

# Penalty Notices

## Local Code of Conduct

### 1. Legal Basis

Section 23 of the Anti-social Behaviour Act 2003 added two new sections (444A and 444B) to the Education Act 1996. These sections introduce penalty notices as an alternative to prosecution under section 444 for the offence of failing to secure regular attendance at school of a registered pupil.

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. These days of exclusion are known as “specified days of exclusion” and will be detailed in a notice given to the parent under section 104 of the 2006 Act. This notice will be combined with the notice the school must issue when a child is excluded. The parent is responsible for the child during the specified days upon receipt of the notice. Section 105 allows for a penalty notice to be given to a parent guilty of an offence under section 103. The school must have notified the parent at the time of the exclusion of their duty and the days to which it relates.

Education (Penalty Notices) (England) (Amendment) Regulations 2012 Amendments have been made to the 2007 regulations which increases the amount payable from 1 September 2012.

Education (Penalty Notices) (England) (Amendment) Regulations 2013. Amendments have been made to the 2007 regulations which reduce the timescales for paying a penalty notice. Parents must, from 1 September 2013, pay £60 within 21 days or £120 within 28 days.

Warning and Penalty Notices must conform to all requirements of the Human Rights Act and all Equal Opportunities Legislation.

In law an offence occurs if a parent fails to secure a child's attendance at the school at which they are a registered pupil and that absence is not authorised by the school.

Section 7 of the Education Act 1996 places a legal obligation on the parents of a child, of compulsory school age, to ensure that the child receives efficient full-time education, that is suitable to the child's age, ability, and aptitude, and to any special educational needs the child may have by regular attendance at school or otherwise.

For the purposes of Sunderland City Council's Code of Conduct, a 'parent' is defined under s576 Education Act 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 Sunderland City 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.

The Local Authority (LA) has a duty to draw up a code of conduct, which sets out the measures to ensure fairness and consistency in the issuing of penalty notices. This code has been produced in consultation with Northumbria Police, the Sunderland's Governors Association, head teachers and other interested parties.

A Penalty Notice is an alternative to the prosecution of parents in cases where pupils incur unauthorised absence. It enables parents to discharge potential liability for conviction by paying a penalty. The parent cannot be prosecuted for the particular offence for which the notice was issued (non-school attendance) until after the final deadline for payment has passed and cannot be convicted of that offence if he or she pays a penalty in accordance with the notice.

As with any legal action, Warning and Penalty Notices should be seen as a matter of enforcement of attendance rather than as a punishment for absence. Decisions on the application of Warning and Penalty Notices are taken on a case by case basis.

## **2. Rationale**

The purpose of the Code of Conduct is to ensure that these powers are applied consistently and fairly across the Sunderland City Council and that suitable arrangements are in place for the administration of the scheme.

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.

Penalty Notices will be employed as an additional resource to raise school attendance.

Attendance at school is essential for pupil attainment and for safeguarding the child. The LA has a duty to enforce attendance and discharges this duty to the Attendance Team.

## **3. Circumstances when a Penalty Notice may be issued**

Within Sunderland LA, the responsibility for issuing Penalty Notices and managing arrangements for their payment, and the collections of monies rests with the Attendance Team. 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 attendance procedures.

Where schools, Police or neighbouring local authorities request Sunderland City Council to issue a Penalty Notice, their request will be investigated and actioned by the Attendance Team provided that: The circumstances of the case meet the criteria specified in this Code of Conduct and all necessary evidence is provided to the Attendance Team to establish that an offence under Section 444 of the Education Act 1996 has been committed;

Penalty Notices can only be issued in cases where a pupil of compulsory school age has been absent, and the absence has not been authorised by the school, or where the pupil has persistently arrived late after the register has been closed (after the register has closed - U code) and where it is believed that the issue of the notice will be effective in helping to get the child back into school.

