

## **PENALTY NOTICES**

### **GUIDANCE FOR SCHOOLS**

#### **PURPOSE**

1. The purpose of this guidance is to provide advice about penalty notices for unauthorised attendance and the practical implications for schools.

#### **CONTEXT**

2. Parents have a legal obligation to ensure that their child receives efficient full-time education suitable to the child's age, ability, aptitude and to any special educational needs the child may have. The Local Authority (LA) therefore has a statutory obligation to challenge parents who are failing in their duty and this includes using a wide range of legal powers to intervene. The Anti-Social Behaviour Act 2003 introduced additional remedies including the power to issue penalty notices to the parents or carers of pupils who take unauthorised absence from school.

#### **LEGAL BASIS FOR PENALTY NOTICES**

3. Section 23 of the Anti-Social Behaviour Act, sub-section (1), adds two new sections (444A and 444B) after section 444 of the Education Act 1996. These sections introduce penalty notices as an alternative to prosecution under section 444 and enable parents to discharge potential liability for conviction for that offence by paying a penalty. The offence of irregular attendance has not changed.
4. The parent cannot be prosecuted for the particular offence for which the notice was issued until after the final deadline for payment has passed (28 days after receipt of the notice) and cannot be convicted of that offence if they pay a penalty in accordance with the notice.
5. From 01 September 2013<sup>1</sup> the penalty is £120 to be paid within 28 days<sup>2</sup> of receipt of the notice, reducing to £60 if paid within 21 days. If the penalty is not paid in full by the end of the 28 days the LA must either prosecute for the offence to which the notice applies or withdraw the notice (which can only be done in limited circumstances). Unlike other penalty notice schemes, the prosecution is not for non-payment of the notice. If there is a prosecution, it will follow the usual procedures of a prosecution for irregular attendance. The LA will bring the prosecution under section 444 of the Education Act 1996.

#### **LOCAL AUTHORITY POLICY**

6. The LA's first priority will be to work with schools and parents to ensure early intervention and prevention of unauthorised absence. However, where there is evidence of non-cooperation and continuing unauthorised absence, the LA will consider issuing a Penalty Notice as one of the options in the range of statutory interventions available. If the criteria set out in the Code of Conduct are met, the LA will not hesitate to issue a penalty notice to a parent.

<sup>1</sup> The Education (Penalty Notices) (England) (Amendment) Regulations 2013

<sup>2</sup> "Days" refers to calendar days within this document unless indicated otherwise

7. The purpose of the penalty notice will be to secure a sustained improvement in attendance. Penalty notices will be used particularly in circumstances of parentally condoned absence, where the parent is judged capable of securing their child's regular attendance but is not willing to take responsibility for doing so. It will also be used as a sanction at an early stage before attendance problems become too entrenched and where the LA considers that a prosecution would be too heavy handed.
8. The legislation allows for penalty notices to be issued by the LA, the police and schools. In Derbyshire, it has been agreed that the Education Welfare Services (EWS) will be responsible for issuing penalty notices in order to:
  - Ensure fairness and consistency across the county
  - Avoid duplication in issuing notices and
  - Provide a cost effective means of operating the scheme

The LA will bear all the costs incurred in issuing the penalty notices and offset against these costs the income it receives from the fines imposed.
9. The LA is required to publish a Code of Conduct, setting out the principles on which penalty notices will be issued. The Code has been drawn up in consultation with schools and other key partners.
10. Schools have a key role in this process, particularly in working with parents.

## **IMPLICATIONS FOR SCHOOLS**

### **Advice to Parents**

11. The LA advice to parents about penalty notices makes clear that:
  - Parents must ensure that their child attends regularly and punctually
  - Failure to do so will amount to an offence in law, making them liable to a penalty notice or other statutory action, including prosecution
  - The penalties for continued unauthorised absence can be severe

The advice emphasises that it is vital for parents to contact the school if they have any concerns about their child's attendance and that **only the school can authorise absence or lateness**.

It also explains the policy on holidays in term time and the other circumstances in which parents may be liable for a penalty notice.

### **Relationships with Parents**

12. The LA recognises the importance of maintaining positive and supportive relationships with parents. The key to this is the school's attendance policy: a clear policy, setting out reasonable expectations of parents and consistently applied, is the best defence to challenges about school practice or allegations of unreasonable decisions by the headteacher. As long as the policy is approved and supported by the Governing Body, particularly the parent governors, schools will have a reasonable and defensive position.

## Consistency of Application

13. The issue of consistency is also very important. The LA recognises that schools in different circumstances will see and apply the provisions of the policy differently. This is to be expected: differences in application to meet different circumstances do not imply inconsistency. What is important is to develop consistent approaches to similar sets of circumstances. Schools are therefore actively encouraged to work together to develop joint approaches, particularly in clusters, so that their decisions about penalty notices and term time holidays will be recognisably the same from one school to another where the circumstances are similar.

## Leave of Absence –Term Time Holiday

14. The policy on term time holidays is clear. Parents do not have an automatic right to withdraw their child from school for a holiday and must apply for permission in advance. Such holidays should be discouraged because they are damaging to the student's continuity of learning.
15. 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 ten school days leave per year. Headteachers could also grant extended leave for more than ten school days in exceptional circumstances.

Amendments to the 2006 regulations which came into force on the 1<sup>st</sup> September 2013 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.

