

Penalty notice code of conduct

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1. Introduction

'Each local authority must draw up a code of conduct which sets out measures to ensure consistency in the issuing of penalty notices' The Education (Penalty Notices) Regulations 2007 Section 14 .

Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities. In law an offence occurs if a parent/carer fails to secure a child's attendance at school at which they are a registered pupil and that absence is not authorised by the school.

A parent/carer is supported at school and local authority (LA) level to overcome barriers to regular attendance. The EWS (Education Welfare Service) will continue to investigate cases of non-attendance at school and use legal sanctions against a parent/carer wherever appropriate. All those recognised as a parent under section 576 of the Education Act are parents for the purposes of this code.

The law

Section 23 of the Anti-Social Behaviour Act 2003 empowers designated LA officers, Head teachers and the Police to issue penalty notices. The Education Penalty Notice Regulations 2007 section 10 also states a head teacher may authorise a deputy or assistant head teacher to issue penalty notices, but no other member of staff can issue penalty notices, in cases of unauthorised absence from school.

The Education (Penalty Notices) (England) Regulations 2007 came into force on 1 September 2007. Penalty notices (Sections 444A & 444B) supplement the existing sanctions to enforce attendance at school currently available under Section 444 of the Education Act 1996 and Section 36 of the Children Act 1989.

Penalty notices offer a swift intervention which may be used to combat truancy problems before they become entrenched. Penalty notices provide an alternative to prosecution and will give parents an opportunity to discharge potential liability for conviction for that offence by paying £60 if paid within 21 days and £120 if paid within 28 days.

If the penalty is not paid by the end of 28 days, the LA must withdraw the notice or commence proceedings for the offence to which the notice relates. The prosecution is not for the non-payment of the notice but for failure to ensure regular attendance at school. Penalty notices supplement and do not replace the use of prosecution powers that are already available.

The LA has the prime responsibility for developing a protocol within which all partners named in the act will operate (The Education Penalty Notice Regulations 2007 sect 14) and has responsibility for the overall administration of the Penalty Notice Scheme.

This local code sets out the procedures and terms under which penalty notices can be issued in Luton. Authorised persons should issue penalty notices in compliance with this code in order to ensure that the powers are consistently and fairly applied across Luton.

2. Criteria for issuing penalty notices

Penalty notices can only be used for unauthorised absence for statutory aged children where an authorised person has reason to believe that a person has committed an offence under section 444 (1) of the Education Act 1996.

These procedures apply to the parents of children of compulsory school age who are registered at a Luton maintained school, a pupil referral unit, an academy or a free school. Penalty notices relating to pupils attending schools outside of the Luton area will be issued only in agreement with the local authority where the pupil attends school.

Penalty notice warnings

A penalty notice warning letter will be issued after a minimum of eight sessions of unauthorised absence (or four days), including unauthorised late absence. A period of grace of five school days will be given to the parent/carer in order to address the issues and seek assistance where necessary. Following the period of grace if there are six further sessions of unauthorised absence within the six week monitoring period, a penalty notice will be issued.

Penalty notice issuing

A penalty notice will be issued for a first offence within the following criteria:

- where a family takes unauthorised leave in term-time and where this has created a period of unauthorised absence in 12 school weeks of 10 or more consecutive sessions (five school days)
- where an excluded pupil is found in a public place in school hours without reasonable justification during the first five days of exclusion

Prosecution

If unauthorised absence continues after the period of the notice, legal proceedings will be taken in accordance with Section 444 (1) or (1A) Education Act 1996. A penalty notice will only be used once per pupil in an academic year before prosecution takes place. There will be no restriction on the number of times a parent/carer may receive a warning on the possible issue of a penalty notice.

Excluded pupils

In the case of the whereabouts of excluded pupils, reasonable justification will depend on all the circumstances of the individual case (and it is ultimately for a court to make a finding on whether any justification was reasonable in the circumstances). For example if it is proved that the child had a pre-arranged medical appointment or there may be a medical emergency which needs immediate attention. Similarly, there may be a pressing need for the parent/carer and they may feel it inappropriate for the pupil to be left at home unattended or make alternative arrangements.

Truancy sweeps

Where a pupil is stopped on a truancy sweep and there is no valid reason for the absence from school, a letter will be sent to the home containing a clear warning that a further offence may result in a penalty notice. In the instance that a pupil is stopped again and the absence is not authorised by the school, a penalty notice will be issued.

