

NORTH EAST LINCOLNSHIRE COUNCIL

Directorate of People and Communities

Local Protocol and Code of Conduct with Regard to the Management of Penalty Notices

1. Legal Basis:

This Code of Conduct has been drawn up by North East Lincolnshire Council as the Local Authority (Local Authority) pursuant to Regulation 14 of The Education (Penalty Notices) (England) Regulations 2007 (Regulations).

Local Authority officers, authorised school staff members (usually head teachers) and the Police are empowered to issue penalty notices under section 444A of the Education Act 1996 (as amended) and section 105 of the Education and Inspections Act 2006.

Any such person issuing a penalty notice must do so in accordance with this Code of Conduct.

In preparing this Code of Conduct the Local Authority has consulted with the relevant statutory consultees as detailed in the Regulations.

Section 444A and 444B of the Education Act 1996 (introduced by section 23 of the Anti-Social Behaviour Act 2003) introduced penalty notices as an alternative to prosecution under section 444 of the Education Act 1996. Parents may discharge potential liability for conviction for an offence under section 444 by paying a penalty. There is no legal obligation to issue a penalty notice before proceeding to prosecution.

Section 103 of the Education and Inspections Act 2006 places a duty on parents in relation to an excluded pupil. A parent has to ensure that his or her child is not present in a public place during school hours and on school days without reasonable justification during the first five days of each and every fixed period or permanent exclusion. These days of exclusion are known as "specified days of exclusion" and will be detailed in a notice given to the parent under section 104 of the Act. This notice will be combined with the notice the school must issue when a child is excluded. The parent is responsible for the child during the specified days upon receipt of the notice. Section 105 of the Act allows for a penalty notice to be given to a parent guilty of an offence under section 103 of the Act. The school must have notified the parent at the time of the exclusion of their duty and the days to which it relates.

The education related provisions of the Anti-social Behaviour Act 2003 apply to all parents who fall within the definition set out in section 576 of the Education Act 1996. 'Parent' means all natural parents, whether they are married or not; and includes any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person; and any person who, although not a natural parent, has care of a child or young person. Having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of their relationship to the child, is considered to be a parent in

education law. Throughout this document, references to 'parent' mean each and every parent coming within the definition (whether acting jointly or separately).

The Education (Penalty Notices) (England) (Amendment) Regulations 2012 SI 1046, which come into force on 1st September 2012, increases the penalty notice rates from £50 to £60 where the amount is paid within 28 days and from £100 to £120 where the amount is paid within 42 days.

2. School Attendance Legislation:

Under section 7 of the Education Act 1996, parents are responsible for making sure that their children of compulsory education age receive efficient full-time education that is suitable to the child's age, ability and aptitude and to any special educational needs the child may have. This can be by regular attendance at school, alternative provision or by education otherwise.

If it appears to the Local Authority that a child of compulsory education age is not receiving a suitable education, either by regular attendance at school or otherwise, then under section 437 of the Education Act 1996, they must begin procedures for issuing a School Attendance Order.

If a child of compulsory education age fails to attend regularly at a school at which they are registered or at alternative provision made for them then the parent may be guilty of an offence under section 444 of the Education Act 1996.

Under section 447 of the Education Act 1996 a Local Authority must consider applying for an Education Supervision Order (ESO) under section 36 of the Children Act 1989 before prosecuting a parent under section 444 of the Act. A Local Authority may apply for an ESO instead of or as well as prosecuting the parent.

3. Circumstances where a Penalty Notice may be issued:

The Education (Penalty Notices) (England) Regulations 2007 detail the framework for the operation of the penalty notice scheme. The Local Authority has primary responsibility for developing, overseeing and administering this Code of Conduct within which all partners named in the Regulations will operate. Within the Local Authority, the Education Welfare Service has operational responsibility for the application of this Code of Conduct.

Parents and pupils are supported at school and by Local Authority officers to overcome issues that prevent regular school attendance through a wide range of intervention strategies. Where this intervention fails penalty notices are an appropriate means to get pupils back into school or alternative education where a parent is judged capable of securing their child's attendance but is not willing to take responsibility for doing so. They are also an appropriate sanction for a parent who has failed to ensure their child is not found in a public place while excluded.