16. When assessing a request for leave of absence schools should consider whether the circumstances are exceptional or not (see School Attendance/ Leave of absence)
17. Under the Code of Conduct, the Education Welfare Services (EWS) will serve a penalty notice for any period of holiday during term time that has not been authorised by the headteacher. Moreover, the LA may do so without any further recourse to assessment or casework with the pupil or family. There will be no requirement for:
- The LA Education Welfare Officer to offer support
  - Any formal warning
  - The absence threshold to be met

In such a case, each parent will receive a separate penalty notice for each child taken out of school with potentially very heavy fines (for example, two parents with three children would be fined a total of £720, reduced to £360 if paid within 21 days).

18. In declining any request for leave of absence for the purpose of a family holiday to be taken in term time, therefore, the headteacher should warn parents that not only will the absence be categorised as unauthorised but also that the LA will serve each parent with a penalty notice for each child without any further warning or intervention.

19. In summary, therefore, schools should:

- Ensure that their policy on leave of absence is made clear to parents (e.g. in the school prospectus) and issue regular reminders
- Avoid adopting a blanket ban within the policy that might suggest that each case will not be considered on its merits
- Determine the reasonableness of each request on a case-by-case basis
- Communicate their decision in writing to each parent
- Warn parents of the consequences of taking their children out of school for any leave of absence in term time without authorisation
- Work together to develop consistent approaches across clusters or consortia
- Develop procedures (for example, standard letters and application forms) that are simple for parents to understand and follow

### **Other Circumstances**

20. With the exception of leave of absence for a family holiday, schools should refer any concerns regarding attendance direct to the Education Welfare Officer based within the local Multi-Agency Team using a Request for Support form. The properly documented referral will be accepted if the following criteria apply:

- The threshold on absence has been met
- The school has made reasonable attempts to contact the parent and has evidence to show this
- There has been no improvement in attendance
- The parent has given unsatisfactory reasons for the absence and
- There is an up to date attendance record available

21. The threshold for unauthorised absence is defined as:

- Twenty consecutive sessions (two consecutive weeks) of unauthorised absence
- Five sessions of unauthorised absence in a five week period
- Ten sessions of authorised absence spread within a five week period where no medical evidence has been received
- Persistent absence threshold met within the last twelve months and where there is some current unauthorised absence.

With the exception of leave of absence for a holiday, these criteria will be the trigger for considering whether to issue a penalty notice.

22. The procedures for issuing penalty notices fall within the well-established framework operated by the LA who applies an incremental progression of actions to where the threshold for statutory intervention is reached. These interventions include:

- Relevant and purposeful action at school level
- Referral to an Education Welfare Officer for assessment according to agreed standards

- Education Welfare Services support, including action planning, governed by the Annual School Attendance Plan
- School Attendance Panels
- Fast tracking where the agreed criteria are met
- Escalation to statutory action including Education Supervision Order, Penalty Notice or Adult Prosecution

23. Where the criteria have been met, statutory action will be taken unless:

- 1) One of the following statutory defences applies, i.e.,
  - The absences are authorised
  - The child was sick and evidence from a School Medical Officer (SMO) is provided
  - The day is set apart for religious observance
  - The designated school is not within walking distance of the child's home and no transport has been provided by the authority
  - Other unavoidable cause
- 2) There is some improvement in attendance and confidence that further improvement is likely
- 3) There is evidence of child protection issues
- 4) There is evidence of bullying
- 5) Other agencies are involved, requiring further investigation
- 6) The child is in statutory public care

24. Where a penalty notice is being considered, parents will receive one written warning (issued by the LA) that failure to improve attendance will result in a fine and may lead to prosecution. Depending on the circumstances of the case, the warning will indicate the period of time over which improvement is expected (normally 15 days) and will be given in the format prescribed in the regulations together with advice on how to make representations to the LA.

25. If there is no sustained improvement within the timescale set, a penalty notice will be issued. The parents have a maximum of 28 days from receipt (taken to be the second day after despatch by first class post) in which to pay the fine. If they do not do so, then the LA will prosecute the parents for the original offence of poor attendance (not for failure to pay the fine). If successful, the penalties are likely to be severe because of the aggravated nature of the offence.

26. The penalty notice can only be withdrawn if it was issued either in error or to the wrong person. There is no appeal against the penalty notice and parents will have to show evidence that either of the two circumstances apply. The school will be kept informed of the outcome of the process.

27. Schools should be aware that these procedures will apply in all cases with the exception of unauthorised leave of absence.

## **WORKING WITH KEY PARTNERS**

28. Close working with our key partners is an integral part of improving attendance. The Code of Conduct therefore has been drawn up in consultation with Social Care, Health, the Police and the Youth Offending Service.

29. Particular care needs to be exercised in managing the attendance of Children in Care. Derbyshire takes its responsibilities as a Corporate Parent seriously and ensures that the agencies involved with Children in Care work together to maximise attendance. Any concerns about the attendance of all Children in Care should be directed to the Education Welfare Officer as well as the pupil's carer and Social Worker. The attendance of all Children in Care is tracked through their Personal Education Plans.

## **EQUALITIES**

30. Schools should be aware that the Code of Conduct places particular emphasis on ensuring compliance with the LA's equal opportunities policy. It commits the LA to monitoring the procedures in the Code to ensure that they are applied fairly and consistently. In particular, it undertakes to ensure that the procedures do not discriminate against:

- Racial minority groups or any other individual in accordance with its obligations under the Human Rights Act, the Race Relations Act 1976 (as amended) and the Race Relations (Statutory Duties) Order 2001
- Disabled students under the Disability Discrimination Act 1995, and that
- Penalty notices are not issued to Traveller families where a parent would have a defence to prosecution under section 444 (1) of the Education Act 1996.

31. Schools are therefore requested to pay particular attention to this aspect of the policy. Any enquiries should be directed in the first instance to the Principal Education Welfare Officer who is based in Matlock.