

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

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 is required 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 issued 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 a Code of Conduct within which all partners named in the Act will operate. This is a requirement from within the School Attendance parental responsibility measures – Statutory guidance for local authorities, school leaders, school staff, governing bodies and the police (DfE 19th August 2024).

Although the regulations make provision for a Head teacher (or other nominated senior member of 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 responsibility for issuing Penalty Notices with North Yorkshire Local Authority. The Authority will administer the scheme for all schools in its area, including Independent Schools, Academies and Free Schools.

Sanctions are never used as a punishment but as a means of enforcing attendance when 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 and/or other agencies. These can include the Ladder of Intervention, an Early Help Assessment and/or referral to the Children & Families Service. An Early Help Consultant can support you to complete an Early Help Assessment and /or support you to arrange a Team Around the Family if support through other agencies is required. Sanctions of any nature are for use only when parental co-operation in this process is either absent or deemed insufficient.

3. Circumstances where a Penalty Notice can be issued

A Penalty Notice for irregular attendance can only be issued in cases of **unauthorised** absence. A national limit of 2 penalty notices can be issued to a parent for the same child within a rolling 3 year period, so at the 3rd or (subsequent) offence(s) another tool will need to be considered such as prosecution or one of the other attendance legal interventions. 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.

A Penalty Notice is issued as an alternative to a prosecution through the magistrates' courts. To meet Health and Safety requirements, PN's will only be delivered by post. 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).
- Being seen in a public place, without a justifiable reason, in the first five days of an exclusion

Procedure for issuing Penalty Notices for long term poor attendance

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

- A wide continuum of assessment and support strategies have been offered to the child and family in accordance with the Working together to improve School Attendance Guidance https://assets.publishing.service.gov.uk/media/65f1b048133c22b8eecd38f7/Working_together_to_improve_school_attendance__applies_from_19_August_2024_.pdf
- Formal Attendance Procedures (Fast track) has been implemented by the school (Stage 1&2)
- A PACE Formal Caution Interview/LA Panel Meeting has been held with the parent (Stage 3)

- The decision, as an outcome of a PACE Formal Caution Interview/LA Panel Meeting was to issue a Notice to Improve.
- Further unauthorised absence has occurred within the 15 day monitoring period of the Notice to improve.
- Ability to pay is set against improving attendance by the issue of a Penalty Notice (*PN's are not means tested*)
- The issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being progressed
- If a previous Fixed Penalty has been issued LA Officers should be mindful that it counts as part of the 3 year rolling programme.
- The circumstances of the pupil's absence meet all the requirements of the LA's Code of Conduct for the use of Penalty Notices

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 the Notice to improve to the parent/carer
- In the same letter set a period of 15 school days commencing no less than 3 school days following dispatch of the letter within which the pupil must have no unauthorised absence
- Issue a Penalty Notice through the post at the end of the 15 day period if there has been further unauthorised absence recorded
- If a Penalty Notice remains unpaid, following two reminder letters being sent, pursue a prosecution through the Magistrates' Courts for the offence of failing to ensure a child's regular attendance at a school where they are a registered pupil

N.B: *There will be no restriction on the number of times a parent may receive a formal warning of a possible Penalty Notice. A Warning Letter is not required for a PN to be issued for an unauthorised leave of absence (holiday) in term time – see Section 5).*

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

The following documents are required to 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 parent to improve their child's attendance, e.g. telephone calls, home visits, following the Ladder of Intervention, an Early Help Assessment and implementation of Formal School/LA Attendance Procedures (Fast track).

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. It is unlikely that the LA would summon the Head teacher and or practitioner (s) to give oral evidence, based on the submitted Witness Statement, but the parent/carer has the right to do so.*

5. Procedure for Issuing Penalty Notices for unauthorised leave of absence 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 a parent has not applied in advance then by default the absence is not agreed, as a leave of absence cannot be approved retrospectively*).

If the leave of absence is agreed, the Head teacher should determine the number of school days the 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 if the criteria for issue is 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 a block or accumulated, in the preceding 10 week period. 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 is required to be submitted:

- **Certificate of Attendance (Unauthorised Leave)** - only for the period in question; completed and signed by the Head teacher
- **Witness Statement** - completed and signed by the Head teacher
- **Leave of Absence Application Form** - if available
- **Letter of refusal to the parent** - if available

When a parent/carer fails to pay a Penalty Notice issued in these circumstances, the LA will pursue a prosecution under the Education Act 1996 s444 (1) and will present the case in court if necessary. 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 (see 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** of the exclusion and requirements, as above, to parent/carer(s) and the means of delivery
- **Witness Statement** including evidence, by the observer, of where the child was seen and the parent/carer having no reasonable justification for their child being in a public place

Fixed Penalty notices of this nature are not included in the 3 year rolling programme for Fixed Penalty Notices

7. Payment of Penalty Notices

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

Only two penalty notices can be issued per child in a three year rolling period.

The first Penalty will be charged at £80 if paid within 21 days, payment after 21 days but within 28 days is £160. A second Penalty notice will be charged at a standard £160. A third Penalty notice will not be issued but will be subject to a Prosecution.

Part payments will not be accepted.

There is no formal right of appeal by parents against a Penalty Notice once issued. If the penalty is not paid in full by the end of the 28 day period, the Local Authority must

decide whether to pursue a prosecution for the original offence to which the notice applies and/or withdraw the notice. (See Section 8)

The LA retains any revenue from Penalty Notices to be used for administration of the penalty notice system and prosecution. Any surplus monies will be used for other interventions to support attendance.

8. Procedure for withdrawing Penalty Notices

Once issued, a Penalty Notice can only 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
- When 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 (1) or the Education & Inspections Act 2006, 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 use of Penalty Notices as a sanction is included in the LA's School/Pupil Attendance Support Pathway - 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 use 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 DfE & Executive Members of the council.

Contacts:

Julie Parrish (Attendance and Enforcement Officer – Hambleton/Richmond, Ripon, Harrogate, Knaresborough, Craven)

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

Victoria Nightingale (Attendance and Enforcement Officer – Yorkshire Coast, Ryedale and Selby) Tel: Tel: 07989727550 or e-mail: victoria.nightingale@northyorks.gov.uk

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

For all other advice please contact the Early Help Consultant from the Children and Families Service based in your area.

May 2024