



Code of Conduct

For Issuing Penalty Notices in
Respect of Unauthorised Absence
from School

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Children, Families & Adults

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1 Legal Background

1.1. Sections 444A and 444B of the Education Act 1996 empowers 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").

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 / Assistant Headteachers. Authorised Persons are not obliged to issue Penalty Notices. Designated officers of Cornwall Council's Children, Families and Adults 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 Children, Families and Adults 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 absence occur within 100 sessions (10 week period), prosecution under the Education Act (1996) may 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 "exceptional circumstances" of up to ten school days leave per year. Headteachers could also grant extended leave for more than ten school days in exceptional circumstances.

3.3 However, amendments to the 2006 regulations remove 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.

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 Children, Families and Adults Directorate will act as Authorised Persons and will be responsible for issuing Penalty Notices on behalf of the Council.

4.2 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.

5. Procedure for issuing a Penalty Notice

5.1 Who can issue Penalty Notices?

Any Authorised Person may issue a Penalty Notice. In Cornwall, designated officers of the Children, Families and Adults Directorate will be responsible for issuing Penalty Notices on behalf of the Council. 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 5 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.
- when the circumstances of the pupil's absence meets 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?

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 generally be a formal warning from the school rather than a Penalty Notice.

Therefore, the school should generally issue a warning on a first offence by writing to the parent 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 Children, Families and Adults Directorate who may also be able to offer their support and advice.

5.3.1 In all cases involving a child in care, the school should 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.

5.3.2 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 six months of the warning (see 5.2), then the school should consider issuing a Penalty Notice. The school and the Authorised Person should consider every aspect of a pupil's circumstances before deciding whether to issue a Penalty Notice. They should also make a record of their considerations and decision when issuing a Penalty Notice.

5.3.3 If, after a warning letter has been issued, there is sufficient irregular attendance to merit a Penalty Notice being issued, then it 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 before the court within 6 months of the offence being committed.

5.3.4 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.

5.3.5 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.

5.3.6 The maximum number of incidents where Penalty Notices can be issued to any one parent during a 12 month period is two, per child.

5.3.7 In families where more than one child is not attending regularly, multiple issues should be the subject of careful consideration by the Authorised Person.

5.3.8 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. The Cornwall Council Authorised Person will liaise with:

- any other Local Authority which is involved with the child;
- any other Local Authority which has a statutory responsibility if the child is 'looked after'; and
- any Local Authority within whose area the child resides.

5.3.9 Persons requesting a Penalty Notice must promptly provide the Children, Families and Adults Directorate with copies of the paperwork relating to the request to issue a Penalty Notice e.g. the warning letter sent, any records of considerations and decisions made, etc.

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

5.4.1 Designated officers of the Children, Families and Adults Directorate will be responsible for issuing Penalty Notices on behalf of the Council. Schools and the police may also refer cases to the Children, Families and Adults Directorate with a request for a Penalty Notice to be issued.

5.4.2 Prior to making a request for a Penalty Notice to be issued, the school would normally send the parent a warning letter containing the information set out in Paragraph 5.3 above. The school should then monitor the pupil's attendance. If the pupil's attendance is not improving, the school should send the relevant paperwork to the Children, Families and Adults Directorate. This will include, where applicable, a copy of the warning letter, as well as the reasons why the school are requesting that the Children, Families and Adults Directorate 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.

5.4.3 Designated officers of the Children, Families and Adults Directorate will consider the recommendation to issue a Penalty Notice as well as any alternative means of intervention it may take. This could include recommending to the school that they consider 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, Code of Conduct For Issuing Penalty Notices in Respect of Unauthorised Absence from School

if paid within 28 days. Any revenue resulting from payment of Penalties will be retained by the 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 generally lead automatically 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; it contains material errors; or where it has been issued to the wrong person.

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

9.1 The Children, Families and Adults 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 Children, Families and Adults 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 Children, Families and Adults Directorate will consult with governing bodies, Headteachers, the police, and any other person or body it deems appropriate, regarding the proposed changes.

Document information

Contacts:

Policy prepared by Andrew Simpson, Acting Principal Education Welfare Officer, July 2015

Amended by Sara Griffiths, Senior Education Welfare Officer, and Daisy French, Penalty Notice Officer, Sept 2017

Further information can be found at

www.cornwall.gov.uk/educationandlearning/schoolsandcolleges

Alternative formats

If you would like this information in another format please contact:

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