



**Staffordshire Local Authority Code of  
Conduct for issuing Penalty Notices Sept  
2017**

**Commencing on 01/01/2018**

## **Rationale**

Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities. In recognition of this, the law makes it an offence for a parent or carer to fail to secure the regular attendance of their child at a school at which the child is a registered pupil, without good reason or the agreement of the school.

Penalty Notices are one of the sanctions available for this offence and offer a means of swift intervention, which can be used to combat attendance problems early, before they become entrenched.

Parents and children should also be supported by their school to overcome barriers to regular attendance, through a range of intervention strategies.

Therefore, Penalty Notices and other legal sanctions will only be used where parental co-operation with this process is either absent or deemed to be insufficient to resolve the problem. They will also be used as a means to support and challenge parents to meet their legal responsibilities and where there is a reasonable expectation that their use will secure improved school attendance.

In April 2012, the Government accepted the Charlie Taylor report recommendation to challenge the culture of expectation to term time holiday and set out a clear expectation that term time leave should only be granted in exceptional circumstances.

The Education (Pupil Registration) (England) (Amendment) Regulations 2013 made an amendment to the Education (Pupil Registration) (England) Regulations 2006 to: clarify that leave of absence shall not be granted by schools unless there are “exceptional circumstances”.

The Supreme Court judgement on the *Isle of Wight v Platt* case on the 6<sup>th</sup> April 2017, has brought clarity to the issue of what regular attendance means and the use of penalty notices. Lady Hale gave the conclusion that “regularly” means “in accordance with the rules prescribed by the school”, she went on to say that there are many examples where a very minor or trivial breach of the law can lead to criminal liability. For instance, it is an offence to steal a milk bottle, to drive at 31 miles per hour where the limit is 30. The answer in such cases is a sensible prosecution policy. In some cases, of which this is one, this can involve the use of fixed penalty notices, which recognise that a person should not have behaved in this way but spare them a criminal conviction.

With specific regard to leave during term time, the judgement stated (this interpretation is also consistent with the provision in section 444(3)(a) and (9)) that a child is not to be taken to have failed to attend regularly if he is absent with the leave of a person authorised by the governing body or proprietor of the school to give it. Unlike sickness or unavoidable cause, leave is not a defence. It is part of the definition of the offence. A child is required to attend in accordance with the normal rules laid down by the school authorities for attendance but the school can make an exception in a case.

### **Legal Framework:**

Section 444 of the Education Act 1996 (as inserted by section 23 of the Anti-Social Behaviour Act 2003) empowers designated Local Authority (LA) officers, head teachers (as well as deputy and assistant head teachers authorised by them) and the Police to issue Penalty Notices in cases of unauthorised absence from school.

- The Education (Penalty Notices) (England) Regulations 2007
- The Education and Inspections Act 2006.
- The issuing of Penalty Notices must conform to all requirements of the Human Rights Act 1998 and the Equality Act 2010.
- Section 444 of the Education Act 1996 makes it an offence if a parent fails to secure their child's regular attendance at school at which they are registered, if that absence is not authorised by the school. Penalty Notices supplement the existing sanctions currently available under s444 Education Act 1996 or s36 Children Act 1989 to enforce attendance at school where appropriate.

The Regulations also require each local authority to publish a code of conduct for issuing penalty notices, after consultation with governing bodies, head teachers and the police. Guidance from the Secretary of State states that this "should set out the criteria that will be used to trigger the use of a penalty notice".

### **Circumstances where a Penalty Notice may be issued:**

- A Penalty Notice can only be issued in cases of unauthorised absence.
- The presence of an excluded child in a public place at any time during school hours in the first five days of exclusion.

### **Penalty Notices may be considered appropriate if one of the following criteria is met:**

- There is unauthorised persistent absence. “Persistent” means at least 20 sessions of unauthorised absence over a period of twelve school weeks, excluding holidays. These absences do not need to be consecutive.<sup>2</sup>
- There is a period of absence not authorised by the head teacher or in excess of the period authorised by the head teacher.(e.g. family holiday)
- Persistent late arrival at school, i.e. after the register has closed. “Persistent” means at least 10 sessions of unauthorised late arrival over a period of 12 school weeks, excluding holidays. These late episodes do not need to be consecutive.
- The presence of an excluded child in a public place at any time during school hours in that child’s first five days of exclusion. An “excluded child” is one who has been excluded from school for a given period under the Education and Inspections Act 2006.
- A Penalty Notice will not be issued in respect of children in the care of the LA with whom other interventions will be used.

### **Other conditions.**

- There will be no limit on the times a Penalty Notice for unauthorised leave of absence can be used in an academic year.
- In cases where there is more than one pupil in a family with unauthorised absences, Penalty Notices may be issued for more than one child
- Use of a Penalty Notice or formal warning of a Penalty Notice for unauthorised persistent absence / lateness will be restricted to one notice/ warning per parent of a pupil per academic year<sup>1</sup>.