Circumstances in which a penalty notice might be issued are:

- Irregular school attendance;
- Overt truancy;
- Parentally-condoned absences;
- Unauthorised holidays in term-time;
- Persistent late arrival at school (after the register has closed);
- Being in a public place during the first five days of an exclusion; and
- Delayed return to school following a fixed term exclusion

Schools must consider every aspect of a pupil's case before considering whether a penalty notice would be appropriate. This must include strategic discussions with the Education Welfare Officer assigned to the case and any other attendance-support staff who have involvement with or knowledge of the pupil/family.

Penalty notices will only be issued for offences where the Local Authority is willing and able to prosecute.

Use of penalty notices will be restricted to two per pupil per academic year. In cases where families contain more than one poor attending pupil, multiple issues may occur. However, this will be subject to careful consideration and co-ordination.

All those recognised as a parent under section 576 of the Education Act are parents for the purposes of this protocol. A penalty notice may be issued to each parent liable for the offence.

A threshold of at least 20 sessions (10 school days) lost to unauthorised absence by the pupil during the last 14 weeks will apply to parentally condoned absences.

There will be no restriction on the number of times a parent may receive a formal written warning of the possible issue of a penalty notice, and where unauthorised absences occur following the successful completion of the 15-day attendance period by a pupil, a further written warning will be issued. Non-compliance with that further written warning may result in the issue of a penalty notice.

In accordance with The Education (Pupil Registration) (England) Regulations 2006, schools (usually acting through the duly authorised head teacher) can only authorise up to 10 days (20 sessions) in any one academic year for the purpose of leave of absence for holidays in term time, if the head teacher considers that there are **special circumstances** relating to that application. A head teacher cannot authorise more than 10 days (20 sessions) save in **exceptional circumstances**. If the head teacher is satisfied that there is a **special reason**, then and only then, should they proceed to consider whether the absence should be authorised, giving proper consideration to SATS, external and internal assessments and the attendance record of the pupil concerned. The Local Authority has no power to authorise or unauthorise leave of absence.

Requests for a holiday in term time should only be made if there are **special/exceptional circumstances** as to why the holiday cannot be taken at any time outside of term time. These circumstances must be detailed on the application form obtained from the school prior to the holiday, as retrospective consent will not be given. Evidence in support of these circumstances must also be provided to the school when the application form is submitted. For example, written confirmation from an employer why the holiday cannot be taken during any of the various school holidays or a Doctor's/Health Professional's certificate in support of a family crisis/serious illness.

Government guidance in support of the above legislation as to what may be considered as special circumstances are:

- ☐ For service personnel and other employees who are prevented from taking any holidays outside of term time, if the holiday will have minimal disruption to the pupil's education; and
- ☐ When a family needs to spend time together to support each other during or after a crisis/serious illness.

Government guidance advises that holidays taken for the following reasons should not be authorised:

- ☐ Availability of cheap holidays;
- ☐ Availability of the desired accommodation;
- ☐ Poor weather experienced in school holiday periods; and
- ☐ Overlap with the beginning or end of term.

Each request will be considered individually, on its merits and in light of the special/exceptional circumstances the parent has detailed on the application form. Where head teachers are not satisfied that special/exceptional circumstances exist for a holiday in term time to be authorised, subject to the other requirements of this Code of Conduct, head teachers will request that the Education Welfare Service issues a penalty notice.

To ensure the consistent application of the penalty notice provisions, penalty notices will ordinarily be issued where the following criteria are met:

- Where there are at least 10 sessions (5 school days) recorded as unauthorised absence due to a holiday in term-time; or
- Where a child has at least 20 sessions (10 school days) recorded as unauthorised absence during the previous 14 weeks and the pupil has failed a 15-day warning period; or
- Where a child who has been excluded is present in a public place during the first five days without reasonable justification.

