

Newcastle upon Tyne Local Authority
Code of Conduct - Penalty Notices
(for irregular attendance at school or alternative educational provision)

1. Legal Basis

- 1.1 Section 23 of the Anti-social Behaviour Act 2003 added sections 444A and 444B to the Education Act 1996. These sections introduced penalty notices as an alternative to prosecution under section 444 for the offence of failing to secure the regular attendance at school (or alternative educational provision) of a registered pupil. Parents may discharge potential liability for conviction by paying a penalty.
- 1.2 The use of penalty notices is governed by regulations (SI 2007 No. 1867 The Education (Penalty Notices) (England) Regulations 2007) as amended.
- 1.3 The issuing of penalty notices must be in compliance with the Human Rights Act 1998 and all Equal Opportunities legislation.
- 1.4 The Local Authority (LA) has a duty to draw up a code of conduct which sets out the measures to ensure consistency in the issuing of penalty notices. The LA will consult with schools and the police when preparing the code of conduct.
- 1.5 The legislation empowers LA officers, head teachers (or deputy or assistant head teachers authorised by the head teacher) and the police to issue penalty notices. There is no requirement for schools or the police to issue penalty notices. In Newcastle upon Tyne, penalty notices will be issued by the Attendance Service, head teachers or a deputy or assistant head teacher authorised by the head teacher.
- 1.6 Head teachers wishing to issue, or to authorise their deputy and assistant head teachers to issue, penalty notices must first gain the agreement of their governing body. The school's attendance policy (where applicable) must be revised accordingly.
- 1.7 Any person authorised to issue a penalty notice in Newcastle upon Tyne must do so in accordance with this code of conduct. Penalty notices will be issued following a standard procedure and in the prescribed form as provided by the LA.
- 1.8 All revenue from the penalty notice scheme will be retained by the LA (as determined by Regulation) for the purpose of issuing and enforcing penalty notices and prosecuting recipients who do not pay.
- 1.9 The Attendance Service will administer the penalty notice scheme on behalf of the LA.

2. Rationale

- 2.1 Regular attendance at school is essential if pupils are to take advantage of their educational opportunities.
- 2.2 Under Section 7 of the Education Act 1996, a parent¹ is responsible for making sure that their child of compulsory school age receives efficient

¹ The education-related provisions of the Anti-social Behaviour Act apply to all parents who fall within the definition set out in section 576 of the Education Act 1996. This defines 'parent' as: all natural parents, whether they are married or not; any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or

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 or otherwise.

- 2.3 If a child of compulsory school age who is registered at a school fails to attend regularly then the parent is guilty of an offence under Section 444(1) of the Education Act 1996 providing that the absences have not been authorised by the school.
- 2.4 The LA has a duty to enforce parental responsibility for attendance and the Attendance Service carries out this responsibility on behalf of the LA. The Attendance Service promotes regular attendance at school through the appropriate use of legal sanctions.
- 2.5 The legal sanctions available under Section 444 of the Education Act 1996 and Section 36 of the Children's Act 1989 in relation to school attendance have been supplemented by the power to issue penalty notices. These powers are used to promote better school attendance.

3. Circumstances in which a penalty notice may be issued

Irregular attendance at school

- 3.1 It is only the commission of the offence (failure to secure regular attendance) that can trigger the use of a penalty notice. The proof required that the offence has been committed is the same as that which would be required for a prosecution. Non-payment of a penalty notice must be followed up by prosecution under Section 444(1) Education Act 1996.
- 3.2 In Newcastle, the issuing of penalty notices is incorporated in the LA's prosecution procedure. Penalty notices will be used as an alternative to prosecution in appropriate cases in accordance with this code of conduct.
- 3.3 A penalty notice can only be issued for unauthorised absences. A penalty notice will only be issued after parents have been given a written warning. The warning letter will indicate the period of time during which attendance is monitored and improvement is expected. Parents will also be warned about the consequences of failing to ensure regular attendance.

Unauthorised term time holidays.

- 3.4 In cases of unauthorised absence due to holiday taken in term time, head teachers may issue a penalty notice or request in writing that a penalty notice is issued by the LA without the normal warning and monitoring period, for the following reason:

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) and should not be taken to mean that provisions only apply to 'parent ' in the singular.

- the deliberate taking of a holiday in term time without the permission of the school which has created a period of unauthorised absence of at least 10 sessions within the previous three months.

