

# NOTTINGHAMSHIRE LOCAL CODE OF CONDUCT FOR PENALTY NOTICES ISSUED IN RESPECT OF TRUANCY AND EXCLUDED PUPILS

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## INTRODUCTION:

1. The purpose of this local code of conduct is to ensure that the power to issue penalty notices is applied consistently and fairly across the local authority area and that suitable arrangements are in place for the administration of the scheme.

For the purpose of this Code of Conduct the term “school” refers to any primary or secondary phase school regardless of their status as maintained, academy or Independent Sector as well Special Schools, Free schools and Studio Schools or Pupil Referral Unit.

2. A penalty notice is a suitable intervention in circumstances where the parent is judged capable of securing their child’s regular attendance at school or whereabouts during school hours but is not willing to take responsibility for doing so. For example this may include situations where the parent fails to engage with any voluntary or supportive measures proposed to address the non-attendance, act following a warning or notification of a child’s absence from school or make adequate arrangements for the whereabouts of their child.
3. The following may issue penalty notices, although there is no requirement for them to do so:
  - authorised local authority staff;
  - head teachers and school staff authorised by them (limited by regulations to deputy and assistant heads); and
  - the police, community support officers and accredited persons.
4. Head teachers wishing to issue, or authorise their staff to issue, penalty notices should first discuss this with their school’s governing body. **Schools deciding to issue penalty Notices themselves should ensure that this is made clear to parents/carers and is reflected in their Attendance and Behaviour Policy.**
5. Any Penalty Notice issued or requests to the Local Authority for a Penalty Notice to be issued, must comply with the Local code of conduct.

**As outlined in the regulations the payment of all monies for Penalty Notices go to the Local Authority.**

6. The issuing of a penalty notice must not conflict with other intervention strategies or legal proceedings that are already in process.

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## LEGAL BASIS FOR ISSUING PENALTY NOTICES

7. This code of conduct has been drawn up to comply with The Education (Penalty Notices) (England) Regulations 2007 that came into force on 1<sup>st</sup> September 2007. These regulations were subsequently updated in 2012 and 2013.
8. This code of conduct applies to the parents of children of compulsory school age who are registered at a maintained school, a pupil referral unit, an Academy, a city technology college, or a city college for the technology of the arts and those attending alternative provision.

## Definition of a parent

9. All those recognised as a parent under section 576 of the Education Act 1996 are parents for the purposes of this code of conduct. A penalty notice may be issued to each parent liable for the offence or offences.

## Parental responsibility for regular school attendance

10. Sections 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. Parents may discharge their potential liability for conviction for an offence under section 444 by paying a penalty.

**There is no legal requirement for a penalty notice to be issued before proceeding to prosecution through the magistrates court.**

There will be circumstances where it is considered that a Penalty Notice is not appropriate. This may be due to a variety of reasons, including, but not limited to: (a) repeated offences indicating that Penalty Notices are not bringing about a change in behaviour, for example, repeated unauthorised term time leave; (b) the high level of unauthorised absence, including extended unauthorised term time leave cases; and (c) the complex or long standing nature of the particular case. In such cases, the Local Authority may consider instigating a prosecution under Section 444(1) or 444(1A) of the Education Act 1996 as an alternative to a Penalty Notice.

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## Parental responsibility for the whereabouts of excluded pupils

11. 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 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.

The **Attendance Register** is a **Legal Document** and must be treated as such at all times. The register **must** be maintained as a wholly accurate and current record of an individual student's education provision and their attendance at that provision.

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## ISSUING PENALTY NOTICES

12. In Nottinghamshire, both the Local Authority (through the Family Service) and Schools can issue penalty notices.

Any School deciding to issue a Penalty Notice is responsible for :

- keeping accurate records as outlined in the Penalty Notice Toolkit and Guidance
- ensuring that the maximum number of notices issued to a parent as set out in this document is not exceeded,
- ensuring that a notice is not issued where court proceedings are being considered and that duplicate notices are not issued.

The Local Authority through the Family Service will be responsible for the collection of the penalty and where a Penalty Notice is unpaid (and the code of conduct has been followed in the issuing of the penalty) will take legal action under section 444(1) of the Education Act 1996 for the original offence.

**Please Note:** A high proportion of Penalty Notices are unpaid and therefore may result in prosecution through the Single Justice Process or a Magistrates court for the original offence. Therefore it is essential that there is good written evidence that **(a)** the parent knew of the consequences of the absence and **(b)** that in the case of general unauthorised absence the parents/family were offered the opportunity to discuss and receive support to identify and overcome any barriers to school absence).

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## ISSUING PENALTY NOTICES FOR AN UNAUTHORISED LEAVE OF ABSENCE IN TERM TIME

13. Penalty Notice Fines may be issued as follows:

### **Persistent Absence**

If the unauthorised absence is in excess of 3 days (6 sessions) over a 6 week rolling period then the school can issue or ask the Local Authority to issue Penalty Notices to each parent for each child to whom persistent absence applies.

In these cases the Local Authority may also consider what services or measures may be provided to prevent or reduce further unauthorised absence including support and interventions through the Family Service.

### **Holidays During School Term Time**

If the school has evidence that a parent has removed a child from school for the purposes of a holiday during term time without authorisation and the level of absence is in excess of 3 days (6 sessions) in total over a 6 week rolling period, then the school can issue or request the Local Authority to issue Penalty Notices to each parent for each child to whom unauthorised absence applies.

The standard of evidence required will be the same as that required for court cases brought under section 444(1) of the Education Act 1996. ).

The evidence should include a warning to the parent(s) alerting them that a PN may be issued or requested should an unauthorised absence occur that meets the threshold.

