



Penalty Notices

Code of conduct for schools

Revised November 2021

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1. Legal framework

Sections 444A and 444B of the Education Act 1996 (the act) empower authorised local authority (LA) officers, headteachers or the police to issue penalty notices (FPNs) in cases of unauthorised absence from school. In Achieving for Children (AfC) that responsibility is held by education welfare officers who are the authorised people acting on behalf of the local authority. In these circumstances, education welfare officers must have reason to believe that a person has committed an offence under section 444(1) of the act.

This provides an alternative to prosecution of parents under Section 444 of the Education Act 1996 and enables parents to discharge potential liability for conviction for that offence by paying a penalty of £60 (if paid within 21 days of receipt of the notice) or £120 (if paid within 28 days of receipt of the notice).

There is no right of appeal against a penalty notice and the imposition of one is not a criminal prosecution. Therefore, the requirement to consider an education supervision order (ESO) is not necessary. Should the penalty notice remain unpaid, or been partially paid, at the end of the 28 day period, the local authority must consider prosecuting the parents for the offence the notice relates to or, in specified circumstances (see below), withdraw the notice.

The Education (Penalty Notices) (England) Regulations 2007 (the regulations) prescribe the details for the operation of the penalty notice scheme. Regulation 14 provides that each local authority is responsible for drawing up a code of conduct to ensure consistency in issuing penalty notices. Therefore, it is the code of conduct, together with the relevant legislation and guidance, that will determine how the local authority should proceed in non-attendance matters and it may be subject to variation between local authorities.

The issuing of penalty notices must conform to all requirements of the Human Rights Act 1998 and the Equality Act 2010. Penalty notices must be applied consistently and fairly. The purpose of the code of conduct is to ensure that the power is applied fairly and consistently across the local authority and that suitable arrangements are in place to help in its effective administration. Any person issuing a penalty notice must do so according to this code of conduct which should also be read in conjunction with the relevant legislation and Department for Education (DfE) guidance.

Definition of a parent

The definition of parent is set out in Section 576 of the Education Act 1996. This can include any person who is not a parent of the child, but who has parental responsibility for them or care of the child. Having care of a child means that a person a child lives with and who looks after a child, irrespective of what their relationship is with that 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. Code of conduct

The code of conduct is to ensure that powers are applied consistently and fairly across the local authority's area and suitable arrangements are in place for the administration of the scheme. Penalty notices must only be issued within the terms of this code of conduct

The code of conduct is key to the successful use of penalty notices. It ensures consistency, fairness and transparency in the way penalty notices are applied and allows the local authority to manage the system and tailor it to local needs and resources. The regulations specify that the following must be included in the code of conduct.

- The means for avoiding the issue of duplicate notices.
- Measures to ensure that a notice is not issued when proceedings for an offence under section 444 of the act (or an offence under subsection (1A) of that section arising out of the same circumstances) or section 103(3) of the Education and Inspections Act 2006 are contemplated or have been commenced by the local authority.
- The occasions when it will be appropriate to issue a penalty notice.
- The maximum number of penalty notices that may be issued to one parent or carer in any 12 month period.
- Arrangements for co-ordination between the local authority, neighbouring local authorities and where appropriate, the police and other authorised persons. In cases where there is more than one poorly attending pupil in a family, multiple penalty notices may be issued. **This decision will involve careful consideration and consultation between the school and Achieving for Children's Education Welfare Service, who are acting on behalf of the local authority.**
- There will be no restriction on the number of times a parent or carer may receive a formal warning of a possible penalty notice.
- A penalty notice may be issued to each parent of each child liable for the offence or offences.
- It is important to avoid issuing duplicate penalty notices and to ensure that a penalty notice is not issued when a prosecution is being planned or has been commenced for the offence relating to the specific period of unauthorised absence. Therefore, before issuing a penalty notice everyone authorised must liaise with the school's named education welfare officer and any other local authority which is involved with the child.
- An authorised person must promptly provide Achieving for Children's Education Welfare Service with a copy of the paperwork relating to the decision (such as the warning letter sent, the record of considerations and decision). If the authorised person decides not to issue a penalty notice and unauthorised absence is continuing, they should liaise with the Education Welfare Service to consider how to proceed.

3. Circumstances where a penalty notice may be issued

Penalty notices may only be considered appropriate in accordance with this code of conduct and specific to the following circumstances (Amended March 2020).

A penalty notice may be considered as an alternative to prosecution for failure to ensure regular school attendance in any given period of unauthorised school attendance as set out below.

Unauthorised absence

At least 10 sessions each session being a morning and afternoon (**five school days**) accrued due to unauthorised absence in any six week period. This includes pupils whose attendance has not reached a satisfactory level during a six week period following intensive support.

In these circumstances, the Education Welfare Service will:

- issue a warning letter
- set a 15 day monitoring period with an expected level of attendance

When the above steps have been completed then a penalty notice would be considered. (The 10 sessions need not be consecutive, however setting a period of 15 school days to effect the improvement before issuing is required).

