



Children & Young People Service

Code of Conduct for the issuing of Penalty Notices

Revised September 2012

1. Legal framework

School attendance

Section 7 of the Education Act 1996 (“EA1996”) places a legal obligation on parents of a child of compulsory school age to ensure that the child receives efficient full-time education. This means education that is suitable to the child’s age, ability, and aptitude, and to any special educational needs the child may have.

The Anti Social Behaviour Act 2003 (“ASBA 2003”) came into effect on 27 February 2004. Under s23 of the ASBA 2003, the EA1996 was amended with the introduction of two new subsections under s444 (subsections 444A & 444B), which has made it possible for Penalty Notices to be used as an alternative to prosecution in cases of unauthorised absence from school. The responsibility for authorising absence rests with the school’s head teacher.

The procedural guidance for the implementation of these subsections is contained within The Education (Penalty Notices) (England) Regulations 2007.

Excluded pupils

Section 103 of the Education & Inspections Act 2006 places a duty on parents to ensure that their child is not present, during school hours, in a public place when they are excluded from school. A public place means any highway or other place to which the public has access. A school is not a public place for this purpose.

This duty applies to the first five days of each exclusion in a school year.

Section 105 of the Act enables a Penalty Notice to be issued where an offence is committed under Section 103. Section 103 (4) allows the parent a defence of reasonable justification.

Definitions

For the purposes of Kirklees Council’s Code of Conduct, a ‘parent’ is defined under Section 576 EA 1996 as: -

- All natural parents, whether they are married or not;
- Any person who, although they are not a natural parent, has parental responsibility (as defined in the children Act 1989) for a child or young person;
- Any person who, although not a natural parent, has care of a child or young person with whom the child lives and who looks after a child, irrespective of their relationship with the child.

Throughout this document, references to 'parent' mean each and every parent coming within the definition, whether acting jointly or separately and should not be taken to mean that provisions only apply to 'parent' in the singular.

For the purposes of Kirklees Council's Code of Conduct, 'compulsory school age' is defined as: -

- Commencing at the start of term on or after a child's fifth birthday and concluding on the last Friday in June of the school year in which the pupil becomes 16.

2. Circumstances where a Penalty Notice may be issued.

The Attendance & Pupil Support Service will consider requests from schools, the Police, other agencies such as Social Care or the Youth Offending Service and neighbouring authorities for issue of a Penalty Notice.

i) Where enforcement is necessary to improve attendance.

Penalty Notices will be considered when a parent has failed in their duty as defined in section 7 of The Education Act 1996 to ensure the regular school attendance of their child.

Evidence should be available to demonstrate that:

- The pupil has had more than 15% unauthorised absence within a continuous 6 week period;
- Support has been offered by school and/or by the Attendance & Pupil Support Service;
- All reasonable attempts have been made to engage the parent and to provide opportunities for the parent to address the poor attendance;
- Parenting or similar contracts have been offered which were clear in the expectations of the parent and of the support that would be offered;
- DfE guidance on the use of parenting contracts has been followed;
- Parents have been made aware of the legal sanctions available including the possibility of a Penalty Notice being issued;
- The pursuit of an Education Supervision Order or a Parenting Order may not be appropriate to bring about improvement in the pupil's attendance

In cases where families include more than one child with unauthorised absence, multiple issuing of Penalty Notices may be necessary but this will be subject to consideration on a case by case basis, by the Attendance & Pupil Support Service.

ii) For unauthorised holidays taken during term time.

All Kirklees schools are required to have a written school attendance policy which includes:

- The school policy in relation to term time holidays;
- The criteria to be used when deciding whether to authorise holiday absence;
- The sanctions to be used if agreements are not kept - this could include requesting that a penalty notice be issued.

A summary of the school's policy on term time holidays must be included in the school brochure/prospectus/website and include details of any procedures to request term time holiday or other exceptional leave.

Penalty Notices may be issued:

- If parents have not sought permission from the head teacher before taking their child out of school for a holiday in term-time;
- If the head teacher has refused the request but the absence occurs anyway;
- If a pupil has not returned to school by the agreed date with no satisfactory explanation;

AND

- Where the absence has been recorded by the school as an unauthorised holiday in the attendance register on at least 10 sessions (5 school days) during the current term.

Where parents continue to take unauthorised holidays in term time, despite having previously been issued with a Penalty Notice, the Local Authority will consider a prosecution under S 444 of the Education Act 1996.

iii) Excluded pupils found in a public place

A formal warning will be included in the initial exclusion letter given to the parent(s). This warning will make it clear that a Penalty Notice may be issued should their child be present in a public place in the first five days of exclusion from school.

