



Code of Conduct

for issuing Penalty Notices in respect of unauthorised absence from school

July 2015

Education, Health and Social Care Directorate

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1. Legal Background

- 1.1. Sections 444A and 444B of the Education Act 1996 empower Authorised Officers of the Local Authority, headteachers (and deputy and assistant headteachers if authorised by them) and the Police (including community support officers and accredited persons) to issue Penalty Notices in cases of unauthorised absence from school. Reference in this Code of Conduct to the "Authorised Person" applies to all persons authorised under current law to issue Penalty Notices.
- 1.2. The Education (Penalty Notices) (England) Regulations 2004 (as amended) require the Local Education Authority to consult with governing bodies, headteachers and the Chief Officer of Police and develop a code of conduct for use when issuing Penalty Notices. Any person issuing a Penalty Notice must do so within the terms of this code of conduct ("the Code of Conduct").
- 1.3. These provisions apply to all parents who fall within the definition of a 'parent' as set out in section 576 of the Education Act 1996. By virtue of this section 'parent' includes: all natural parents, whether they are married or not; any person or body who has Parental Responsibility for a child (as defined by the Children Act 1989) and any person who, although not a natural parent, has care of a child. Having care of a child means that a person with whom a child lives and who looks after a child, irrespective of what their relationship is with that child.

2. Rationale for issuing Penalty Notices

- 2.1. Regular and punctual attendance at school is a legal requirement and is essential if pupils are to maximise their educational opportunities.
- 2.2. Parents/carers can commit an offence if they fail to ensure the regular and punctual attendance of their child at the school at which the child is registered, unless the absence has been authorised by the school.
- 2.3. Although current sanctions to enforce regular school attendance exist under Section 444 of the Education Act 1996 and Section 36 of the Children Act 1989, the introduction of Penalty Notices is aimed at offering a swift intervention which may be used to combat cases of unauthorised absence before the problem becomes too entrenched.
- 2.4. The purpose of the Code of Conduct is to ensure that these powers are applied consistently and fairly across the area of Cornwall Council ("the Council") and that suitable arrangements are in place for the administration of the scheme.
- 2.5. Authorised Persons are headteachers or their designated deputies or assistant headteachers. Authorised Persons are not obliged to issue Penalty Notices. Designated officers of Cornwall Council's Education, Health and Social Care Directorate will automatically consider the use of Penalty Notices in all cases of unauthorised absence at the level defined below.
- 2.6. Schools are already required to provide attendance data via census returns. This requirement continues to apply notwithstanding this Code of Conduct.

- 2.7.** The Police can also refer concerns about a pupil's absence from school to the Education Health and Social Care Directorate without having to recommend a Penalty Notice.

3. Circumstances when a Penalty Notice may be issued

- 3.1.** Penalty Notices can only be issued in cases where a pupil of compulsory school age has been absent and the absence has not been authorised by the school or where the pupil has persistently arrived late after the register has been closed. The minimum level of absence that is necessary before a Penalty Notice can be issued in any circumstance is 10 or more half-day sessions, i.e. the equivalent of 5 school days, of unauthorised absence in any 100 sessions (10 week period). In cases where more than 20 sessions of unauthorised absences occur within 100 sessions (10 week period), prosecution under the Education Act (1996) should be considered as an alternative to a Penalty Notice.
- 3.2.** The Education (Pupil Registration) (England) Regulations 2006 allowed headteachers to grant leave of absence for the purpose of a family holiday during term time in "special circumstances" of up to 10 school days leave per year. Headteachers could also grant extended leave for more than 10 school days in exceptional circumstances.
- 3.3.** Amendments to the 2006 Regulations remove references to family holiday and extended leave as well as the statutory threshold of 10 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.
- 3.4.** Penalty Notices are intended to be used in tackling parentally condoned absence where it is reasonable to expect that the parent can ensure the child's regular attendance but they are not willing to take responsibility for doing so e.g. where a parent is not cooperating with advice or support offered to help improve the child's attendance. Furthermore, in accordance with Department for Education (DfE) guidance, they should only be issued when to do so is likely to secure an improvement in the child's future attendance.
- 3.5.** Prior to the issuing of a Penalty Notice, the following criteria must be considered and satisfied:
- Will this be an effective measure in helping the pupil return to School and/or ensure future regular attendance?
 - Is it reasonable to expect that the parent is capable of ensuring the pupil's regular attendance?
 - Is there evidence of a lack of parental cooperation in responding to the advice/support offered?
 - When considering whether or not a Penalty Notice is appropriate, it should also be borne in mind that if the parent were to fail to pay the

Penalty:

- the parent could not be prosecuted for the non-payment of the penalty itself but would have to be prosecuted for the original offence to which the Penalty Notice relates; and
- prosecution proceedings for the particular offence for which the Penalty Notice was issued could not be initiated until after the final deadline for payment has passed i.e. 28 days after receipt of the Notice.

