

Blackburn with Darwen, Blackpool and Lancashire County Children's Services Authorities

Joint procedures for issuing education-related Penalty Notices

Introduction

This document sets out the principles which influence how and when education-related penalty notices will be used. It includes the codes of conduct in respect of notices for attendance and notices for the whereabouts of excluded pupils and also details the procedural arrangements for the administration of such notices. In addition, the detail of the legislation that underpins the issuing of education-related penalty notices can be found in Appendix 1.

Rationale – penalty notices for non-attendance

Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their education opportunities.

Legal action in the courts may be used as a strategy to improve attendance when parents have failed to secure their children's regular attendance at school or other alternative provision. Penalty notices are simply another enforcement option that is now available to the local authority.

However, it should be noted that sanctions of any nature are for use only where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem.

Furthermore, all parties involved must act within the parameters of the local code of conduct.

Rationale – penalty notices for whereabouts of excluded pupils

Parents are expected to make arrangements for the supervision of children who have been excluded from school on any day which is one of the first five school days to which any exclusion relates.

Where the Children's Services Authority (CSA) is notified that a parent is believed to be failing in their statutory duty to ensure such children are not in a public place, an investigation will be undertaken to establish the basic facts of the

case in each instance in order to determine whether an offence is likely to have been committed.

It is expected that in the first instance parents would be reminded of their duty under this legislation and warned as to future behaviour, but subsequently a penalty notice could be issued where the criteria set out in the relevant code of conduct have been met. However, where a child is reported on more than one occasion during any single episode of exclusion, the CSA will only consider a penalty notice for any one offence.

Where there is evidence of repeat episodes which suggest parenting is a significant contributory factor to the pupil's continuing behaviour concerns, schools will be expected to have considered/offered a parenting contract for behaviour before the CSA will consider more than three requests for penalty notices in any one academic year.

Administration of education-related penalty notices

Payment of penalty

Arrangements for payment will be detailed on the penalty notice proforma.

Payment of a penalty discharges the parent/carer of liability for the period/episode in question and so they cannot be subsequently prosecuted under other enforcement powers for the absence period/episode already covered by the penalty notice.

Payment of a penalty within 28 days of receipt of the notice is £50 (subject to review). Payment after this time, but within 42 days of receipt of the notice is £100 (subject to review).

The CSA will retain any revenue from the income generated by education-related penalty notices to help cover the administration and enforcement costs.

Non payment of penalty

Non payment of the penalty within the 42 day time limit will trigger the prosecution process under the provisions of section 444 of the 1996 act or section 103 of the 2006 act, except where the notice is withdrawn (as detailed in the criteria below). However, as with all prosecutions the rules of evidence and criminal procedural rules apply, and so the authority must be satisfied that any prosecution meets the "evidential" test and the "public interest" test, otherwise a prosecution may not proceed.

Procedure for withdrawing penalty notices

Once issued, a penalty notice may be withdrawn where the relevant CSA agrees that:

- The penalty notice should not have been issued; or
- The penalty notice is shown to have been issued to the wrong person; or
- It appears to the authority that the notice contains material errors

Where a notice is withdrawn under the first two of the above criteria, the requirements of regulation 8 (3) of the regulations 2007 will be satisfied by the CSA.

If a CSA ultimately decides not to bring proceedings in respect of the non-payment of a penalty notice, the notice must be formally withdrawn.

Reporting and review

The three CSAs will review the penalty notice procedures at appropriate intervals and:

- Provide an annual report for council members, head teachers and the police
- Ensure that all relevant statistical information is made available to the DfE
- Propose amendments to the procedures as and when appropriate

Code of Conduct for penalty notices for non-attendance

Circumstances where a penalty notice may be issued for non-attendance

To ensure consistent and equitable delivery and the avoidance of duplicate notices being issued, the local delivery of the penalty notice scheme will be managed by the CSA.

A penalty notice for non-attendance can only be issued in cases of **unauthorised** absence. Any schools submitting requests must adhere to the guidance on the marking of registers. This guidance can be found in the Department for Children, Schools and Families (DCSF) document entitled "Absence and Attendance Codes – Guidance for Schools and Local Authorities" and in local authority guidance documents.