The Local Authority (LA) will only issue Fixed Penalty Notices requested by a school in response to a holiday related unauthorised absence where the school has provided the necessary paperwork and evidence. This paperwork should comprise:

- A copy of the school newsletter or letter sent to all parents during the current Academic year which clearly states that parents may receive a Fixed Penalty Notice or an authorised holiday in term time.
- A copy of the Holiday Request Form submitted by parent, and a copy of the written response sent to the parent by school. In the event the holiday request is being denied the school's response should state the reason why the holiday is unauthorised and should again advise parent that they may receive a Fixed Penalty Notice if they take their child out of school;
- A copy of the letter sent by school to the parent advising that the school has referred the matter to the LA and that a Fixed Penalty Notice may be issued;
- Relevant pupil Attendance or Registration Certificate;
- A witness statement signed by the Head teacher.

Excluded Pupils

3.5 The Education and Inspections Act 2006, Section 103 places a duty on parents in relation to an excluded pupil, 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 term and permanent exclusion. These days are known as the "specified days of exclusion".

- Section 104 of the Act requires schools to notify parents in writing that they are responsible for the child during these days.
- A public place means any highway or any other public place to which the public have access. A school is not a public place for this purpose.
- Where an excluded child is found to be in a public place on one of the "specified days for exclusion", the parent(s)/carers will be given the opportunity to provide reasonable justification prior to issuing the penalty notice.
- The decision as to whether the circumstances for being in a

public place are justified or not will be determined by one of those authorised to issue a penalty notice.

It should be noted that where the individual circumstances of a particular case requires a departure from this code of conduct, this decision will be properly reasoned and documented accordingly.

- 3.6 The use of penalty notices will be restricted to one per parent per child in any twelve month period for unsatisfactory attendance in addition to penalty notices issued for unauthorised holidays taken in term time.
- 3.7 A penalty notice would not be issued in cases where a parent has been subject to previous conviction under Section 444(1) or (1A) Education Act 1996 within the previous twelve months.
- 3.8 The Attendance Service will administer the scheme and will issue penalty notices on behalf of the LA in Newcastle upon Tyne. This will ensure that, as required by The Education (Penalty Notices) (England) Regulations 2007:
 - there is consistency across the city;
 - the issuing of duplicate notices will be avoided;
 - notices will not be issued when proceedings under section 444 of the Act are contemplated or have been commenced by the LA;
 - there is co-ordination between the LA, neighbouring LAs, the police and those officers authorised to issue notices.

4. Procedure for issuing penalty notices

4.1 Penalty notices issued by the LA:

- 4.1.1 Appropriate cases are identified by schools and referred to the LA:
 - attendance is 90% or less and there have been at least 10 unauthorised absences in the previous 10 weeks;
 - parents will have been given the opportunity to enter into a parenting contract with school to improve attendance;
 - schools will have warned parents in writing they are going to make a referral to the local authority as the pupils attendance is a concern;
 - a letter will be sent to parents advising that attendance will be monitored for four school weeks and warning that failure to ensure regular attendance could result in legal sanctions being imposed;
 - if during the monitoring period there are 4 or more unauthorised absences, schools may request that the LA considers issuing a penalty notice or instituting a prosecution;
 - schools will provide supporting evidence, reports and/or witness statements in a format that satisfies current legal and LA requirements. The evidence will always include a registration certificate signed by the head teacher.

4.1.2 The LA will request information from parents in relation to the absences in the monitoring period and will then decide whether to impose a legal sanction.

If the decision of the LA is that an offence has been committed during the monitoring period for which legal action will be taken, the following criteria will determine which sanction will be imposed:

- a penalty notice will be issued if, within the previous 12 months:
 - a) the parent has not been issued with a penalty notice for that child; and
 - b) the parent has not been convicted of an offence in relation to that child under Section 444(1) or (1A) Education Act 1996; or
- a referral will be made for prosecution under Section 444(1) or (1A) Education Act 1996. The LA will also consider whether to apply for an Education Supervision Order instead of or in addition to the prosecution.
- Penalty Notices for Year 11 pupils should not be issued later than the spring term to ensure the process can be concluded. It may prove impossible to prosecute following an unpaid Penalty Notice due to the child attaining school leaving age and in this circumstance, the case would be deemed to fail to meet the public interest criteria.

4.1.3 Penalty notices will be issued by first class post and a certificate of service will be completed for each penalty notice issued. This will ensure that evidence of the offence is lodged with the LA and will reduce any health and safety risk to staff. The Attendance Service will keep a copy and a record of each notice issued.

