

# Penalty Notice

## Code of conduct

### Introduction

1. Under Section 23 of the Anti-Social Behaviour Act 2003 local education authority officers, headteachers and the police have the discretionary power to issue Penalty Notices in cases of unauthorised absence from school.
2. The new power provides an alternative to prosecution of parents under Section 444 of the Education Act 1996 and enables parents to discharge potential liability for conviction for that offence by paying a penalty of £60 if paid within 21 days or £120 if paid within 28 days.
3. Should the Penalty Notice remain unpaid or have been paid only in part at the end of the 28 day period Cambridgeshire County Council must prosecute the parents for the offence to which the notice relates, or, in specified circumstances (see section 29 below), withdraw the notice.
4. Penalty Notices may only be issued in Cambridgeshire in accordance with the terms of this Code of Conduct. The purpose of the Code of Conduct is to ensure that the power is applied fairly and consistently across the County Council and that suitable arrangements are in place for the effective and efficient administration of the scheme.
5. In implementing this Code of Conduct the County Council will liaise when appropriate with neighbouring education and police authorities.
6. This Code of Conduct has been drafted in accordance with the Education (Penalty Notices) (England) Regulations 2004: Statutory Instrument 2004 No 181 and guidance issued by the Department for Education and Skills.
7. In preparing this Code of Conduct the County Council has consulted with Cambridgeshire headteachers and the Chief Officer of Cambridgeshire Constabulary. This complies with The Education (Penalty Notices) (England) Regulations 2007.

## **Circumstances in which Penalty Notices may be issued**

8. Penalty Notice may be considered as an alternative to prosecution for failure to ensure regular school attendance in any given period of unauthorised school attendance as below:

### **8a. Unauthorised absence**

As the Government changed the PA (Persistent Absence) threshold to 90% (in effect from Sept. 2015), the Local Authority may issue a Penalty Notice in relation to a child whose attendance at school is 90% or less over a given period. There must be at least 8 unauthorised sessions over an 8 week period with all absences recorded as unauthorised or 90% and below mostly unauthorised over a longer period. To allow time and opportunity for early intervention work with the family, attendance will be monitored by school and Local Authority before enforcement actions are considered. Such a Fine is intended to offer a rapid intervention, which may be used to address non-school attendance before it becomes entrenched, following guidance in section 13 of 'PN Code of Conduct'.

### **8b. Unauthorised term time leave (includes holiday)**

Any parent who takes a child out of school for term time leave for 6 consecutive sessions (3 days) or more, not authorised by the school (under exceptional circumstances rule), may receive a Penalty Notice. Therefore Penalty Notices will be issued for single event absences of at least 3 consecutive school days or more where these absences are unauthorised because they are neither exceptional nor unavoidable. The absences must be recorded with a 'G' code in the attendance register. Such cases will have to be supported by evidence of parents being warned about a potential Penalty Notice. (The Supreme Court Judgement in the case between Isle of Wight Council v Platt (6th April 2017) clarified the meaning of regular school attendance in relation to Section 444 Education Act 1996. To attend school "regularly" means "in accordance with the rules prescribed by the school".)

## Procedural guidelines

9. The key consideration in deciding whether to issue a Penalty Notice should be whether it is considered likely to be effective in helping the child to whom it relates to return to regular attendance.
10. Before issuing a Penalty Notice for unauthorised absence (refer to section 8A), due consideration should be given to other strategies which may help return the child concerned to regular school attendance. Such strategies might include:
  - a) writing to the child's parents to remind them of their legal responsibilities;
  - b) meeting with the child's parents;
  - c) ensuring a first-day response to any absence;
  - d) setting targets for improvement;
  - e) involvement of other services/agencies.

### **These strategies do not apply to term time leave / holiday. (refer to section 8B)**

11. It is expected that schools will communicate with parents and issue a warning about potential Penalty Notice fine being issued for unauthorised absences. This warning can be in the form of communication sent to parents via school Newsletters, School Web page as well as any direct mail sent to individual parents
12. Head teachers and police officers should only issue a Penalty Notice following consultation, discussion, reflection and joint decision with County Council Attendance Legal Panel.
13. The Local Authority will not agree to sanction the issuing of a Penalty Notice unless he/she considers that with regard to the offence to which it relates there is sufficient evidence to secure a conviction under Section 444 of the Education Act 1996. Evidence could be letters sent to parent, minutes of meetings and record of telephone conversations.
14. A maximum of three Penalty Notices may be served on any one parent over a 12-month period.
15. There is no statutory right of appeal against the issuing of a Penalty Notice. A parent should therefore, if possible, be given warning of the possibility of a notice being issued (refer section 13) in order to allow him/her to make representations should he/she wish to do so. If a head teacher refuses to authorise any absence or requests for holidays during term time and parents are not happy with the decision, they should make representations to the Governing Body of the school. They should not wait and make a representation to the County Council once a Penalty Notice has been issued.