The circumstances in which a penalty notice for non-attendance may be issued include:

Parentally condoned absence

Unauthorised holidays in term time

Unwarranted delayed return from an extended holiday (without school agreement)

Persistent late arrival after the register has closed

This is not an exhaustive list and each case will be considered individually. In addition, when considering issuing a penalty notice for unauthorised holidays in term time, the CSA will take into consideration the advice issued to schools on managing extended leave.

A minimum evidential requirement of twelve (12) school sessions lost to unauthorised absence by any pupil in the current term **and/or** twenty (20) sessions lost to unauthorised absence over two consecutive terms will be required to trigger the process.

The number of penalty notices for non-attendance which can be issued is restricted up to a maximum of 2 per pupil, per parent, in any one school year. There is no restriction on the number of times a formal warning may be given about the possible issue of a penalty notice.

The CSA will only be responsible for considering the issuing of penalty notices for children who are on the roll of a school or a pupil referral unit/short stay school within Blackpool. Neighbouring CSAs will decide on the appropriate action to be taken for children resident in Blackpool but who attend out borough/county schools. However, in such circumstances, cross-border discussions will take place between the relevant CSAs.

Procedure for issuing penalty notices for non-attendance

The Pupil Welfare Service will issue penalty notices for non-attendance on behalf of the CSA in Blackpool. This will help ensure consistent and equitable delivery, maintain home/school relationships and complement other enforcement measures.

Penalty notices will only be issued by first class post (which constitutes good service) and never hand delivered. This will ensure that evidential requirements are in place and meets health and safety requirements by avoiding potential face-to-face confrontation.

Requests from schools and the police to issue penalty notices will be considered by the Children's Services Department provided that:

- All relevant information is supplied in the specified manner
- The circumstances of the pupil's absence meet all the evidential requirements of this code of conduct
- Family circumstances are measured against the likelihood of securing improved attendance through the issuing of a penalty notice
- The issuing of a penalty notice will not conflict with other intervention strategies already in place or other enforcement measures already being processed.

The Pupil Welfare Service will respond to all such requests within 10 school days, providing all criteria are met. They will then either:

- Issue a formal written warning to the parent/carer of the possibility of a penalty notice being issued
- In the same letter, set a period of 15 school days within which the pupil must have no unauthorised absence (except in respect of unauthorised holidays*)
- Issue a penalty notice through the post at the end of the 15 day period if the required level of improvement has not been achieved.

OR

- Investigate other interventions that may be more appropriate

Where a penalty notice is requested for unauthorised holidays in term time, the Pupil Welfare Service will usually issue a warning letter relating to the period of the planned holiday, but reserve the right to issue penalty notices without a warning letter where such holidays are either not requested by parents in advance, or requested within insufficient notice for a warning letter to be sent, or

if a Headteacher has already formally warned the parents/carers that he/she will request the local authority to issue them with a penalty notice because:

- They have already taken a family holiday during term time in the same school year; or
- They have withdrawn their child(ren) for an extended holiday of more than 10 school days (20 pupil sessions) without securing prior approval from the Headteacher, i.e. no agreed exceptional circumstances.

Code of Conduct for penalty notices for the whereabouts of excluded pupils

Circumstances where a penalty notice may be issued for the whereabouts of excluded pupils

To ensure consistent and equitable delivery and the avoidance of duplicate notices being issued, the local delivery of the penalty notice scheme will be managed by the CSA.

A penalty notice for the whereabouts of excluded pupils can only be issued in cases where the parents of a formally excluded child fail in their duty to ensure that he/she is not in a public place during school hours (without reasonable justification) on a day which is one of the first five school days of any fixed period or permanent exclusion.

The notice allows a parent to pay a penalty as a way of discharging any liability for the offence on the days specified. However, the parents must have been explicitly notified by the school of this duty/liability at the time of their child's exclusion **and** the specific days to which it relates.

Consequently, schools will be required to provide the CSA with proof of notification and the means of delivery when making a request for a parent to be issued with a penalty notice for the whereabouts of an excluded pupil.

However, a parent has a defence if they can prove reasonable justification. A competent justification which is capable of being regarded as reasonable will depend on the parents "facts" being backed up by proof. It is unlikely that any justification will be held to be reasonable unless it stands up on these facts.

The maximum number of penalty notices for the whereabouts of an excluded pupil that can be issued is restricted to 1 per pupil, per parent **in any one exclusion period**, up to a maximum of five in any one school year.