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<sup>1</sup> Continued poor attendance in the same academic year can be addressed by other statutory actions available to the Local Authority under the Education Act 1996.

<sup>2</sup> Once an unauthorised absence has been used as evidence in Court/Penalty Notice it cannot then be used again in another prosecution.

**Leave not authorised by the head teacher or in excess of the period determined by the head teacher.**

The Local Authority will only issue Penalty Notices requested by a school in response to an unapproved leave of absence (including holiday related) resulting in unauthorised absence where the school has provided the necessary paperwork.

This paperwork should comprise:

- A copy of any school information available to parents which clearly states that parents may receive a Penalty Notice for unauthorised leave (holiday) in term time.
- A copy of the leave of absence (holiday) request form submitted by the parent (s), and a copy of the response sent to the parent(s) by school. In the event the leave of absence (holiday) request is being denied the school's response should state the reason why the request is unauthorised and should again advise parent (s) that they may receive a Penalty Notice if they take their child out of school and that the Local Authority will be advised of the unauthorised leave of absence.
- In cases where the unauthorised leave of absence occurs without prior request from the parent (s), or is due to unauthorised absence beyond that which was agreed, the school should include all correspondence sent to the parent(s) to explore the unauthorised absence.
- Relevant pupil attendance registration certificate signed by the Head teacher / Principal – or their nominated deputy – confirming that non-attendance during the period was unauthorised.
- Completed and signed penalty notice request form. (Appendix A).

## **Pupil who has persistent unauthorised absences/lateness**

As part of this process the parent(s) will first be issued with a 20 day notice period, clearly advising that if unauthorised absence / lateness occurs in this 20 day period, a Penalty Notice may be issued. This is to allow the parents a further period to address their child's irregular attendance by working with the school or other agencies. It is part of a scaled approach, and affords the parents an opportunity to avoid receiving a penalty notice. This is seen as good practice and integral to a proportionate response.

Therefore, the process is as follows:

- School completes and signs a penalty notice request form. (Appendix A).
- School provides pupil attendance registration certificate signed by the Head teacher / Principal – or their nominated deputy – confirming that non-attendance / lateness during the period was unauthorised.
- School provides an assessment and plan which demonstrates that the use of a Penalty Notice is now the appropriate action to improve the child's school attendance / punctuality.
- The local authority issues a 20 day Warning Notice to the parent (s) advising them of the possibility of a Penalty Notice being issued and that the child must have no unauthorised absence / lateness during the set period.
- If there are unauthorised absences / lateness in the period and after due consideration of the facts of the case with the school, issue a Penalty Notice through the post.

Please note:

Where the Penalty Notice is requested from a school in response to a leave of absence (holiday) related unauthorised absence, or is in relation to an offence under section 103 of the Education and Inspections Act 2006, the formal warning letter and 20 day improvement period will not apply.

All Penalty Notices are entered onto a database maintained by Families First to ensure that no duplicate Penalty Notices are issued.

Use of a Penalty Notice or formal warning of a Penalty Notice for unauthorised persistent absence / lateness will be restricted to one notice/ warning per parent of a pupil per academic year.

## **Excluded Pupils**

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 that he / she is excluded, up to and including the first 5 days or, where that exclusion is for a fixed period of 5 days or less, any of the days to which the exclusion relates.

If the excluded pupil is present in a public place at any time during school hours on a school day specified above the parent commits an offence under section 103 of the Education and Inspections Act 2006 and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

In such cases the school should provide:

- A copy of the letter required to be sent to parent(s) pursuant to s.104 of the Education and Inspections Act 2006 warning them to ensure that the child is not permitted to be present in a public place in the first five days of exclusion.
- Robust and reliable evidence in the form of a witness statement, stating how the child is known to the witness, where the child was seen including the date and time.

Please note if the case is contested the witness may be required to give evidence in court.

## **Who may issue / request a Penalty Notice**

A Penalty Notice may only be issued by authorised LA staff. In Staffordshire this will be members of Families First, Education Welfare.

A Penalty Notice may be requested by a head teacher / principal and school staff authorised by them, a police officer during a truancy sweep under the provision of Crime and Disorder Act 1998.

### **Procedure for issuing Penalty Notices:**

The designated officers within Families First will be the only individuals permitted to issue Penalty Notices in the Staffordshire area. This will ensure consistent and equitable delivery, avoid duplication of issue and allow schools to maintain good relationships with parents and ensure that they reinforce other enforcement sanctions.

Penalty Notices will only be issued by post and never as an instant action, e.g. during a truancy sweep. This will enable officers to ensure that all evidential requirements are in place, duplication of issue is avoided and to limit the health and safety risks associated with delivering such notices by hand.