A Penalty Notice may be issued:

- If an excluded pupil of compulsory school age is unsupervised in a public place during school hours (Section 103 of the Education and Inspection Act 2006);
- If an excluded pupil of compulsory school age is accompanied by a parent in a public place during school hours without reasonable justification;

- If an excluded pupil is apprehended during schools hours by the Police, or by anti-social behaviour officers.
- If an excluded pupil of compulsory school age returns to the excluding school - i.e. in or around the school grounds or buildings - without prior agreement from the excluding school's head teacher.
- If an excluded pupil of compulsory school age returns to the excluding school with his/her parent(s) without prior agreement from the excluding school's head teacher.

Section 103(4) of the Education and Inspections Act 2006 allows the parent a defence of reasonable justification. 'Reasonable justification' is:

- Taking a child to a medical appointment;
- Extraordinary family circumstances – e.g. a funeral;
- Accompanying an adult to a place of work or to an education related working area of supervision – e.g. a library;
- On a school INSET day and/or school closure day.

Unless the above criteria apply, the presence of the parent does not, in itself, give reasonable justification for being found in a public place during school hours. To be justified there needs to be an element of unavoidable presence. The question of reasonableness is ultimately one for the courts to decide and will be determined on an individual case basis. It is for the parent to prove 'reasonable justification'.

3. The issue of Penalty Notices.

Within Kirklees, the responsibility for issuing Penalty Notices and managing arrangements for their payment rests with the Attendance & Pupil Support Service. This ensures that all procedures relating to Penalty Notices are consistently applied, that enforcement action is not duplicated, and that any subsequent court action is integrated into the existing procedures.

Penalty Notices will only be issued by first class post and never as an 'on the spot' action; this is to ensure that all statutory requirements for the issue of Penalty Notices have been met and that Health and Safety requirements relating to staff safety are also met.

No parent will receive more than two separate Penalty Notices for an individual child in any one academic year. Penalty Notices may be issued to each parent of the child.

4. The procedure for withdrawing Penalty Notices

Guidance only allows a Penalty Notice to be withdrawn in the following circumstances:

- Proof has been established that the Penalty Notice was issued to the wrong person;
- The issuing of the Penalty Notice did not conform to the terms of this Code of Conduct

Where a Penalty Notice is withdrawn in accordance with the above, a Notice of Withdrawal shall be sent to the recipient by postal service. Any amount paid towards the Penalty Notice in pursuance of that notice shall be repaid to the payee.

No proceedings shall be commenced (under Section 444(1) or 444(1A) of the Education Act 1996 or under S103 (3) of the Education and Inspections Act 2006) for an offence to which a withdrawal notice has been issued.

5. The Procedure for payment of Penalty Notices

Arrangements for payment will be included with the Penalty Notice. Payment of a Penalty Notice discharges the parent of liability for the offence in question. S/he cannot subsequently be prosecuted for the period covered by the Penalty Notice.

Since September 2012, payment of a Penalty Notice within 28 days is £60 and payment after 28 days, but within 42 days, is £120.

Kirklees Council retains any revenue from Penalty Notices to cover enforcement costs (collection or prosecution in the event of non-payment).

6. Procedure to address Non-Payment of Penalty Notices

If after 42 days the notice remains unpaid, the Attendance & Pupil Support Service will inform the parent/carer of subsequent action being taken.

Non-payment of a Penalty Notice will normally trigger a prosecution (under the provisions of section 444 of the Education Act 1996 or under the provisions of S103 (3) of the Education and Inspections Act 2006). The prosecution can only be for the original offence and NOT for the non - payment of the Penalty Notice.

Should a Penalty Notice be issued for a second offence and there has been a failure to pay a previous notice, this fact may be used in evidence and will be deemed to be an aggravating feature of the offence.

7. Policy and Publicity

Attendance

The utilisation of Penalty Notices as a sanction for unauthorised absence from school forms part of the Local Authority's Attendance Strategy. All policies in schools relating to school attendance should include information on the utilisation of Penalty Notices and this sanction should be brought to the attention of all parents.

Kirklees Council will provide information on the use of Penalty Notices in its leaflets, which are available to parents, and in its publicity campaigns.

Excluded pupils

The utilisation of Penalty Notices as a sanction for failing to ensure that a child is not present in a public place, during school hours, when excluded from school, forms part of the Local Authority's response to exclusions. All policies in schools relating to school exclusion should include information on the utilisation of Penalty Notices and this sanction should be brought to the attention of all parents.

Kirklees Council will provide information on the use of Penalty Notices in its leaflets, which are available to parents, and in its publicity campaigns.

8. Reporting & Review

The Attendance & Pupil Support Service will report at regular intervals on the use and outcomes of Penalty Notices.

If you wish to make any comment regarding this Code of Conduct please direct all communication to the Service manager at:

Attendance & Pupil Support Service,
The Deighton Centre,
Deighton Road
Huddersfield
HD2 1JP