However, after three such requests, no further notices will be issued in any school year unless the school can provide evidence of considering/offering the parent support through a parenting contract (behaviour).

There is no restriction on the number of times a formal warning may be given about the possible issue of a penalty notice.

The CSA will only be responsible for considering the issuing of penalty notices for children who are on the roll of a school or pupil referral unit/short stay school maintained within Blackpool. Neighbouring local authorities will decide on the appropriate action to be taken for children resident in Blackpool but who attend out borough/county schools. However, in such circumstances, cross-border discussions will take place between the relevant CSAs.

Procedure for issuing a penalty notice for the whereabouts of excluded pupils
The Pupil Welfare Manager will issue penalty notices for the whereabouts of excluded pupils on behalf of the CSA in Blackpool and will automatically consider their use in all cases brought to his/her attention.

There are provisions in the legislation to enable the following to issue penalty notices, though there is no requirement to do so

- Authorised Local Authority staff
- Head teachers and where authorised, deputy and assistant heads
- The police, community support officers and accredited persons.

Lancashire Constabulary have confirmed that they will not issue penalty notices in respect of excluded pupils under these provisions, nor will they formally request the Local Authority to issue such penalty notices. However, where the police (or community support officers) believe an offence may have been committed under this legislation, they will share information with the relevant local authority so that enquiries can be made.

Although head teachers are empowered to issue penalty notices, the offence under section 103 of the 2006 act allows an excluded pupil's presence in a public place where there is reasonable justification for them being there. As such, each individual case must obviously be looked at on its own merits.

Consequently, schools should report suspected breaches of section 103 to the Pupil Welfare Service so that the facts of the case can be appropriately investigated before a penalty notice is ever issued.

As part of his/her investigation, the Pupil Welfare Manager will consider circumstances such as the proper notification to parents, the number of times an excluded pupil has been apprehended, the parents' actions or inactions that resulted in the excluded pupil being in a public place when they shouldn't have

been there, the justification (if any) put forward by the parents and their overall attitude towards their responsibilities.

Some sets of circumstances will be more straightforward than others. Parents who claim to be unable to control their child or to be physically intimidated by them will need to prove this to be the case, unless it is self-evident. Although it is unlikely that such a justification would be held to be reasonable, it could still count towards mitigation. In such cases, where there is not already a Common Assessment Framework (CAF) process in place, schools will be advised to consider whether it would be appropriate to initiate the CAF process.

Penalty notices for parental responsibility will only be issued by first class post (which constitutes good service*) and never hand delivered. This will ensure that evidential requirements are in place and meets health and safety requirements by avoiding potential face-to-face confrontation.

Appendix 1 – Legislation

In this document “Joint Procedures for Issuing education-related Penalty Notices” the 96 Act means The Education Act 1996, the 2006 Act means The Education & Inspections Act 2006, and the Regulations 2007 means The Education (Penalty Notices) (England) Regulations 2007.

Relevant Sections include:

Children Act 1989

The definition of “parent” means all natural parents, whether they are married or not; and includes any person who, although not a natural parent, has parental responsibility and/or care for a child or young person.

The Education Act 1996

Section 7	Duty of parents to secure education of children of compulsory school age
Section 8	Definition of compulsory school age
Section 444	Offence: Failure to secure regular attendance at school of registered pupil
Section 444A	Penalty notice in respect of failure to secure regular attendance at school of registered pupil
Section 444B	Penalty notices: supplemental
Section 444ZA	Application of section 444 to alternative educational provision
Section 576	Meaning of “parent”

Education & Inspections Act 2006

Section 103	Duty of parent in relation to excluded pupil
Section 104	Notice to parent relating to excluded pupil
Section 105	Penalty notice in respect of presence of excluded pupil in public place

Additional Interpretations

“School hours” mean a school session or a break between sessions on the same school day.

“A public place” means any highway or any place to which the public have access, and a school is not a public place for this purpose.

“Specific days of exclusion” are the days when this duty on parents applies, and will be detailed in the notice given to the parent under section 104 of the 2006 Act. The parent is responsible for the child during the specified days upon receipt of such notice.

“Parent” – throughout this document, references to “parent” means each and every parent coming within the definition of the Children Act 1989, whether acting jointly or separately, and should not be taken to mean that the provisions only apply to a “parent” in the singular.

“Which constitutes good service” is a legal definition prescribing the approved conditions for effectively issuing formal notices under this scheme.