Where a penalty notice is unpaid with the 28 day deadline, it will be necessary for the person who issued a penalty notice to provide evidence for the court case by way of a Section 9 Statement (a witness statement admissible in court under the Criminal Justice Act and the Magistrates' Courts Act and Rules).

An Enforcement Lead from the Family Service will consult with the person providing the Section 9 Statement and offer guidance as required and arrange for the Section 9 Statement to be completed in the appropriate format.

If the defendant requests the author of a Section 9 Statement to be present at the court hearing the Local Authority will notify the person concerned as soon as such a request is made.

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15. A parent will be issued with no more than two penalty notices, relating to the same child, within a twelve-month period.

## **Where notices are issued by the Local Authority:**

16. The Family Service Enforcement Lead for each area will receive requests for penalty notices to be issued from those persons authorised to issue such notices and will oversee the process.
17. Where the issue of a penalty notice is requested it will be necessary for the Family Service Enforcement Lead to receive details of the pupil's absence and the evidence that will be available to present to the magistrates' court should the penalty be unpaid.

## **Where notices are issued by the School / Academy:**

18. The designated person authorised by the Head Teacher to issue a Penalty Notice will oversee the process.
19. **Before the issue of a penalty notice is requested it will be necessary for the designated person to check the pupil's absence and the evidence that will be available to present to through Single Justice or at magistrates' court should the penalty be unpaid.**
20. Where a penalty notice has been issued the designated person will provide a copy to the Family Service Enforcement Lead within one week.
21. The Family Service Enforcement Lead will monitor payment of the penalty and where payment is not received the LA will prosecute for the offence to which the notice applies or withdraw the notice (which can only be done in limited circumstances). All fines must be paid within the required timescales as set out in the national regulations. **There will be no flexibility to allow for the late payment of fines**

**Please Note: The Local Authority will only prosecute those cases where the Code of Conduct has been followed fully in the issuing of the Penalty Notice.**

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## **ISSUING PENALTY NOTICES FOR EXCLUSION**

22. For notices issued by the Local Authority, The Family Service Enforcement Lead for each area will receive requests for penalty notices to be issued from those persons authorised to issue such notices and will oversee the process.
23. Where penalty notices are issued by the school, the designated person authorised by the Head Teacher will oversee the process of issuing the notice in line with the Code of Conduct.
24. A penalty notice may only be issued when there is no reasonable justification for the child being in public at the times set out in the next paragraph. Reasonable justification may include pre-arranged medical and dental appointments or emergency appointments. It might also be necessary for a child to accompany a parent with similar appointments if the parent considers it inappropriate to leave the child unsupervised. Attendance at a court hearing or an interview at a police station or with the Youth Offending Service may also provide reasonable justification.
25. Where a penalty notice is requested by a school, it will be necessary for the Family Service Enforcement Lead to receive from the school evidence that a notice under section 104 of the Education and Inspections Act 2006 has been given to a parent of the pupil.

Where the school is issuing the Penalty Notice, the designated person in school is responsible for checking that a notice under section 104 of the Education and Inspections Act 2006 has been given to a parent of the pupil.

In addition to the above, the person issuing the notice must have evidence that the excluded pupil was present in a public place during school opening hours without reasonable justification. The time and date must be provided to ensure that this falls within the time the school at which the pupil is on roll is open and that the incident occurred within the period set out in the notice issued under section 104 of the Education and Inspections Act 2006.

Before requesting or issuing a Penalty Notice the school will need to evidence that they have checked that there was no reasonable justification for the child or young person being in a public place and that the parent had been told verbally or by letter that an excluded child cannot be seen in a public place.

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Where a penalty has not been paid, it will be necessary for the person who requested the issue of a penalty notice to provide evidence for the court case by way of a Section 9 Statement (a witness statement admissible in court under the Criminal Justice Act and the Magistrates' Courts Act and Rules).

The Family Service Enforcement Lead for each area will consult with the person providing the Section 9 Statement and offer guidance as required and arrange for the Section 9 Statement to be completed in the appropriate format.

If the defendant requests the author of a Section 9 Statement to be present at the court hearing the LA will notify the person concerned as soon as such requests are made.

26. A parent will be issued with no more than two penalty notices, relating to the same child, within a twelve-month period.

## **ISSUING PENALTY NOTICES FOR PERSISTENT LATENESS:**

- 27 A penalty notice may only be issued where a pupil is persistently late for 10 separate instances over a period of six school weeks and where these are signified as a "U" in the attendance register.
- 28 Schools should make it clear to parents/carers and pupils in their attendance policy what they categorise as being late ("L") and the time after which arrival will be marked as unauthorised absence ("U") in the attendance register.
- 29 The issuing of Penalty notices will be only in cases where the persistent lateness is marked as unauthorised absence.

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## WITHDRAWING A PENALTY NOTICE

30. The Education (Penalty Notices)(England) Regulations 2007 limit the circumstances in which local authorities can withdraw penalty notices and the normal response to non-payment of a penalty notice will be prosecution for the offence to which the notice relates.
31. A penalty notice **may only be** withdrawn by the local authority named in the notice as the authority to which payment is to be made. The only circumstances in which a Penalty Notice will be withdrawn include cases in which:
- it ought not to have been issued; or
  - it ought not to have been issued to the person named as the recipient; or
  - it appears to the authority that the notice contains material errors,
  - it interferes with existing intervention strategies or legal proceedings
32. Where a penalty notice has been withdrawn -
- notice of the withdrawal must be given to the recipient; and
  - any amount paid by way of penalty in pursuance of that notice must be repaid to the person who paid it.