Where Schools, Police or neighbouring local authorities ask Staffordshire County Council to issue a Penalty Notice, their request will be investigated and actioned by Families First provided that:

- The circumstances of the case meet the criteria specified in this Code of Conduct.
- The pupil is registered at a Staffordshire School;
- All necessary evidence is provided to Families First to establish an offence under Section 444(1) of the Education Act 1996 has been committed.
- Issuing a Penalty Notice would not conflict with another intervention strategy already in place or another enforcement sanction already being processed; and
- There is an assessment and plan which demonstrates that the use of a Penalty Notice is now the appropriate action to improve the child's school attendance (not required in the case of unauthorised leave of absence).

Families First will respond to all requests within 10 school days of receipt.

### **Truancy Sweep**

A Penalty Notice will only be issued after due consideration, when all facts are known and the threshold for serving the notice has been met.

Information should be given to anyone stopped on a truancy sweep (pupil and/or parent) about the possible support and sanctions used to address non-attendance.



### **Criteria for withdrawing Penalty Notices:**

Once issued a Penalty Notice may be withdrawn if Families First is satisfied that:

- The Penalty Notice was issued to the wrong person;
- The use of the Penalty Notice did not conform to this Code of Conduct.
- The Penalty Notice contained material errors.
- The evidence demonstrates that the Penalty Notice should not have been issued, e.g. medical evidence;

### **Representation**

There is no statutory right of appeal against the issuing of a Penalty Notice.

However, the parent will be advised when they receive the warning that they may make representation to the County Manager for Education within Families First if they believe one of the above criteria has been met. This will then be investigated and the parent(s) informed of the outcome either to withdraw or uphold the penalty notice.

Please note - in the case of a material error the penalty notice may be re-issued with the appropriate corrections made.

### **Payment of Penalty Notices:**

- Arrangements for payment will be detailed on the Penalty Notice; (Appendix B).
- Payment of a Penalty Notice discharges the parent's or carer's liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Penalty Notice;
- Payment of a Penalty Notice within 21 days is £60 and payment after this time but within 28 days is £120; and
- The County Council retains any revenue from Penalty Notices to cover enforcement costs (collection or prosecuting in the event of non-payment).

Payments will not be accepted in part or by instalments.

### **Non-payment of Penalty Notices:**

Non-payment of a Penalty Notice will result in the withdrawal of the Penalty Notice and will trigger the fast-track prosecution process under the provisions of section 444(1) of the Education Act 1996.

### **Policy and Publicity**

- Identifying information about Penalty Notices issued to particular parents or specific children should not be made public;
- Issuing of Penalty Notices as a sanction is included in the Authority's Attendance Policy;
- School attendance policies should include information on the issuing of Penalty Notices and this should be available to parents;
- The LA will include information on the use of Penalty Notices and other attendance enforcement sanctions in promotional or public information material.

### **Reporting & Review:**

Families First will:

- Report at regular intervals to the head teacher forum groups (Primary, Secondary, Middle and Special) and Staffordshire Police on the deployment and outcomes of Penalty Notices;
- Make regular reports to Staffordshire County Council on attendance matters which will include Penalty Notice use; and
- Review Penalty Notice use at regular intervals and amend the Protocol as appropriate.

### PENALTY NOTICE REQUEST

#### Reason for Penalty Notice

- Unauthorised Persistent absence Choose an item.
- Excluded pupil Choose an item.
- Unauthorised Leave of absence Choose an item.
- Truancy Sweep (Police Only) Choose an item.

Registered pupil at: .. .....School

#### Pupil Details:

Name: .... MALE / FEMALE Choose an item. D.O.B. ....

Address: .. ..

.....Postcode: .....

Telephone No: .. Mobile No: ....

- Does the pupil have any statement of Special Educational needs? Yes / No / NA Choose an item.
- Does the pupil have a Disability under the Equality Act 2010? Yes / No / NA Choose an item.

#### Parent/Carer (please add any additional parent/carers)

**Name:**  
.....

Relationship to pupil... ..

Address (if different from above):  
.....

..... Postcode: .....

Telephone No: . Mobile No: .

**Name:**  
.....

Relationship to pupil... ..

..Address(ifdifferentfromabove): .....

..... Postcode: .....

Telephone No: .. ..... Mobile No: .....

**Dates of unauthorised absence**

The named pupil had unauthorised absence from school for the period of:

... ..... to ... .....

And this absence is recorded in the school register as unauthorised.  
 (Please attach a signed attendance certificate showing the period).

**Declaration**

I am the Head Teacher/Acting Head Teacher of the School named. I certify that this request for a Penalty Notice has been considered in line with the School Attendance Policy.

