

Appendix 3



NORTH YORKSHIRE LOCAL AUTHORITY'S CODE OF CONDUCT FOR THE USE OF PENALTY NOTICES - UNAUTHORISED ABSENCE AND EXCLUSION

1. Legal Basis

Irregular Attendance

Under Section 23 of the Anti-Social Behaviour Act 2003, the Education Act 1996 was amended with the introduction of 2 new subsections under Section 444 (subsections 444A and 444B) which make it possible for Penalty Notices to be used as an alternative to prosecution in cases of unauthorised absence from school.

Exclusions

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 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 or permanent exclusion. Section 105 allows for a Penalty Notice to be given to a parent guilty of an offence under Section 103 of the Act.

The issuing of **all** Penalty Notices must conform to the requirements of the Human Rights Act and all Equal Opportunities legislation.

2. Rationale

The Local Authority (LA) has the responsibility, as determined by the Department for Education (DfE) for developing the Code of Conduct within which all partners named in the Act will operate. This is a requirement of the School attendance parental responsibility measures – Statutory guidance for local authorities, school leaders, school staff, governing bodies and the police (DfE January 2015).

Although the regulations make provision for a Head teacher (or other nominated school staff), the Police and the LA to issue Penalty Notices, it is a requirement of the LA's Code of Conduct for the use of Penalty Notices that procedures are consistently applied and enforcement action is not duplicated.

In order to support compliance with this requirement, and that any subsequent court action can be integrated within existing arrangements, this protocol places the main responsibility for issuing Penalty Notices with North Yorkshire Local Authority. The

Authority will administer the scheme for all schools in its area, including academies and free schools.

Sanctions are never used as a punishment, only as a means of enforcing attendance where there is a reasonable expectation that it will secure an improvement. Parents and pupils are supported to overcome barriers to regular attendance at school through a wide continuum of assessment and intervention strategies delivered by the school, the LA's Prevention Service and other agencies. Sanctions of any nature are for use, therefore, only where parental co-operation in this process is either absent or deemed insufficient.

3. Circumstances where a Penalty Notice may be issued

Irregular Attendance

A Penalty Notice for irregular attendance can only be issued in cases of **unauthorised** absence. No parent will receive more than two separate Penalty Notices resulting from the unauthorised absence of an individual child in any twelve-month period. In cases where families contain more than one poor-attending pupil, multiple issue may occur. This will be the subject of careful consideration and co-ordination.

There will be no restriction on the number of times a parent/carer may receive a formal warning of a possible Penalty Notice. This is in the form of a letter stating that if further unauthorised absence occurs within 15 days of the letter being received, a Penalty Notice will be issued (*not required for unauthorised leave of absence i.e holiday in term time – see Section 5*).

The issuing of a Penalty Notice is considered appropriate in the following circumstances:

- Parentally-condoned absences including unacceptable reasons for absence (e.g. too tired after a late night, birthday treat)
- Leave of absence taken but not agreed as exceptional circumstances by the Head teacher when requested in advance e.g. for a family holiday
- Excessive delayed return from agreed leave of absence without prior school agreement
- Persistent late arrival at school recorded as unauthorised absence (after the close of registration).

Exclusions - see Section 6

4. Procedure for issuing Penalty Notices for Attendance (*excluding unauthorised leave of absence (holiday) in term time – (see Section 5)*)

A Penalty Notice is issued as an alternative to a prosecution through the magistrates courts. The LA will issue Penalty Notices to achieve consistent and equitable delivery and allow cohesion with other enforcement sanctions. Penalty Notices will only be issued by post. This is to satisfy that all evidential requirements are in place and to meet Health and Safety requirements.

A Penalty Notice can be issued when the following criteria is met:

- There has been a prior referral made to the Prevention Service for support
- A formal School Attendance Procedure (fast track) has been implemented by the school
- All relevant information has been submitted to the LA in the specified manner
- A PACE Formal Caution Interview has been held with a decision made to issue a Penalty Notice Warning letter and further unauthorised absence has occurred within the time scale
- Ability to pay is set against improving attendance by the issuing of a Penalty Notice (*PN's, unlike a prosecution, are not means tested - this to include any cases of possible multiple issue to any one family*)
- The issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being progressed
- The circumstances of the pupil's absence meets all the requirements of this Code of Conduct

Where the criteria is met and it is established that an offence under Section 444 of the Education Act 1996 has been committed the LA will:

- Issue a formal written warning to the parent/carer of the possibility of a Penalty Notice being issued
- In the same letter set a period of 15 school days commencing 3 school days following dispatch of the Warning Letter within which the pupil must have no unauthorised absence (*to be sent by 1st Class Post*)
- Issue a Penalty Notice through the post at the end of the 15 day period if there has been further unauthorised absence recorded
- If the Penalty notice remains unpaid and there are no conditions met to warrant withdrawal, the LA will progress a prosecution through the Magistrates Courts for the offence of failing to ensure the child's regular attendance at school. (*Not regarding the non-payment of the fine although this will be used in evidence*)

Documents required by the LA in the event of non-payment of the fine:

The following should support a minimum of a prosecution under s444 (1) of the Education Act 1996; Level 3 offence of up to a £1,000. (*It would be unlikely the LA would pursue a prosecution under s444(1A) - Level 4 'aggravated' offence – up to £2,500 and/or 3 months imprisonment, in instances where a Penalty Notice has been offered as an alternative to a prosecution*).

Certificate of Attendance – completed and signed by the Head teacher evidencing the unauthorised absence

Witness Statement - supporting written evidence completed and signed by the Head Teacher/school practitioner including evidence that the school has supported the family to improve their child's attendance, e.g. home visits, meetings in school,

formal School Attendance Procedures (fast track) implemented and referral to the Prevention Service and/or other agencies.