The use of penalty notices is to supplement the existing sanctions currently available for this offence and offers a means of swift intervention which can be used to combat truancy problems before they become entrenched.

Unauthorised term time leave

(Absence from school **without permission** and is not deemed to be exceptional circumstances nor authorised by the headteacher)

Any parent who takes a child out of school for term time leave for 10 consecutive sessions (five days) or more, not authorised by the school (under exceptional circumstances rule), may receive a penalty notice. Therefore, penalty notices will be issued for single event absences of at least five consecutive school days or more where these absences are unauthorised because they are neither exceptional nor unavoidable. The absences must be recorded with a 'G' code in the attendance register. In the circumstances where a headteacher does not authorise a request from a parent or carer for an absence, they will respond to the request directly.

This response will constitute a valid warning to the parent about a potential penalty notice. In all cases, a minimum of 10 sessions in total (five school days) of absence must have been accrued. (The Supreme Court Judgement in the case between Isle of Wight Council v Platt (6 April 2017, clarified the meaning of regular school attendance in relation to Section 444 Education Act 1996.) To attend school regularly means in accordance with the rules prescribed by the school.

Unauthorised delayed return from authorised extended holidays

(The pupil fails to return on agreed date)

In these circumstances, the headteacher should make clear to parents and carers the date of when the pupil will be expected to return to school, warning them that if they fail to return on the date then a penalty notice may be issued.

Persistent late arrival at school

(After the register has closed)

Equivalent to a minimum of 10 sessions accrued in a six week period. Following the warning letter being sent, a penalty notice may be issued. The late mark (code U) for an unauthorised absence should be recorded.

Penalty notices will not be issued in respect of children who are looked after.

4. Considerations before issuing a penalty notice

The key consideration in deciding whether to issue a penalty notice should be whether it is considered likely to be effective in helping the child return to regular attendance.

Before issuing a penalty notice for unauthorised absence, other than for holidays taken during term-time, strategies which may help return the child to regular school attendance should be considered. Penalty notices and other sanctions will be used only where parental cooperation in this process is either absent or deemed insufficient to resolve the presenting problem. They will be used as a means to support parents to meet their responsibilities in law and where there is a reasonable expectation that their use will secure an improvement.

A penalty notice warning letter should then be sent to the parent or carer. This should be completed by the Education Welfare Service. The letter should include:

- details of the pupil's absence
- an offer to discuss with the parents, or where appropriate, meet 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 their child's regular attendance. In particular, warning that further unauthorised absences could result in a penalty notice or prosecution
- an expectation that, after receipt of the warning letter, the level of expected attendance will significantly improve and that this improvement will be maintained

If this warning and the offer of support does not affect a significant improvement in attendance, the authorised person should consider every aspect of a pupil's circumstances before deciding whether to issue a penalty notice.

Please note: none of the above strategies apply to term time leave or holiday.

5. Issuing of a penalty notice

Headteachers must comply with the terms of this code of conduct. Schools who have a service level agreement with Achieving for Children, should directly discuss cases of unsatisfactory school attendance with their education welfare officer (EWO) in the first instance. For schools who have not bought into service level agreement, where penalty notices are being sought for unauthorised holiday these can be sent directly to ews.fpn@achievingforchildren.org.uk

All other referrals relating to unauthorised absence, must be submitted through the Single Point of Access as a matter of persistent absence.

Schools must provide an up-to-date attendance summary which is signed by the headteacher with their request for a penalty notice. The Education Welfare Service may request further evidence before making an assessment.

On receipt of any referral for any penalty notice request the Education Welfare Service will make an informed decision regarding next steps and will advise the school of the outcome.

Before schools can request the issue of a penalty notice under the code of conduct, they must ensure that the school's own attendance policy is updated to include penalty notices as a way of addressing absence and term time holidays.

If a school does not yet have an updated attendance policy which contains information regarding the use of penalty notices, they should give parents at least one term's notice of their decision to include this process as part of their attendance management.

Schools should regularly inform and remind parents of the use of penalty notices by including information in their prospectus, parent mail, website and any other form of communication. School governors should agree with the endorsement of the use of penalty notices.

The headteacher should only determine that the issuing of a penalty notice is appropriate, following consultation, discussion, reflection and joint decision with their education welfare officer.

The education welfare officer will not agree to sanction the issuing of a penalty notice unless they consider that there is sufficient evidence to secure a conviction under Section 444 of the Education Act 1996. Evidence could be letters sent to a parent, minutes of meetings and record of telephone conversations.

A maximum of two penalty notices may be served on any one parent over a 12 month period.

There is no statutory right of appeal against the issuing of a penalty notice.

Parents, carers and pupils will continue to be supported by their school, by the Education Welfare Service and, as appropriate, support services, to overcome apparent barriers to regular attendance through a range of intervention strategies.

6. Procedure for issuing penalty notices

Penalty notices should only be used where a parent or carer is capable of securing an improvement in their child's attendance, but is unwilling to do so.