PN Holiday

- Parent requested leave?  
 Yes / No Choose an item. - enclose copy if Yes
- School sent letter to parents?  
 Yes / No Choose an item. - enclose copy if Yes

PN Persistent Absence/lateness

- Assessment of need and plan in place for child to address issue? Yes / No Choose an item. - enclose copy if Yes
- Is there evidence of work undertaken with the child and family? Yes / No Choose an item. - enclose copy if Yes
- The school is not beyond the statutory limits for walking, but if so, transport was amicable. The limit of two miles for pupils under 8 years old : 3 miles for pupils aged 8+ over?  
 Yes / No Choose an item.
- Has the school informed Parents of this referral to the Local Authority? Yes / No Choose an item. - enclose copy if Yes

PN Excluded Pupil in Public Place

- School issued letter to parents informing them of responsibilities during first 5 days of exclusion? Yes / No / NA Choose an item.
- Evidence can be provided to substantiate the child has been in a public place during school hours? Yes / No / NA Choose an item.

Signed copy of the register is required with any submission.

**PLEASE ATTACH COPIES OF ALL CORRESPONDENCE WITH REQUEST, AND SEND TO THE LOCAL SUPPORT TEAM.**

Name: ... .. Position ... ..

Signature .. .. Date: .. ..

## Penalty Notice

### S.444 Education Act 1996

(Insert by S23 of the Anti Social Behaviour Act 2003)

Please read the notes overleaf carefully

#### PART 1

If 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 under S.444 Education Act 1996.

To:

Of:

You are a parent of (called in this notice "the pupil") who is a registered pupil  
at .

Between and the pupil failed to attend regularly at the school.

This notice gives you the opportunity to pay a penalty fine instead of being prosecuted for the offence given above. The amount of the penalty is £60/£120 in accordance with the table overleaf. If you pay this penalty within the time limits set out below, no further action will be taken against you in connection with the offence as set out in this notice.

Payment should be made within 21 days from date of issue. If paid after 21 days but within 28 days the penalty is doubled to £120. Payment should be made to **Staffordshire County Council** and can be made in person at **Staffordshire County Council Offices, Staffordshire Place One, Tipping Street, Stafford, ST16 2DH** between 9am and 5pm Monday to Thursday, 4.30pm on Fridays, or by posting this notice with a cheque or postal order to this address. **NO CASH PAYMENTS.** If you wish to pay by **debit/credit** card then please call 01785 278927 / 277409 with your card details.

Late, cash or part payments will not be accepted and no reminders will be sent. **If payment is not received by , you may be prosecuted for the offence and could be subject to a fine of up to £1,000.**

This notice is issued by Karl Hobson, County Manager for Targeted Services, on behalf of Staffordshire County Council.

Date of issue:

## PART 2

Please complete the following and return this notice with your payment to Staffordshire County Council:

Name:

Address:

Child's Name:

I attach payment in the sum of £

**NO CASH PAYMENTS ACCEPTED**

Signed:

Date:

## NOTES

### 1. Contact Details

If you have any queries about this notice, please email [karl.hobson@staffordshire.gov.uk](mailto:karl.hobson@staffordshire.gov.uk) or you can put it in writing using the address below.

### 2. Amount of Penalty

The amount of the penalty is as follows:

#### **When paid**

#### **To be paid by:**

Within 21 days      £60

Within 28 days      £120

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### **Address payment to be sent to:**

Families First, Penalty Notice Administration  
Staffordshire County Council  
Targeted Services  
Staffordshire Place One  
Tipping Street  
Stafford  
ST16 2DH

### 3. Code of Conduct

This notice is issued in accordance with a local code of conduct drawn up by Staffordshire County Council. Any questions or correspondence about the code should be addressed to the Strategic Lead – Targeted Services at Staffordshire County Council, Staffordshire Place One, Tipping Street, Stafford, Staffs, ST16 2DH.

### 4. Withdrawal

This notice may be withdrawn by Staffordshire County Council if it is shown that it should not have been issued to you, it has not been issued to you in accordance with the local code of conduct or you did not receive the notice e.g. sent to wrong address. If you believe that the notice was wrongly issued you must contact the County Council to ask for it to be withdrawn as soon as possible, stating why you believe the notice to have been incorrectly issued. The County Council will consider your request and will contact you to let you know whether the notice is withdrawn. If the notice is not withdrawn and you do not pay, you will be liable to prosecution for the offence that your child has failed to attend school regularly.

### 5. Payment

You should complete the notice above and send or deliver it to Targeted Services, Staffordshire County Council at the address given. Office opening hours: Monday to Thursday 9am - 5pm, Friday 9am – 4:30pm.

### 6. Prosecution

If you do not pay the penalty, and the notice is not withdrawn, you will be prosecuted for the offence of failing to ensure your child's regular attendance at school. You will receive a separate summons for this which will give you notice of the time and date of the court hearing. You will be able to defend yourself and you would be advised to seek legal representation; in some circumstances you may be entitled to legal aid.