

Hertfordshire County Council

**Penalty Notices
Unauthorised Absence
(Truancy)**

Hertfordshire Code of Conduct

Sept 2022

21/11/22 

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1. Local Code of Conduct – Penalty Notices for Unauthorised Absence (Truancy)

Introduction

Section 23 of the Anti-Social Behaviour Act 2003 empowers the police, designated Local Authority Officers and Headteachers and Deputy and Assistant Headteachers authorised by them to issue penalty notices in cases of unauthorised absence (truancy) of pupils of statutory school age.

The government requires Local Authorities to issue a Code of Conduct to which all parties involved must adhere. Penalty notices may be issued only in accordance with the terms of the Code of Conduct.

The purpose of the Code of Conduct is to ensure that:

- the powers are applied consistently and fairly
- duplicate notices are not issued
- issuing a notice does not conflict with proceedings proposed or being taken by the Local Authority under section 444 of the Education Act 1996
- suitable arrangements are in place for the administration of the penalty notice scheme.

The Law

Section 23 of the Anti-Social Behaviour Act 2003 added sections 444A and 444B to section 444 of the Education Act 1996. These sections introduced penalty notices as an alternative to prosecution and enable parents to discharge potential liability for that offence by paying a penalty. The Education (Penalty Notices) (England) Regulations 2007 set out the framework for the operation of the scheme.

All those defined as a parent under section 576 of the Education Act 1996 are considered to be parents for the purpose of these provisions.

As with prosecutions under section 444 of the Education Act 1996 a penalty notice may be issued to each parent liable for the offence in respect of each child.

Penalty notices apply to parents of children of compulsory school age who are registered pupils at maintained schools, academies, Pupil Referral Units (Education Support Centres), City Technology Colleges, Studio Schools, UTCs and any other alternative education provision arranged under section 19 of The Education Act 1996.

Parents cannot be prosecuted for the offence for which the penalty notice was issued until after the final deadline for payment has passed and the penalty remains unpaid. Parents cannot be convicted of that offence if the penalty is paid in accordance with the notice.

The Local Authority will retain any revenue from penalty notices to cover the administration of the scheme and any legal actions arising from it.

Rationale

Regular and punctual attendance is a legal requirement for pupils registered at schools, academies or other maintained or alternative provision.

As absence is so often a symptom of wider issues a family is facing, schools, trusts and local authorities should always work together with other local partners to understand the barriers to attendance and provide support. Where that is not successful, or is not engaged with, the law protects pupils' right to an education and provides a range of legal interventions, which includes Fixed Penalty Notices, to formalise attendance improvement efforts, and where all other avenues have been exhausted-

Fixed penalty notices are served on parents as an alternative to prosecution where they have failed to ensure that their child of compulsory school age regularly attends the school where they are registered or at a place where alternative provision is provided. Fixed penalty notices can be used by all schools (with the exception of independent schools) where the pupil's absence has not been authorised by the school and the absence constitutes an offence. Fixed penalty notices can be issued to each parent liable for the attendance offence or offences, which should usually be the parent or parents with day-to-day responsibility for the pupil's attendance.

Fixed penalty notices are intended to prevent the need for court action and should only be used where a fixed penalty notice is deemed likely to change parental behaviour and support to secure regular attendance has been provided and has not worked or been engaged with, or would not have been appropriate in the circumstances of the offence (e.g. an unauthorised holiday in term time).

Circumstances in which a penalty notice may be issued

- Schools, Academies and Trusts must be clear and able to demonstrate that the issue of a Penalty Notice will change parental behaviour.
- Schools, Academies and Trusts must provide evidence that all other avenues of support have been exhausted (excluding holidays) which includes the offer of a FFA.
- Penalty notices may only be issued in cases of unauthorised absence
- The pupil must have at least **15 sessions** (half days) unauthorised absence in the current and/or previous term
- The school must have sent a formal warning letter to each parent separately, addressed and on school headed paper. This must be sent by first class post.
- The purpose of the warning letter is to give a parent the opportunity to prevent further unauthorised absence, so should be sent as soon as unauthorised absence occurs.
- The formal warning letter must have been sent in the same term that the application for Penalty Notice is made.
- The school/academy/police or Local Authority Attendance Officer considers that issuing a penalty notice could avoid further absence
- Issuing a penalty notice does not conflict with any other legal action being taken
- Separate notices are issued to each parent in respect of each child.

- A maximum of **two** separate penalty notices will be issued to a parent within any twelve-month period
- Penalty notices will be issued for pupils of compulsory school age, up to the end of the spring term of year 11 – this is in order to ensure sufficient time to prosecute unpaid Notices
- A penalty notice will not be issued in respect of a pupil who is looked after by the Local Authority without the prior agreement of the Senior Manager on behalf of the County Lead for Access and Inclusion
- Government guidance is clear that a Penalty Notice should not be issued unless the Local Authority is prepared to prosecute if it remains unpaid. The information contained in the application will form part of the evidence in any subsequent prosecution and therefore must be fully completed and demonstrate all support including early help where possible. If it is not, the Local Authority may decide not to issue the Notice.

Responsibilities of the Local Authority for issuing penalty notices

Primary responsibility for issuing penalty notices rests with the Local Authority and may not be delegated. Schools, academies and the police may issue penalty notices if they wish to do so but any notices issued by them **must** comply with the Local Authority Code of Conduct and a copy of any penalty notice issued must be provided to the Local Authority.

In Hertfordshire all parties agree that the Integrated Service for Learning Statutory Attendance and Participation Teams administer the scheme and issue penalty notices on behalf of police, schools, academies and other settings to ensure fairness and consistency and in the event that subsequent legal action may need to be taken.

The Local Authority receives applications to issue penalty notices from schools, academies and the police. Penalty notices will be issued provided that:

- the circumstances of the absence meet the requirements of the Code of Conduct
- the information is provided in the specified manner
- the request is received not more than 10 school days after the final absence cited

The Local Authority retains revenue from the scheme to cover the costs of issuing and enforcing notices and prosecuting recipients who do not pay.

Appealing against the issue of penalty notices

There is no statutory right of appeal once a penalty notice has been issued. The Local Authority may withdraw a notice if it has been issued incorrectly. If the penalty notice has been issued in accordance with Hertfordshire's Code of Conduct there is no facility to overturn the decision to issue the notice.

Effect of issuing penalty notices

If the penalty is not paid in full before the expiry of the period for paying it the Local Authority named in the notice shall either institute proceedings against the recipient for

the offence or shall withdraw the notice. The School/Academy will be required to provide a witness statement and must be prepared to attend court if required.

Payment of penalty notices

The amount payable is £60 (per parent) if paid within 21 days or £120 (per parent) if paid after 21 days but within 28 days of receipt of the notice.

Separate notices are issued to each parent in respect of each child.

Penalty notices are sent by first class post and are deemed to have been received on the second day after posting.

Arrangements for payment are detailed on the penalty notice and payment by cheque, postal order and by debit/credit card is accepted.

Withdrawal of penalty notices

The Local Authority may withdraw penalty notices in circumstances where it determines that the notice:

- has not been issued in accordance with the Code of Conduct
- ought not to have been issued
- ought not to have been issued to the person named as the recipient
- has not been paid but it is not appropriate to prosecute the recipient for the offence

Prosecution of unpaid penalty notices

If the notice remains unpaid after the expiry of the payment period and the Local Authority has not withdrawn the notice, the Local Authority will prosecute for the offence under section 444 of the Education Act 1996.

All decisions to prosecute (or not) rest with the Local Authority.

