



Bournemouth Borough Council

Penalty Notice Code of Conduct - For failure to ensure regular attendance at school of a registered pupil

Background

Primary responsibility for issuing Penalty Notices rests with the Local Authority who are responsible for the administration of the scheme under the Education (Penalty Notices) (England) Regulations 2007 as amended. Local Authorities are required to issue a Code of Conduct and consult with School Headteachers (including Academies and Free Schools), Governors and the Chief Constable. The new Code of Conduct needs to be adopted by all those consulted in order to replace the existing Code of Conduct.

Bournemouth Borough Council's Children and Young People's Service have previously issued all Penalty Notices for failure to ensure regular attendance at school of a registered pupil. However, some schools or Academies may now want to issue their own Penalty Notices. This Code of Conduct specifies how this can be done.

If a school wishes, a Headteacher is empowered to issue Penalty Notices. The Headteacher may delegate this to a Deputy or Assistant Headteacher. Headteachers who wish their school to issue Penalty Notices must have the agreement of the Governing Body and must notify the Local Authority at the time of signing this Code of Conduct. Penalty Notices can only be withdrawn in very limited circumstances, so it is important that they are issued correctly.

This Code of Conduct has been written in accordance with the relevant legislation and guidance.

The purpose of the Code of Conduct is to ensure a consistent approach to the issuing of Penalty Notices across the Borough.

When deciding whether to issue a Penalty Notice or prosecute under the relevant provisions of the Education Act 1996, those concerned should always have regard to both the Public Interest and Evidential tests.

1. Rationale

- Regular and punctual attendance of children and young people at school is both a legal requirement and essential in order for students to maximise the opportunities available to them.
- Penalty Notices offer a means of early intervention and can be used to deal with issues of failure to ensure regular attendance at school before attendance issues become entrenched.

2. Legal Basis

Section 444 (1) of the Education Act 1996

- Under Section 444(1) of the Education Act 1996 where a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.
- A child shall not be taken to have failed to attend regularly at the school by reason of the following:
 - If the parent proves that at the relevant time the child was prevented from attending by reason of sickness or any unavoidable cause.
 - Where the child is absent with leave from the school.
 - On any day exclusively set apart for religious observance by the religious body to which the parent belongs.
- Further where the child's home is in England:
- The child shall not be taken to have failed to attend regularly at the school if the parent proves that
 - The Local Authority have a duty to make travel arrangements in relation to the child under Section 508B (1) for the purpose of facilitating the child's attendance at the school and have failed to discharge that duty, or
 - The Local Authority have a duty to make travel arrangements in relation to the child by virtue of Subsection (2)(c) of Section 508E (school travel schemes) for the purpose of facilitating the child's attendance at the school and have failed to discharge that duty.
- A person guilty of an offence under Section 444 (1) of the Education Act 1996 is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Section 444 (A) of the Education Act 1996

- Under Section 444A a person guilty of an offence under Section 444 (1) of the Education Act 1996 may be offered a Penalty Notice in respect of the offence.
- A Penalty Notice is a notice offering a person the opportunity of discharging any liability to conviction for the offence under Section 444(1) to which the notice relates by payment of a penalty in accordance with the notice.
- Where a person is given a Penalty Notice, proceedings for the offence to which the notice relates may not be instituted before the end of such period as may be prescribed.
- Where a person is given a Penalty Notice, he cannot be convicted of the offence to which the notice relates if he pays the penalty in accordance with the notice.
- The issue of said Penalty Notices are governed by the Education (Penalty Notices) Regulations (England) 2007 as amended.

The word 'Parent' within of the meaning of the Education Act 1996 includes:

All natural parents, whether they are married or not.

Any person who, although not a natural parent, has parental responsibility for a child or young person (as defined in the Children Act 1989).

Any person who, although not a natural parent, has care of the child or young person.

Regulation 7 Education (Pupil Registration) (Amendment) Regulations 2006 as amended.