Unauthorised leave in term-time

Parents may request a period of authorised absence for term-time leave, to be granted at the head teacher's discretion, and in accordance with the criteria set out in the school's term-time leave policy (please also see leave of absence guidance for schools). Leave of absence cannot be granted retrospectively, so would automatically be unauthorised. Where a family fails to follow procedures or takes a period of leave that is not agreed by the school, a penalty notice can be issued. In these cases, a warning letter will not be issued.

Late arrival at school

When a pupil persistently arrives late to school, where the arrival time is after the close of registration and no acceptable reason is given for this, the lateness will be classed as 'unauthorised late'. A warning letter can be issued where necessary followed by a penalty notice in accordance with the procedures described above.

3. Restrictions for issuing penalty notices

A penalty notice shall not be served on a parent of a child who is looked after by the local authority or is under a care order under section 31 of the Children Act 1989.

4. Procedure for issuing penalty notices

Penalty notices issued by the local authority will be issued and monitored by the Education Welfare Service in Luton. Penalty notices are issued separately to each appropriate parent, and in respect of each individual child. Penalty notices will be served via first class post and is deemed to have been received by the second working day after posting (The Education Penalty Notices regulations 2007 Sect 22).

Those authorised to issue a penalty notice other than the EWS must send a copy to the designated education welfare office (EWO) for the school (The Education Penalty Notice Regulations 2007 Section 19). Where requests are received to issue penalty notices these will be considered against the following criteria:

- do the circumstances of the absence meet the criteria according to the code of conduct and all necessary information is provided in order to establish that an offence has been committed
- the period of absence is not being considered for proceedings according to Section 444 (1) or (1A) Education Act 1996
- the issue of a penalty notice does not conflict with other intervention strategies put in place by the EWS or by other agencies where the circumstances are known to the EWS

Register checks will be carried out in all schools and pupils will be identified with eight or more sessions of unauthorised absence within a 12 school week period. A warning letter or penalty notice can then be issued to all parents/carers of each identified pupil unless alternative action is being taken.

Payment of penalty notices

The arrangements for payment are stated on the penalty notice. Payments must be made direct to the local authority (the Education Penalty Notice Regulations 2007 Section 6).

Payment of a penalty notice is £60 within 21 days or £120 within 28 days of receipt. Payment in full discharges a parent/carer's liability for the period in question and this period cannot then be part of a Section 444 Education Act 1996 prosecution.

Non-payment of penalty notices

Non-payment of a penalty notice will result in prosecution in accordance with Section 444(1) or (1A) of the Education Act 1996, for the unauthorised absence or withdrawal of the notice depending on the appropriateness of prosecution.

During the Covid-19 outbreak whilst compulsory school attendance is not required the council will be issuing a warning instead to all those who do not take the option to discharge liability by paying a fixed penalty notice. The warning will be in place up until the end of the academic year 2020 to 2021 and further unauthorised absence will result in prosecution in the Magistrate's Court and will not be addressed by way of a fixed penalty notice.

Procedure for withdrawal

Once a penalty notice has been issued, it can only be withdrawn in the following circumstances:

- it has been established that the notice was issued to the wrong person or it ought not to have been issued to the person named as the recipient
- where it ought not to have been issued ie where it has been issued outside the terms of the local code of conduct or where no offence has been committed
- it appears that the notice contains material errors
- the penalty is not paid in full and the local authority has neither instigated proceedings against the recipient nor is contemplating such proceedings

Relevant underpinning legislation

- The Education Act 1996
- The Children Act 1989
- The Education (Pupil Registration) (England) Regulations 2006
- The Education (Pupil Registration) (England) (Amendment) Regulations 2010
- The Education (Pupil Registration) (England) (Amendment) Regulations 2011
- The Education (Pupil Registration) (England) (Amendment) Regulations 2013
- The Education (Pupil Registration) (England) (Amendment) Regulations 2016
- The Education Act 2002
- The Anti-Social Behaviour Act 2003
- The Education Act 2005
- The Education and Inspections Act 2006
- The Education (Penalty Notices) (England) Regulations 2007
- The Education (Penalty Notices) (England) (Amendment) Regulations 2012
- The Education (Penalty Notices) (England) (Amendment) Regulations 2013