## Authority to Issue a Penalty Notice

16. The Attendance Legal Panel may issue a Penalty Notice to the parent of a child who is a registered pupil at a school in Cambridgeshire or who is a registered pupil at a school in an authority, which has an agreement to that effect with Cambridgeshire County Council.
17. A headteacher or an authorised deputy or assistant headteacher may issue a Penalty Notice to the parent of a child who is registered at his/her school, in consultation with CCC Attendance Legal Panel.
18. A police officer, including a community support officer or other accredited person, may issue a Penalty Notice.
19. Head teachers and Police Officers should comply with the terms of this Code of Conduct when issuing a Penalty Notice and should provide a copy of any notice issued to the Attendance Legal Panel.

## Form and Content of Penalty Notices

20. A Penalty Notice should give the following particulars alleged to constitute the offence to which the notice relates and should contain:
  - a) the name and address of the person to whom the notice is issued;
  - b) the name and address of the child who is failing to attend school regularly and the name of the school at which he/she is a registered pupil;
  - c) the name, title and official details of the authorised person issuing the notice;
  - d) the date of the offence and of the issue of the notice;
  - e) the amount of the penalty which is to be paid and details of the timescales and any variation involved;
  - f) the address of the County Council office at which the penalty is to be paid and to which any correspondence relating to the notice may be sent;
  - g) the method/methods by which payment may be made;
  - h) the specified period within which the penalty should be paid;
  - i) a statement that full payment within the specified period will discharge any liability for the offence;
  - j) an explanation of the consequences should the penalty not be paid in full before the expiry of the specified period;
  - k) an explanation of the grounds on which the notice may be withdrawn.
21. Should there be more than one person liable for the offence (Section 576 Education Act 1996) a separate notice should be issued to each person, per each child.
22. Should the offence involve more than one child a separate notice should be issued for each child, per each parent.

## **Service of Penalty Notices**

23. A Penalty Notice may be served by:
  - a) giving it to the recipient; or
  - b) leaving it at the recipient's usual or last-known address; or
  - c) sending it to the recipient at that address by first-class post.
24. Service by post is deemed to have been effected, unless the contrary is proved, on the second working day after posting the notice by first-class post.

## **Methods of Payment**

25. The preferred method of payment of a Penalty Notice would be on-line payment via the Cambridgeshire County Council website. However, alternatives methods are available on request. Late or part payments (including instalments) will not be accepted and no reminders will be sent.

## **Failure to Pay a Penalty Notice**

26. Should the recipient of a Penalty Notice fail to pay the full amount before the expiry of the period for paying it the County Council will either begin proceedings against the parent under Section 444 of the Education Act 1996 or withdraw the notice in accordance with specified conditions (see section 29 below).
27. An electronic record will be retained to monitor that the recipient of a Penalty Notice has or has not paid the amount due on or before the date specified and presented as evidence in any subsequent Section 444 Education Act 1996 proceedings.

## **Withdrawal of a Penalty Notice**

28. A Penalty Notice may be withdrawn by the County Council, regardless of whom within the authority issued it, if it is deemed that:
  - a) the notice ought not to have been issued (i.e. where it has been issued outside of the terms of this Code of Conduct or where no offence has been committed); or
  - b) the notice ought not to have been issued to the person named as the recipient.
29. Should a Penalty Notice be withdrawn:
  - a) notice of the withdrawal should be given to the recipient;
  - b) any amount already paid by the recipient should be reimbursed;
  - c) any proceedings under Section 444 of the Education Act 1996 instituted against the recipient should be discontinued.

## **Retention of Receipts and Revenue Collection**

30. The County Council will retain all revenue from the issuing of Penalty Notices in order to cover the costs of issuing and enforcing notices and the cost of prosecuting those recipients of the notices who fail to pay.
31. The County Council will produce an annual audit statement as part of its usual audit procedures in order to show that income received from Penalty Notices does not exceed enforcement costs as defined above. Any surplus acquired will be surrendered to a consolidated fund.