school and the circumstances appear to have been avoidable; or
- Where a child who has been excluded is present in a public place during the first five days. A penalty notice will be issued on the first occasion if appropriate after considering the parents action or inaction which led to the child being in a public place at a proscribed time, the parent's justification if any, and the parent's attitude to having failed to meet their statutory responsibility.

4. Procedure for Issuing Penalty Notices:

Penalty notices will only be issued within the terms of the Code of Conduct. The LA will ensure that penalty notices are properly issued and only issued for offences where the LA is willing and able to prosecute. The Education Welfare Service is responsible for the administration and issue of penalty notices in Wakefield.

The Education Welfare Service will accept requests to issue penalty notices from schools, West Yorkshire Police, the Education Welfare Service and neighbouring LAs. These requests will be actioned provided that:

- All relevant information is supplied in the specified manner;
- The circumstances of the pupil's absence meets all the requirements of this Code of Conduct; and,
- The issue of a penalty notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.

The Education Welfare Service will respond to all requests within 10 school days of receipt and where the criteria is met will either:

- Issue a formal written warning to the parent of the possibility of a penalty notice being issued identifying the period during which the pupil must have no unauthorised absence;
- Identify the record of unauthorised absences which gives rise to the formal warning; and,
- Issue a penalty notice at the end of the period if the pupil has unauthorised absences during the identified period.

Or, with regard to unauthorised holidays during term time:

- Issue a formal written warning to the parent that they will be liable to receive a penalty notice because they have applied for authorisation of a holiday in term time and this has not been agreed.
- Identify the record of unauthorised absences which gives rise to the issue of a penalty notice; and,
- Issue a penalty notice.

Or, with regard to excluded pupils:

- Issue a formal written notification to the parent that they will receive a penalty notice because the child who has been in a public place during the first five days during school hours without reasonable justification;
- Identify the period of exclusion as specified in the notice from school which gives rise to the issue of a penalty notice; and,
- Issue a penalty notice.

5. Payment of Penalty Notices:

Arrangements for payment will be detailed on the penalty notice. Payment of a penalty notice is £50 if paid within 28 days of receipt of the notice, increasing to £100 if paid after 28 days but within 42 days of receipt of the notice. If the penalty notice is not paid in full by the end of the 42 day period the LA must either prosecute under section 444 of the Education Act 1996 or withdraw the notice. Where a penalty notice is withdrawn the recipient must be informed in writing.

Payment of a penalty notice discharges liability for prosecution for the offence to which the notice relates. Neither the fact that a penalty notice was issued and paid nor the pattern of unauthorised absence or presence in a public place of an excluded pupil to which a paid notice relates can be submitted as evidence in a prosecution for any subsequent truancy or excluded pupil offence.

If a penalty is not paid, the fact a notice was issued and unpaid can be used as evidence in a subsequent prosecution. The unauthorised absence for which an unpaid notice was issued can also be used as evidence for a prosecution.

6. Procedure for Withdrawing Penalty Notices

LAs may only withdraw a penalty notice where:

- It ought not to have been issued, i.e. where it has been issued outside the terms of the local Code of Conduct or where no offence has been committed; or
- It has been issued to the wrong person; or
- It contains material errors.

7. Policy and Publicity

The use of penalty notices is included in school's attendance and behaviour policies and will be brought to the attention of all parents.

The use of penalty notices as a sanction is included in the LAs Attendance Strategy.

The LA will include information on the use of penalty notices and other attendance enforcement sanctions in promotional and public information material.

8. Administration of the Scheme

The LA is responsible for the overall administration of penalty notices. The Code of Conduct ensures that the powers are applied consistently and fairly across the LA area and that suitable arrangement for the administration of the scheme has been made.

9. Retention of Receipts and Revenue Collection

The LA retains revenue from the penalty notice scheme to cover the costs of issuing or enforcing notices or the cost of prosecuting recipients who do not pay.

10. Reporting and Review:

The Education Welfare Service will maintain accurate records identifying the implementation of penalty notices.

The Education Welfare Service will review penalty notice intervention at regular intervals and make amendments as required.

Sue Phillips
Principal Education Welfare Officer
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