4. Steps to be taken before Authorised Persons issue Penalty Notices

- 4.1.** Designated officers of the Education, Health and Social Care Directorate will act as Authorised Persons and will be responsible for issuing Penalty Notices on behalf of the Council.
- 4.2.** Although the legislation empowers headteachers to issue Penalty Notices, it is important that there is a consistency of approach across the County. It is not intended that the issue of a Penalty Notice is treated as an 'on the spot' remedy. There is always potential for a criminal prosecution and there are evidential issues to be considered. Schools will therefore, in the first instance, report unauthorised absences to their Education Welfare Officer or equivalent Officer within the school who is responsible for attendance so that the appropriate steps can be taken. Only in exceptional circumstances will a school issue a Penalty Notice and, even then, it will not do so without prior consultation with the Local Authority.
- 4.3.** The Police should decide who, within the Police or agents acting on their behalf in relation to Penalty Notices, should issue Penalty Notices.

5. Procedure for issuing a Penalty Notice

5.1. Who can issue Penalty Notices?

Any Authorised Person may issue a Penalty Notice. In doing so, however, the Authorised Person must comply with the Code of Conduct.

5.2. When can Penalty Notices be issued?

- when a pupil has had 10 or more half day sessions i.e. the equivalent of five school days, of unauthorised absence during a period of 100 sessions (10 school weeks) and parent has been previously warned (as outlined in 5.3). This includes term-time holidays where the parent has been informed that a Penalty Notice may result from such unauthorised absences. In this regard, a parent must be warned by the school if a request for absence is not being authorised in the first instance for absences of at least 10 or more sessions.

- when the circumstances of the pupil's absence meets all the requirements and criteria in the Code of Conduct; and
- when the issuing of a Penalty Notice does not conflict with other intervention strategies in place or other sanctions already being processed.

5.2.1. Save in certain circumstances (see paragraph 5.3 below), a Penalty Notice will not be issued as an 'on the spot' response. This is to ensure that the criteria and requirements of the Code of Conduct have been met.

5.3. How will Penalty Notices be issued?

5.3.1. In cases where an Authorised Person has concerns about a pupil's attendance, they would normally ensure that contact has been made with the parent in the first instance in order to try to resolve any difficulties. Where the minimum defined period of unauthorised absence has occurred however, an Authorised Person may consider the issuing of a Penalty Notice. Where an Authorised Person is considering issuing a Penalty Notice they should bear in mind that the response to a first offence should be a formal warning rather than a Penalty Notice. Therefore, the Authorised Person should issue a warning on a first offence by writing to the parent (as defined in para.1.3 above) and include the following:

- details of the pupil's absence;
- an offer to meet with the parent to discuss the concerns and to provide advice and support in an attempt to resolve any difficulties;
- a statement of the legal responsibilities of the parent regarding attendance;
- the consequences for the parent in failing to ensure the child's regular attendance, in particular warning that further unauthorised absences could result in a Penalty Notice or prosecution;
- contact details for officers in Local Offices of the Education, Health and Social Care Directorate who may also be able to offer their support and advice;
- an expectation that as soon as possible and in any event within 15 school days of receipt of the warning letter that the level of attendance will have significantly improved and that this improvement will be maintained thereafter.

5.3.2. In all cases involving a child in the care of the Local Authority (a 'Child in Care' or a child 'looked after'), the Authorised Person must also send a copy of the warning letter to the child's social worker as well as to the Director of Children's Services for the Local Authority which has responsibility for the Child in Care.

5.3.3. If this warning and the offer of support does not result in a significant improvement in attendance and the required amount of unauthorised absences are recorded within one year of the warning (see 5.2), then the Authorised Person can consider issuing a Penalty Notice. The Authorised Person should consider every aspect of a pupil's circumstances before deciding whether to issue a Penalty Notice. They should make a record of their considerations and decision when issuing a Penalty Notice.