Penalty notices will only be issued by first class post and never as an on the spot action (for example, given out when a headteacher is meeting a parent or carer). Following all criteria being met, the Education Welfare Service:

- will issue a written warning to the parent or carer outlining the reasons
- The formal warning gives a monitoring period of 15 school days within which the pupil must have a sustained period of improved attendance. The parent has an opportunity to respond at this point. Any further unauthorised absence within the 15 school day monitoring period will result in the issuing of a penalty notice

If a penalty notice has previously been issued and in the opinion of the headteacher it has been ineffective in addressing the absenteeism, the case should be discussed with the Education Welfare Service.

In families where more than one child is not attending regularly, or has requested leave of absence, the issuing of multiple penalty notices (one for each child) will need to be carefully considered. Education Welfare Services will establish whether there are any siblings attending other schools before making a final decision. It would be the local authority's expectation, where two siblings have high attendance, but have the same period of unauthorised leave of absence, parents are issued with a penalty notice for the absence of both children.

7. Evidence

If a penalty notice is issued, and not paid within 28 days, the local authority must consider prosecution for this unauthorised absence. It is therefore essential that the decision to issue a penalty notice is supported by sufficient evidence to ensure a realistic prospect of conviction should it be necessary to withdraw the penalty notice if non-payment occurs and a prosecution is being sought under section 444 of the act.

8. Procedure for the withdrawal of penalty notices

Once issued, a penalty notice may only be withdrawn in the following circumstances:

- it ought not to have been issued
- it ought not to have been issued to the person named as the recipient
- it contained material errors
- the use of the penalty notice does not conform to this code of conduct
- the penalty notice has not been paid in full before expiry date of the period for payment.

A decision can be made that this matter is not in the public interest and/or the best interests of the child, therefore to prosecute the recipient for the period of the offence in connection to which the notice was issued would be inappropriate.

9. Payment of penalty notices

Arrangements for payment will be detailed on the penalty notice.

Payment within 21 days is £60 per parent, per child and payment after this time (21 and within 28 days) is £120 per parent, per child for the offence period. No reminder is sent. This includes those who hold day-to-day care of a child and may not be the biological parent however hold parental responsibility.

The local authority retains revenue from penalty notices to cover the cost of administration (both collection and prosecution in the event of non-payment). This revenue will be held separately and audited annually.

10. Records

The local authority must keep records of penalty notices which must include:

- a copy of each penalty notice issued
- a record of all payments made and on what dates
- whether the penalty notice was withdrawn and on what grounds
- whether the recipient was prosecuted for the offence for which the penalty notice was issued (or, where the penalty notice related to an offence under subsection (1) of section 444 of the act, for an offence under subsection (1A) arising out of the same circumstances)

11. Non-payment of penalty notices

If the penalty payment is not received within 28 days, the local authority can consider whether to start a prosecution. If it decides not to start a prosecution or consider one, it must withdraw the penalty notice. If proceedings are deemed to be appropriate, then the action will be a criminal prosecution under section 444(1) or section 444(1A) of the act, as opposed to an action for failing to pay the penalty notice. The provisions of section 447 of the act will then apply, requiring consideration of an ESO.

Non-payment of a penalty notice does not automatically result in further action being taken by the local authority. If the fine remains unpaid after 28 days, the presumption is that the local authority will issue a summons and proceed to court. When deciding on whether there is enough evidence to charge, prosecutors must consider and determine whether evidence can be used in court and is reliable. Prosecutors must be satisfied that there is enough evidence to provide a realistic prospect of conviction against each defendant. Each case is looked at to ensure that it is in the public interest and/or the best interests of the child before this is done.

Should the matter be pursued, a warning letter will be sent from the local authority to the parent or carer informing them of the local authority's intention to pursue legal proceedings for the period of absence in question under section 444(1) or 444(1A) of the act.

The instigation of legal proceedings for unauthorised absence from school under prosecution powers is not for the non-payment of the penalty notice, but is for failure to ensure regular attendance at school relating to the original unauthorised absence.

Only the local authority has the power to instigate criminal proceedings in cases of school non-attendance.

12. Policy and publicity

The local authority will include information on the use of penalty notices on Achieving for Children's website that relates to Kingston and Richmond local authorities and the Education Welfare Service who oversees this code of conduct.

This code of conduct will be reviewed annually by the Education Welfare Service on behalf of each of Kingston and Richmond councils. Amendments to this code of conduct will be made in line with any legislative changes. As with any review this may require further consultation as deemed appropriate. Schools will be expected to review their policies annually.

13. Useful contact details

Achieving for Children Education Welfare Service:

E: ews@achievingforchildren.org.uk

Request for FPN notice for unauthorised holiday can be sent to:

E: ews.fpn@achievingforchildren.org.uk

Single Point of Access

The Single Point of Access team is available from 8am to 6pm, Monday to Friday.

T: 020 8547 5008

After hours or at the weekend T: 020 8770 5000.

Further information can be found on the Achieving for Children website:

<https://kr.afcinfo.org.uk>