Leave of Absence

- Leave of absence may only be granted by a person authorised to do so by the Headteacher or member of the Senior Leadership Team.
- Leave of absence should only be granted where:
 - An application has been made in advance by a parent with whom the pupil normally resides;
 - and the authorised person considers that leave of absence should be granted due to the exceptional circumstances relating to that application.
- Leave of absence shall not be granted to enable a pupil to undertake employment (whether paid or unpaid) during school hours except:
 - Employment for the purpose of taking part in a performance within the meaning of Section 37 of the Children and Young Persons Act 1963 under the authority of a licence granted by the Local Authority under that section; or
 - Employment abroad for the purpose mentioned in Section 25 of the Children and Young Persons Act 1933 where a licence has been granted under that section by a Justice of the Peace.

3. Procedure for issuing Penalty Notices

- Pupils who attended schools within the Borough of Bournemouth (including Academies and Free School) are expected to achieve a good level of attendance. Where a pupil's attendance falls below 96% (or any other lower threshold as may be set by the school) intervention may become necessary.
- The School and or Local Authority will try and work with parents to ensure regular attendance at school.
- Where a parent fails to engage or fails to provide an explanation for a pupil's failure to attend school regularly and attendance does not improve, legal action may be considered. In certain circumstances a Penalty Notice may be offered in lieu of prosecution.

- When deciding whether to issue a Penalty Notice in lieu of prosecution the following factors will be considered:
 - Is this a first offence.
 - Any extenuating circumstances.
 - What percentage of the overall absence has been authorised by the school.
 - Is there likely to be an improvement in attendance.
- For most first offences a letter will be sent to parents or carers advising that action may be taken should attendance not improve. Parent/carers should be advised they may be prosecuted under Section 444 (1) of the Education Act 1996 or that they may be offered a Penalty Notice in lieu of prosecution. Said letter should specify what factors will be considered when determining which course of action will be taken.
- A parent/carer will then be given fifteen school days to improve the situation before any further action is taken.
- The Local Authority and any persons authorised to issue Penalty Notices must do so in accordance with their responsibilities under the Human Rights Act 1998, Data Protection Act 1998 and the Equality Act 2010 and in line with the Councils commitment to fairness, 'Diversity promise' and Equality and Diversity Policy.
- Where a Penalty Notice is issued parents must be made aware that the Local Authority may prosecute, for failure to ensure regular attendance at school of a registered pupil, if the Penalty Notice is not paid in full.
- The Children and Young People's Service will action requests for Penalty Notices provided:
 - The circumstances of the case meet the criteria for the issuing of a Penalty Notice as specified in the Code of Conduct, and
 - All necessary information is provided to the Children and Young People's Service with the PN1 form in order to establish that an offence has occurred and
 - That both the Public Interest and Evidential Test are met.
- A Penalty Notice should be addressed to only one parent but a Penalty Notice can be issued to each parent/carer liable for the offence or offences.
- Penalty Notices will be issued by post to ensure that all evidential requirements are in place.
- The Children and Young People's Service will ensure that the issuing of Penalty Notices is closely monitored. Schools must notify the service of any Penalty Notices that they have issued, and whether said notices have been paid in full or withdrawn.

4. Procedure for withdrawing Penalty Notice

- There is no statutory right of appeal against a Penalty Notice.
- A Penalty Notice may be withdrawn in any case in which it is determined that:
 - It ought not to have been issued, or;
 - It ought not to have been issued to the person named as the recipient;
 - It appears that the notice contains material errors
- A Penalty Notice may be withdrawn in accordance with the above whether or not the period for payment referred to in the notice has expired, and whether or not the penalty has been paid.
- Where a Penalty Notice has been withdrawn in accordance with the above a notice of 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.
- Except as provided below no proceedings may be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued.
- Where a Penalty Notice was issued and was withdrawn proceedings may be continued or instituted for the offence in connection with which that Penalty Notice was issued if both the following conditions are met,
 - A further Penalty Notice in respect of the offence was issued at the same time as the first Penalty Notice was withdrawn; and
 - The penalty has not been paid pursuant to that further Penalty Notice in accordance with the requirement of the regulations.
- Where
 - The Penalty Notice is not paid in full before expiry of the period for paying it; and
 - The Local Authority named in the notice has neither instituted proceedings against the recipient for the offence to which the notice relates, nor is it contemplating such proceedings,
 - The authority must withdraw the notice.