- 5.3.4.** If, after a warning letter has been issued, there is sufficient irregular attendance to merit a Penalty Notice being issued, this must be issued promptly. It must be borne in mind that any subsequent prosecution can only be dealt with in a magistrates' court which means time limits apply i.e. the information must be laid within 6 months of the offence being committed.
- 5.3.5.** Any Penalty Notice issued must be addressed to one parent but a Penalty Notice may be issued to each parent liable for the offence or offences.
- 5.3.6.** An Authorised Person has discretion when deciding whether to issue one or more parents of a child with a Penalty Notice. This is to enable account to be taken of the specific circumstances in individual cases.
- 5.3.7.** The maximum number of incidents where a Penalty Notices can be issued to any one parent during a 12 month period is two, irrespective of the number of children not attending school on a regular basis.
- 5.3.8.** In families where more than one child is not attending regularly, multiple issues should be the subject of careful consideration by the Authorised Person.
- 5.3.9.** It is important to avoid the issuing of duplicate Penalty Notices and to ensure that a Penalty Notice is not issued when a prosecution is being planned or has been initiated for the offence relating to the specific period of unauthorised absence. Therefore , before issuing a Penalty Notice all Authorised Persons must liaise with:
- Cornwall Council's Education, Health and Social Care Directorate;
 - any Local Authority, including Cornwall Council, which is involved with the child;
 - any Local Authority, including Cornwall Council, which has a statutory responsibility if the child is 'looked after'; and
 - any Local Authority within whose area the child resides.
- 5.3.10.** An Authorised Person must promptly provide the Education, Health and Social Care Directorate with copies of the paperwork relating to the decision to issue a Penalty Notice e.g. the warning letter sent, any records of considerations and decisions made etc.
- 5.3.11.** If the unauthorised absence is continuing but the Authorised Person decides not to issue a Penalty Notice, then they may liaise with an officer of the Education, Health and Social Care Directorate to consider how best to proceed.

5.4. Where an Authorised Person recommends that the Council should issue a Penalty Notice

- 5.4.1.** Although designated officers of the Education, Health and Social Care Directorate will be responsible for issuing Penalty Notices on behalf of the Council, any Authorised Person may refer a case to the Education, Health and Social Care Directorate with a recommendation that a Penalty Notice be issued.
- 5.4.2.** Prior to making a recommendation for a Penalty Notice to be issued, the Authorised Person would normally send the parent a warning letter containing

the information set out in Paragraph 5.3 above. The Authorised Person should then monitor the pupil's attendance. If the pupil's attendance is not improving, the Authorised Person should send the relevant paperwork to the Education, Health and Social Care Directorate. This will include, where applicable, a copy of the warning letter as well as the reasons why the Authorised Person recommends that the Education, Health and Social Care Directorate should issue a Penalty Notice and in particular, why they believe that a Penalty Notice would be likely to secure an improvement in the pupil's future attendance. This recommendation can be made before the expiration of the 15 school day timescale provided for in the warning letter.

- 5.4.3.** Designated officers of the Education, Health and Social Care Directorate will consider the recommendation to issue a Penalty Notice as well as any alternative means of intervention it may take. This would include the offer of family support, a parenting contract, referral to another agency or prosecution.

6. Payment of Penalty Notices

- 6.1.** Arrangements for the payment will be detailed on the Penalty Notices themselves. Penalties are to be paid to Cornwall Council.
- 6.2.** If paid within 21 days of receipt of the Penalty Notice, the Penalty is £60. If not paid within 21 days the Penalty automatically increases to £120 if paid within 28 days. Any revenue resulting from payment of Penalties will be retained by Cornwall Council to help cover the costs of issuing and enforcing Penalty Notices and the cost of prosecuting recipients who do not pay.
- 6.3.** Payment of a Penalty discharges a parent's liability for the period in question and means that they cannot subsequently be prosecuted for the period covered by the Penalty Notice.

7. Non-payment of Penalty Notices

- 7.1.** The non-payment of a Penalty within the prescribed period of time will automatically lead to a prosecution under section 444 of the Education Act 1996. The prosecution cannot be for the non-payment of the Penalty.

8. Withdrawal of a Penalty Notice

- 8.1.** There is no statutory right of appeal against the issuing of a Penalty Notice. Furthermore, once issued, a Penalty Notice can only be withdrawn if it is established that it ought not to have been issued e.g. where it has been issued outside the terms of the Code of Conduct, where no offence has been committed or where it has been issued to the wrong person.
- 8.2.** Where an Authorised Person withdraws a Penalty Notice, they must notify the Education, Health and Social Care Directorate and explain the reasons for the withdrawal.

9. Arrangements for co-ordination between the Council, other Local Education Authorities (where appropriate), the Police and Authorised Officers

- 9.1.** The Education, Health and Social Care Directorate will monitor the use of Penalty Notices. This will help ensure consistent and equitable delivery and allow cohesion with other enforcement sanctions.
- 9.2.** The Education, Health and Social Care Directorate will provide annual feedback to headteachers and the Police (and neighbouring LEAs where appropriate) on the use of Penalty Notices and resulting outcomes.
- 9.3.** Where it appears to the Council that the Code of Conduct requires amendment, the Education, Health and Social Care Directorate will consult with governing bodies, headteachers, the Police, and any other person or body it deems appropriate, regarding the proposed changes.

Further information can be found at:
www.cornwall.gov.uk/educationandlearning/schoolsandcolleges

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