1. The level of absence that is necessary before a Penalty Notice can be issued is 20 or more half day sessions (equivalent to ten school days) of unauthorised absence during any ten week period.
2. In the case of unauthorised absence due to holiday, a Penalty Notice can be issued if there are 20 or more half day sessions of unauthorised absence in 10 school days. It would have to be clearly demonstrated that the parent understood and had been warned that permission for the holiday had not or would not be given. The school must be able to demonstrate that the parent had full knowledge of the schools procedures and the possible consequences.
3. As a result of attendance sweeps, where there is a repeated unjustified reason for the child being absent from school and they are found accompanied by their parent.

4. Where a child who has been excluded is present in a public place during the first five days. A penalty notice will be issued on the first occasion if appropriate after considering the parents action or inaction which led to the child being in a public place at a proscribed time, the parent's justification if any, and the parent's attitude to having failed to meet their statutory responsibility.
5. The liable parent or carer has received a formal warning from the LA of the possibility of a Penalty Notice being issued, and shall be given a maximum of 15 school days to effect an improvement. A warning notice is not necessary with regards to point 2 as the schools decline letter will be used as the formal warning. A warning notice is not required in for cases that meet the criteria in point 4.

There will be no restriction on the number of times a parent or carer may receive a warning on the possible issue of a Penalty Notice, but no more than two penalty notices per child will be issued during any academic year. Where families have more than one child who fits the criteria, multiple issuing of Penalty Notices may occur.

Should a parent fail or refuse to pay a penalty notice then the evidence provided by the school registration certificate (or that of alternative education provider) will be the primary information laid before the court.

The Attendance Manager will oversee the administering of Penalty Notices in Sunderland to ensure that they comply with legislation on Human Rights and ensure that the practice is applied consistently, fairly and transparently across Sunderland. This will also allow cohesion with other enforcement sanctions.

## **4. When a Penalty Notice would not be appropriate**

Sunderland City Council would not consider a Penalty Notice in the following situations:

- Where there are statutory defences for the child's absence.
- Where a case would not be considered for a court prosecution.
- Where a parent has already received two Penalty Notices in respect of the child within the academic year.
- Where legal proceedings have already begun against the parent.
- Where the irregular attendance was due to an unmet SEN need or the child's registered disability.
- Looked After Children.

## **5. When a Penalty Notice would be withdrawn**

Sunderland LA may withdraw a penalty notice in the following circumstances:

Once issued, a Penalty Notice will only be withdrawn in the following circumstances:

- proof has been established that the Warning or Penalty Notice was issued to the wrong person; or
- the use of the Warning or Penalty Notice did not conform to the terms of this Code of Conduct. or
- there is compelling evidence that no offence has been committed.

## **6. Payment and amounts**

Arrangements for payment will be detailed on the Penalty Notice.

Payment of a Penalty Notice discharges the parent or carer 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.

The Attendance Team retains any revenue from Penalty Notices to cover enforcement costs (collection or prosecuting in the event of non-payment).

Payment of a Penalty Notice discharges the parent or carer liability for the absences in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Penalty Notice.

The Attendance Team will keep accurate records. These will include a copy of all notices, a record of payments received, details of withdrawn notices, and records of any subsequent prosecutions following non-payment.

Penalty notices will be either hand delivered or sent via first class post. Posted notices will take effect from the second working day after posting. (Amendment “working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.)

## **7. Failure to pay the Penalty Notice**

If the penalty is not paid in full by the end of the 28 day period the Attendance Team must either prosecute for the offence to which the notice applies or withdraw the notice. The prosecution is not for non-payment of the notice but is a prosecution for irregular school attendance - Education Act 1996 Section 444(1).

There is no statutory right of appeal against the issuing of a penalty notice.

## **8. Policy and publicity**

The use of Penalty Notices, as a sanction will be included in the LA's policy on the enforcement of attendance.

The LA will include information on the use of Penalty Notices and other sanctions in promotional or public information material.

Schools should include reference to the LA's policy on the use of Penalty Notices and other legal sanctions in their attendance policies.

The LA will report statistics on the numbers of Warning and Penalty Notices issued in their annual PRAB (Parental Measures for Behaviour and Attendance) return to the DFE.

## **9. Review**

The Attendance Team will review penalty notices on an annual basis. The Code of Conduct will be reviewed and amended as appropriate