5. Payment of Penalty Notices

- Those issued with a Penalty Notices will need to pay a penalty. Said penalty is currently £60.00 if paid within twenty-one days, or £120 if paid within twenty-eight days.
- Said Penalty Notice require the penalty to be paid in full within 28 days.
- Arrangements for the payment will be detailed on the Penalty Notices.
- Sums paid by way of penalty shall be payable to Local Authorities and the monies received may be used by the authority for the purposes of any of its functions which may be specified in regulations but, to the extent that they are not so used, must be paid in accordance with regulations to the Secretary of State.

6. Non Payment of Penalty Notices

- Non-payment of a Penalty Notice may result in proceedings being commenced under the relevant provisions of the Education Act 1996 for failure to secure regular attendance at school of the registered pupil. Non-payment of the Penalty Notice is not an offence in itself.
- The Children and Young People's Service will take into account factors including previous school attendance, if it is in the public interest to proceed with legal action and whether there has been any material change in circumstances.

7. Review arrangements

- This Code of Conduct will be reviewed regularly and amended when necessary.

8. Supplemental

- If a Penalty Notice is not paid or not paid in full within twenty-eight days, the fact that the Penalty Notice was offered in lieu of a prosecution will be brought to the courts attention.
- Prosecution in such cases would be for the period to which the Penalty Notice relates, but could also include other periods of absence as appropriate. In this way, Bournemouth Borough Council will have the means to avoid the issue of duplicate notices.
- The Children and Young People's Service will manage a central database for storing pupil data and details of Penalty Notices issued. The service will also keep details of all payments made, court dates, whether the recipient was prosecuted or whether the notice was withdrawn and on what grounds.
- Bournemouth Borough Council's Children and Young People's Service, will continue to investigate cases which are referred to them and, following appropriate casework, instigate legal action if applicable. Schools that do not have a Service Level Agreement with the Children and Young People's Service must consider what assessments and support are required to enable a young person to attend school, before the Local Authority instigates legal proceedings where a Penalty Notice has not been paid. Further they must consider whether an application for an Education Supervision Order would be more appropriate in the circumstances.
- An individual parent/carer will usually receive no more than one separate Penalty Notice in respect of the irregular attendance of an individual child in any twelve-month period.
- Local Authorities have no powers in relation to privately funded schools.

Appendix A – Penalty Notice factsheet for parents

Appendix B – Duty of parent in relation to excluded pupil

Bournemouth schools' head teachers and chair of governors signed their Code of Conduct in 2017

Penalty Notice Fact Sheet

Penalty Notices for unauthorised absence from School/Academy

Information for Parents/Carers

Each parent/carer issued with a Penalty Notice has to pay a Penalty Fine

What is a Penalty Notice?

Under existing legislation, parents/carers commit an offence if a child fails to attend regularly and the absences are categorised as unauthorised (the School/Academy viewing reasons provided as unacceptable; or no explanations received; or 'truancy'). Depending on circumstances such cases may result in prosecution under Section 444 of the Education Act 1996. However legislation allows the Local Authority to issue a Penalty Notice under Section 23 of the Anti-Social Behaviour Act 2003 to each parent/carers with responsibility for a child in respect of the offence.

A Penalty Notice is seen as a simpler sanction to focus parents on their responsibilities and does not require an appearance in Court. Payment of a Penalty Notice offers a person the opportunity of discharging any liability to conviction of the offence under section 444(1) to which the notice relates.

How are they issued and who are they issued to?

They are issued by post to your home. No more than one will usually be issued for each child in any academic year to each parent/carer. More than one maybe issued to excluded children or for multiple unauthorised holidays in term time. Each parent/carer issued with a Penalty Notice has to pay a Penalty Fine.

When are they used?