Documentation should provide evidence that the parent has not engaged with the support offered and has continued to fail to exercise their legal responsibility to ensure their child's regular and punctual attendance at their educational placement.

NB: *If a not guilty plea is entered by the parent then the initial hearing would be adjourned to prepare for trial when the Head teacher and or practitioner (s) may be summoned to give oral evidence regarding the unauthorised absence.*

5. Procedure for Issuing Penalty Notices for unauthorised leave of absence (Holiday) taken in term time

Amendments to the Education (Pupil Registration) (England) Regulations 2006 removed references to 'family holiday' and 'extended leave' as well as the statutory threshold of 'ten school days'. The amendments make clear that head teachers may not grant any leave of absence during term time unless there are exceptional circumstances (*requests for holidays in term time would not normally meet the criteria*).

The issuing of a Penalty Notice applies only to the deliberate taking of leave of absence in term time, where 1) the Head teacher has deemed on application that the reason given did not meet the criteria for exceptional circumstances and 2) where it can be clearly demonstrated that the parent/carer understood that permission had not/would not be given. (*If parents have not applied in advance then, by default the absence is not agreed, as leave of absence cannot be approved retrospectively*).

If the leave of absence is agreed, the Head teacher should determine the number of school days a child can be away from the school. Any leave taken in excess of this period is deemed in itself to be an unauthorised absence and can be liable to a Penalty Notice being issued if the above criteria are met.

The school can contact the LA to request the issue of a Penalty Notice, if there have been at least 10 sessions of unauthorised absence in the preceding four months. All relevant documentation should be sent to the safeguardingunit@northyorks.gov.uk preferably no more than two weeks following the taking of the unauthorised leave. The following documentation needs to be submitted:

- **Certificate of Attendance (Unauthorised Leave)** - for the period in question completed and signed by the Head teacher. This may straddle two academic years
- **Witness Statement** - completed and signed by the Head teacher
- **Leave of Absence Application Form** - if available
- **Letter of refusal to the parent** - if available

Where a parent fails to pay a Penalty Notice issued in these circumstances, the LA will pursue a prosecution of the parent under the Education Act 1996 s444 (1) and will present the case in court. The evidence provided by the Head teacher will be laid before the magistrates regarding the unauthorised absences.

6. Procedure for Issuing Penalty Notices for Exclusion (fixed term or permanent)

A parent/carer is required 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. A public place means any highway or any place to which the public have access.

N.B: *School premises are not a public place for this purpose (Section 547 Education Act 1996).*

A Penalty Notice enables the parent to pay a fine as a way of discharging liability for the offence of failing to ensure that their child is not present in a public place on the days specified in the notice given to them by the school. The parent must have been notified of their duty by the school at the time of the exclusion and the days to which it relates.

In order for the LA to issue a Penalty Notice, evidence would be required, either through eye witness testimony in the form of a Witness Statement, or proven evidence from a CCTV system.

The following documentation is required to be submitted to the LA:

- **Proof of notification** to parent/carer(s) and the means of delivery as above
- **Witness Statement** including evidence of where the child was seen and the parent/carer(s) having no reasonable justification for their child being in a public place

7. Payment of Penalty Notices

Penalty Notices are issued per child per family. Arrangements for payment will be detailed on the back of the Notice. Payment discharges the parent's liability for the period in question and he/she cannot subsequently be prosecuted for the period covered by the Penalty Notice.

Payment of a Penalty Notice within 21 days is £60 and payment after 21 days but within 28 days is £120. Part payments will not be accepted.

There is no formal right of appeal by parents against a Penalty Notice. If the penalty is not paid in full by the end of the 28 day period, the local authority must decide either to prosecute for the original offence to which the notice applies, or withdraw the notice. (See Section 8)

The LA retains any revenue from Penalty Notices in order to cover the administration costs of the scheme.

8. Procedure for withdrawing Penalty Notices

Once issued, a Penalty Notice can be withdrawn for the following reasons:

- The Penalty Notice has been issued outside the terms of this Code of Conduct
- The Penalty Notice ought not to have been issued or issued to the person named as the recipient
- It appears that the Notice contains material errors
- Where after the expiry of 28 days the penalty is unpaid and the LA does not wish to bring legal proceedings under s444 of the Education Act 1996

9. Non-payment of Penalty Notices

Non-payment of a Penalty Notice will trigger the prosecution process under the provisions of the Education Act 1996 s444, if none of the criteria set out in Section 8 applies.

Reminder letters will be sent to the parent/carer(s) when the LA is considering or intends to pursue legal action following non- payment of the fine within the required time scale.

10. Policy and Publicity

The utilisation of Penalty Notices as a sanction will be included in the LA's School Attendance - Advice and Requirements of all schools for consideration of Legal Enforcement by the Local Authority. All School Attendance Policies will need to include information on the utilisation of Penalty Notices and this will be brought to the attention of all parent/carer(s).

11. Reporting and Review

The LA will review the use of Penalty Notices at regular intervals. An annual monitoring report will be made to the Executive Members.

Contacts:

Julie Parrish (Attendance and Enforcement Officer)

Tel: 01609 798013/ 07772096982 or e-mail: julie.parrish@northyorks.gov.uk

Kate Flinton (Attendance and Enforcement Officer – Scarborough, Filey, Whitby and Ryedale areas only)

Tel: 01609 797232/07794072363 or e-mail: kate.flinton@northyorks.gov.uk

All documentation for Penalty Notices regarding unauthorised leave for a holiday in term time should be forwarded by e-mail to safeguardingunit@northyorks.gov.uk or by post to Rm SB114, Safeguarding Unit, County Hall, Racecourse Lane, Northallerton, DL7 8AD

For all other advice please contact the Area Prevention Manager from the local Prevention Service based in your area.