4. Protocol for Issuing Penalty Notices:

Penalty notices will only be issued within the terms of the Code of Conduct. The Education Welfare Service is responsible for the administration and issue of penalty notices in the area of North East Lincolnshire.

The Education Welfare Service will accept requests to issue penalty notices from schools (head teachers) and Humberside Police. These requests will be actioned provided that:

- All relevant information is supplied in the specified manner;
- The circumstances of the pupil's absence meets all the requirements of this Code of Conduct;
- Family circumstances/ability to pay is set against the likelihood of securing an improved attendance by issuing a penalty notice (this to include any cases of possible multiple issue to any one family); and
- The issue of a penalty notice does not conflict with other intervention strategies in place or other enforcement sanctions already being considered or processed.

The Education Welfare Service will respond to all requests within 10 school days of receipt and where the criteria is met will:

For unauthorised absences:

- Issue a formal written warning to each parent of the possibility of a penalty notice being issued identifying the 15-day period during which the pupil must have no unauthorised absence;
- Identify the record of at least 20 sessions (10 school days) of unauthorised absences in the previous 14-week period which gives rise to the formal warning; and,
- Issue a penalty notice at the end of the 15-day period if the pupil has any unauthorised absences during the identified period.

For unauthorised, holiday-in-term-time absences:

- Issue a formal written notification to each parent that they will receive a penalty notice because the child has at least 10 consecutive sessions (5 school days) on the school register recorded as unauthorised absence due to a holiday in term time;
- Identify the record of unauthorised absences which gives rise to the issue of a penalty notice; and,
- Issue a penalty notice.

For exclusion-associated absences:

- Issue a formal written notification to the parent that they will receive a penalty notice because the child has been in a public place during the first five days during school hours without reasonable justification;
- Identify the period of exclusion as specified in the notice from school which gives rise to the issue of a penalty notice; and,
- Issue a penalty notice.

5. Payment of Penalty Notices:

Arrangements for payment will be detailed on the penalty notice. Payment of a penalty notice is £60 if paid within 28 days of receipt of the notice, increasing to £120 if paid after 28 days but within 42 days of receipt of the notice. If the penalty notice is not paid in full by the end of the 42-day period, the Local Authority must either prosecute under section 444 of the Education Act 1996 or withdraw the notice. Where a penalty notice is withdrawn the recipient must be informed in writing.

Payment of a penalty notice discharges liability for prosecution for the offence to which the notice relates. Neither the fact that a penalty notice was issued and paid nor the pattern of unauthorised absence or presence in a public place of an excluded pupil to which a paid notice relates, can be submitted as evidence in a prosecution for any subsequent truancy or excluded pupil offence.

However, sections 98 to 101 of the Criminal Justice Act 2003 bring penalty notices within the definition of bad character. Evidence of the issue of a paid penalty notice may therefore be introduced if any of the relevant conditions in sections 101 to 106 of the Criminal Justice Act 2003 are met. These include for example:

- If agreed by all parties; or
- If it is necessary to contradict a false impression given by the defendant; or
- If the defendant attacks the character of another person.

If a penalty notice is not paid, the fact a notice was issued and unpaid can be used as evidence in a subsequent prosecution. The unauthorised absence for which an unpaid notice was issued can also be used as evidence for a prosecution.

6. Procedure for Withdrawing Penalty Notices

Local Authorities may only withdraw a penalty notice where:

- It ought not to have been issued, i.e. where it has been issued outside the terms of this Code of Conduct or where no offence has been committed;
- It has been issued to the wrong person; or
- It contains material errors.

7. Policy and Publicity

The use of penalty notices is included in schools' attendance and behaviour policies and will be brought to the attention of all parents.

Deployment of penalty notices as a sanction is included in the Local Authority's Attendance Policy.

The Local Authority will include information on the use of penalty notices and other attendance enforcement sanctions in promotional and public information material.

8. Retention of Receipts and Revenue Collection

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

9. Review

The Local Authority will review this Code of Conduct and its implementation at regular intervals and in so doing consult with its partner agencies.

July 2012