4.2 Penalty notices issued by a head teacher:

4.2.1 Initial checks:

- schools will check with the LA whether a penalty notice has been issued previously or whether a prosecution under Section 444(1) or (1A) Education Act 1996 has been commenced or is contemplated;
- a penalty notice may only be issued if, within the previous 12 months:
 - a) the parent has not been issued with a penalty notice for that child; and
 - b) the parent has not been convicted of an offence in relation to that child under Section 444(1) or (1A) Education Act 1996.

4.2.2 Appropriate cases are identified by schools:

- attendance is 90% or less and there have been at least 10 unauthorised absences in the previous 10 weeks;
- parents will have been given the opportunity to enter into a parenting contract with school to improve attendance;
- a letter will be sent to parents advising that attendance will be monitored for four school weeks and warning that failure to

ensure regular attendance could result in legal sanctions being imposed;

- the LA will provide schools with model letters to parents containing the minimum information that should be included;
 - if during the monitoring period there are 4 or more unauthorised absences, schools may consider issuing a penalty notice;
- 4.2.3 Schools will request information from parents in relation to the absences in the monitoring period and then the head teacher or authorised deputy or assistant head teacher will decide whether to issue a penalty notice.
- 4.2.4 In cases of unauthorised absence due to holiday taken in term time, the head teacher or authorised deputy or assistant head teacher may issue a penalty notice without the normal warning and monitoring period, for the following reason:
- the deliberate taking of a holiday in term time without the permission of the school which has created a period of unauthorised absence of at least 10 sessions within the previous three months.
- Schools will have evidence that:
- a) the parent understood that permission for the holiday had not or would not be given; and
 - b) the parent had been warned that a penalty notice could be issued.
- 4.2.5 The LA will provide schools with:
- a model letter to send to parents informing them of the decision to issue a penalty notice
 - a model letter to enclose the penalty notice
 - a pro forma and reference number for the penalty notice
 - a model certificate of service
- 4.2.6 Penalty notices will be issued by first class post and a certificate of service will be completed for each penalty notice issued.
- 4.2.7 Within 5 working days of issuing a penalty notice, schools will provide the LA with:
- a copy of the registration certificate signed by the head teacher;
 - a copy of the penalty notice;
 - copies of all relevant documents and letters;
 - witness statement(s) describing the process leading up to and the issue of the penalty notice.

5. Procedure for withdrawing penalty notices

- 5.1 There is no statutory right of appeal against the issuing of a penalty notice. The parent will be advised when they receive the notice that they may make representations to the LA setting out the reasons why they should not be issued with a notice.
- 5.2 Once issued, a penalty notice can only be withdrawn in the following circumstances:
- it ought not to have been issued (for example, the issuing of the penalty notice did not conform with this code of conduct); or
 - it has been issued to the wrong person; or
 - it contains material errors.

5.3 The LA will inform schools that penalty notices have been withdrawn.

6. Payment of penalty notices

6.1 Penalty notices will be served by first class post and will be deemed to have been received on the second working day after posting.

6.2 Arrangements for payment will be detailed on the penalty notice.

The amount of the penalty to be paid shall be:

- £60 if paid within 21 days² of receipt of the notice;
- £120 if paid after 21 days² but within 28 days² of receipt of the notice.

6.3 The LA will retain any 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.

6.4 Payment in full of a penalty notice discharges potential liability for the particular offence for which the notice was issued; parents cannot be convicted of that offence.

6.5 The LA will inform schools that penalty notices have been paid.

7. Non-payment of penalty notices

7.1 If a notice has not been paid in full by the final deadline for payment (28 days² after receipt), the LA will bring a prosecution under Section 444 of the Education Act 1996. In exceptional cases where no prosecution will be brought, the penalty notice will be withdrawn.

7.2 The LA will inform schools that cases have been referred for prosecution or that penalty notices have been withdrawn because no prosecution will be brought.

8. Policy and publicity

8.1 The use of penalty notices as a sanction will be included in the LA's policy on the enforcement of attendance. The LA may include information on the use of penalty notices and other sanctions in promotional/public information material.

8.2 Schools may wish to include reference to the LA's policy on the use of penalty notices and other legal sanctions in their attendance policies.

8.3 Schools which issue penalty notices will include this in their attendance policy.

9. Review

9.1 The Attendance Service will monitor and review the use of penalty notices. Any amendments to the local code of conduct will be subject to consultation with schools and the police.

² Calendar days