



# Northumberland County Council

## **PENALTY NOTICE CODE OF CONDUCT**

The Education (Penalty Notices) (England) Regulations 2007

**(Revised September 2017)**

**(Reviewed July 2019)**

*(The term “school” will include, state schools, academies and alternative provision)*

### **1. RATIONALE**

- Regular and punctual attendance of pupils at school is a legal requirement under Section 7 of the Education Act 1996 and is essential in order for students to maximise the educational opportunities available to them. It is a parent's/carer's responsibility to ensure their child receives efficient full time education that is suitable to their child's age, aptitude and to any special educational needs the child may have.
- The Local Authority has a duty to enforce attendance and discharges this duty to Education Welfare who will continue to investigate cases of irregular school attendance by undertaking targeted casework intervention and where appropriate, institute legal proceedings for unauthorised absence.
- Penalty Notices add to the range of sanctions available and offer a means for swift intervention, which Northumberland County Council will use to combat attendance problems before they become entrenched. This code of conduct ensures the power to use penalty notices is applied consistently and fairly, and that suitable administrative arrangements are in place.
- The Education & Inspections Act 2006 allows a Penalty Notice to be issued when an excluded child is found in a public place, during school hours without a justifiable reason.
- In order to comply with human rights legislation, it is essential that penalty notices be issued in a consistent manner. This code of conduct will govern the issuing of penalty notices for Northumberland County Council. This Code of Conduct is also consistent with the County Council's Corporate Enforcement Policy, sections 14 to 16 of the Crime and Disorder Act 1998 and statutory guidance issued as appropriate.

### **2. LEGAL BASIS**

- Section 23 of the Anti-social Behaviour Act 2003 added two new sections (444A and 444B) to the Education Act 1996. These sections introduce penalty notices as an alternative to prosecution under section 444 for the offence failing to secure regular attendance at school of a registered pupil.

- The Education (Penalty Notices) (England) (Amendment) Regulations 2005 extends the issuing of Penalty Notices to alternative provision.
- The Education (Penalty Notice) (England) (Amendment) Regulations 2012 increased the amount payable following the issue of Penalty Notice to £60 and £120.
- The Education (Penalty Notice) (England) (Amendment) Regulations 2013 reduced the timescales for paying a penalty notice. Parents/carers will pay £60 within 21 days or £120 within 28 days. Penalty Notices are issued per parent/carer per child. Full payment of the penalty discharges the parent from liability for prosecution.
- This code of conduct relies on the meaning of parent as set out on in s576 of the Education Act 1996. This can include:

*All natural parents, whether they are married or not;  
Any person who has parental responsibility for a child;  
Any person, who although not a natural parent, has care of a child,  
irrespective of what their relationship is with that child)*

- Penalty Notices supplement the existing sanctions available under s 444 Education Act 1996 or Section 36 Children Act 1989 to enforce attendance at school or alternative provision. This local authority will keep this code of conduct under review and will take into account guidance including statutory guidance issued by the Department for Education (DfE).

### 3. PROCEDURE FOR ISSUING PENALTY NOTICES

- Penalty Notices will be issued by Education Welfare, who will ensure that this process is closely monitored and that recipients pay the relevant fine. In cases where the penalty is not paid within the defined period, action will be undertaken through the courts as required by legislation.
- Each case will be considered individually and on its merits. Every aspect relating to pupil's attendance and home circumstances will be considered before the issuing of a penalty notice. No Penalty Notice will be issued without the issue of a relevant warning notice **unless** the absence is due to unauthorised leave of absence in term time.
- No one parent/carer will receive more than one separate Penalty Notice resulting from the unauthorised absence of an individual child in any twelve month period, **unless** the absence is due to unauthorised leave of absence in term time.
- Education Welfare, on behalf of Northumberland County Council, will receive and administer referrals for the issue of Penalty Notices, from Local Authority maintained schools, academies and the Police. These requests will be actioned providing:

- i. The circumstances of the case meet the criteria for the issuing of a penalty notice specified in this Code of Conduct, and;
  - ii. All necessary information is provided to Education Welfare in order to establish that an offence, under Section 444 (1) of the Education Act 1996, has been committed.
- Once a case has been considered in accordance with this code then where appropriate each parent will receive a separate warning notice and Penalty Notice for each child. Should a parent fail, or refuse to pay any Penalty Notice, then the evidence provided by the school will be part of the information laid before the court.
- Penalty Notices will not be issued during the course of truancy patrols. It is likely that insufficient evidence will be available to prove the offence at that time. Enquiries will be undertaken with the school and parent/carer regarding any pupil stopped.

#### **4. CRITERIA FOR ISSUING A PENALTY NOTICE**

- Education Welfare will generally only consider it appropriate to issue a Penalty Notice if, following assessment, a parent is judged capable of but unwilling to secure the required improvement in their child's school attendance.
- The parent should not have a previous conviction relating to a child's non-attendance at school.
- A minimum absence of ten sessions (five school days) which are unauthorised must be recorded against the pupils name within a 6-12 school week period.
- A formal warning notice will be issued in the first instance rather than a Penalty Notice. This formal warning notice will:
  - i. State the record of unauthorised absences which gives rise to the formal warning,
  - ii. Notify the parent that a penalty notice will be issued unless the pupil's record shows no unauthorised absence within 15 school days; the commencement date will be set out in the formal warning notice.

#### ***EXCEPTIONS:***

##### Leave of absence in term time

**A formal warning notice will not be issued prior to the issue of a Penalty Notice where the leave of absence relates to a one off instance of irregular unauthorised absence (for example a holiday taken in term time)**

Leave of absence in term time can include leave, for which no permission has been sought from the school, or permission sought but refused, or the child has not returned by the agreed date and no acceptable reason for delay has been received.

***It should be noted in accordance with The Education (Pupil Registration)(England) (Amendment) Regulations 2013 and statutory guidance issued by the DfE***

Leave of absence in term-time will not be granted **unless:**

- i. An application has been made in advance by a parent/carer with whom the pupil normally resides. (Parents/carers should refer to the school for application forms and time limits for the submission of such an application.)
- ii. **AND** the leave of absence has been duly authorised due to exceptional circumstances.

It is usually the Head teacher who determines whether or not the absence is authorised. In short, Head teachers are prohibited from granting leave of absence except where an application has been made in advance and they consider there are exceptional circumstances relating to the application.

- A Penalty Notice will be considered by authorised officers within Education Welfare following an application by an appropriately authorised person from the school where a parent/carer has failed to make a request in accordance with the Regulations and the child has been absent from school for a minimum absence of ten sessions (five school days).
- A Penalty Notice will be considered by authorised officers within Education Welfare following an application by an appropriately authorised person from the school where an application has been made, but the leave of absence has not been authorised as there are no exceptional circumstances and the child has been absent from school for a minimum absence of ten sessions (five school days).

#### Excluded Pupils

- 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.

## **5. WITHDRAWAL OF PENALTY NOTICE**

The Local Authority may withdraw a penalty notice in any case in which it is determined that:

- It has been issued outside the terms of the code of conduct;
- No offence has been committed;
- It has been issued to the wrong person;
- It contains material errors

Where a penalty notice has been withdrawn in accordance with the above, notice of the withdrawal shall be given to the recipient and any amount paid by way of penalty in pursuance of the notice shall be repaid to the person who paid it. No proceedings shall be continued or instituted against the recipient for the offence in connection with which the withdrawal notice was issued or for an offence under Section 444 1(a) of the Education Act 1996 arising out of the same circumstances.

## **6. PAYMENT OF A PENALTY NOTICE**

The arrangements for payment will be detailed on the Penalty Notice.