Bournemouth Borough Council considers that regular attendance at School/Academy is of such importance that Penalty Notices may be used in a range of situations where unauthorised absence occurs:

- overt truancy;
- parentally-condoned absences;
- unauthorised holidays and unauthorised absences during term-time;
- persistent late arrival at School/Academy after the register has closed (which is categorised as an unauthorised absence);
- an emerging pattern of unauthorised absences.

Is a warning given?

The deliberate taking of a holiday in term-time without/against School/Academy permission, where this has created a period of unauthorised absence will result in a penalty notice being issued by the Education Social Work Service **without warning**. The School/Academy having already warned that such action will be taken in their letter refusing the holiday application.

A written warning will be sent from the Education Social Work Service when a pupil has had or is likely to have had a minimum of 6 sessions lost to unauthorised absence in the previous 6 weeks.

The written warning will indicate the extent of your child's absences and give you 15 School/Academy days in which to affect an improvement.

A Penalty Notice can then be issued if there has been little improvement or if your child has been identified truanting during a Truancy Patrol.

Is there an appeal process?

There is no statutory right of appeal once a Notice has been issued, but you can make representation to the Bournemouth Education Social Work Service if you believe the Penalty Notice contains factually inaccurate information and has been wrongly issued.

What are the costs & how do I pay?

Payment within 21 days of receiving a Notice is £60 and £120 if paid after this within 28 days. Details of payment arrangements will be included on the Penalty Notice. You need to be aware that payment in part or by instalment is not an option with Penalty Notices.

What happens if I don't pay?

You have up to 28 days from receipt to pay the Penalty Notice in full, after which the Authority can under the Act commence proceedings in the Magistrates' court for the offence of failure to secure regular attendance at School/Academy of registered School/Academy. If the case is proven at court, the court can impose a fine and/ or a community penalty or a custodial sentence.

Can I be prosecuted if I pay the Penalty Notice but my child is still missing School/Academy?

Not for the period included in the Penalty Notice – payment discharges your liability in this respect. However it may be the case that a prosecution might be considered for further periods of poor attendance not covered by the Notice, depending on the circumstances. If this is an issue, it is vital that you work closely with your child's School/Academy and support agencies such as the Education Social Work Service.

Can I get help if my child is not attending regularly?

Yes, the Local Authority and your child's School/Academy will give you advice and support if you need help to secure an improvement in your child's attendance.

It is very important that you speak with the School/Academy or with the Education Social Work Service at the earliest opportunity if you have any worries at all about ensuring your child's School/Academy attendance.

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Duty of parent in relation to excluded pupil

Section 103 of the Education and Inspections Act 2006

Section 103 of the Education and Inspection Act 2006 specifies the duty of a parent in relation to a pupil of compulsory school age who is excluded from school,

Section (1) states this section applies where—

- a pupil of compulsory school age (“the excluded pupil”) is excluded on disciplinary grounds from a relevant school in England, whether for a fixed period or permanently, and
- notice under [Section 104](#) has been given to a parent of the pupil.

Section 103 (2) states that the parent of the excluded pupil must ensure that the pupil is not present in a public place at any time during school hours on a day which—

- is one of the first five school days to which the exclusion mentioned relates or,
- where that exclusion is for a fixed period of five days or less, any of the days to which the exclusion relates,
- and is stated in the notice under Section 104 to be a day on which the parent is subject to this subsection.

If the excluded pupil is present in a public place at any time during school hours on a school day falling within Subsection (2) above, the parent commits an offence unless they have a reasonable justification for doing so.

Section 105 of the Education Act 2006

States that:

Where an Authorised Officer has reason to believe that a person has committed an offence under [Section 103\(3\)](#), he may give the person a Penalty Notice in respect of the offence.

- A Penalty Notice is a notice offering the person the opportunity of discharging any liability to conviction for the offence under [Section 103\(3\)](#) to which the notice relates by payment of a penalty in accordance with the notice.
- Where a person is given a Penalty Notice, proceedings for the offence to which the notice relates may not be instituted before the end of such period as may be prescribed.
- Where a person is given a Penalty Notice, he cannot be convicted of the offence to which the notice relates if he pays a penalty in accordance with the notice.

Dated: 7 June 2017