



## **Middlesbrough Education Welfare Service**

### **Penalty Notice Code of Conduct**

The Education (Penalty Notices)(England) Regulations 2007

Section 444A Education Act 1996  
(Section 23 Anti Social Behaviour Act 2003)

Section 103 of the Education and Inspections Act 2006  
(Section 105 Education and Inspections Act 2006)

Education (Pupil Registration) (England) (Amendment) Regulations 2013

#### **Section 1**

This Code of Conduct will govern the issuing of Penalty Notices for Middlesbrough Council.

In order to comply with Human Rights legislation and to ensure that there is no underlying bias that could lead to disproportionate, unfair or unequal treatment on account of ethnicity, disability or special educational needs, it is essential that Penalty Notices are issued in a consistent manner.

This code ensures that Penalty Notices are issued consistently and fairly and that suitable administrative arrangements are in place.

The Education Welfare Service (EWS) will issue Penalty Notices in Middlesbrough on behalf of the Local Authority (LA). This will ensure consistent and equitable delivery, retain home-school relationships and allow integration with other enforcement sanctions.

Penalty Notices will only be issued by 1<sup>st</sup> Class Royal Mail and never as an on the spot action; this is to ensure that all evidential requirements are in place.

These procedures apply to the parents of children of compulsory school age who are registered at a maintained school, a pupil referral unit or an academy.

Within this Code of Conduct the term 'parent' means all natural parents, whether they are married or not; and includes any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person; and any person who, although not a natural parent, has care of a child or young person, as defined in Section 576 Education Act 1996.

A Penalty Notice is a suitable intervention in circumstances where the parent is judged capable of securing their child's regular attendance or whereabouts but is not willing to take responsibility for doing so. For example where the parent:-

- has failed to effectively engage with any voluntary or supportive measures proposed to support regular school attendance
- removes their child from school during term time without authorised leave of absence
- has failed to make adequate arrangements to ensure their child is not in a public place during the first 5 days of exclusion

## **Section 2**

### **Penalty Notice: in relation to school attendance**

#### **Legal Basis**

Sections 444A and 444B of the Education Act 1996 (introduced by Section 23 of the Anti Social Behaviour Act 2003) introduced Penalty Notices as an alternative to prosecution under Section 444, and empowers designated Local Education Authority Officers to issue Penalty Notices in cases where an offence under s444 has, in the opinion of the Local Authority, been committed. Parents may discharge potential liability for conviction for this offence by paying a penalty within a fixed time. There is no legal requirement for there first to have been a Penalty Notice issued before proceeding to prosecution.

The Education (Penalty Notices) (England) Regulations 2004 came into force on 1<sup>st</sup> September 2007.

Section 23 of the Anti Social Behaviour Act 2003 came into force on 27<sup>th</sup> February 2004.

The Education (Penalty Notices) (England) (Amendment) Regulations 2013 come into force on 1 September 2013. The amendment reduces the timescales for paying a penalty notice to £60 within 21 days or £120 within 28 days.

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

A Penalty Notice may only be issued in accordance with this Code of Practice and when the Local Authority is satisfied that an offence under s444 of the Education Act 1996 has been committed by the recipient of the Notice.

A Penalty Notice can only be issued in cases of **unauthorised** absence. An unauthorised absence is recorded where the Head Teacher is not satisfied with the reasons given for absence, or a leave of absence request has been refused.

A Penalty Notice is considered appropriate in the following circumstances:

- 10 or more sessions of unauthorised absence in the previous seven school weeks.
- Unauthorised leave of absence of 10 or more sessions in the previous seven school weeks. Head Teachers may not grant any leave of absence during term time unless there are exceptional circumstances. The Head Teacher should determine the number of school days a child can be away from school if the leave is granted.
- Persistent late arrival (recorded as unauthorised) after the register has closed for 10 or more sessions in the previous seven school weeks.

To ensure consistent delivery of Penalty Notices the following criteria will apply:

- At least 10 sessions (5 school days) lost to unauthorised absence by the pupil in the previous seven school weeks.
- Other than in specific circumstances\* the parent will receive a formal warning of the possibility of a Penalty Notice being issued and given a minimum of 10 school days to effect an improvement

\*The deliberate taking of a leave of absence in term time without the Head Teacher's permission (where it can be clearly demonstrated that the parent understood that permission had not/would not be given) and where this has created, or contributed to, a period of unauthorised absence of at least 10 sessions.

In cases where families contain more than one child who meets the above criteria parents may receive a separate Penalty Notice for each child but this will be the subject of careful consideration and coordination.

Where more than one person comes within the definition of "parent" a separate Penalty Notice may be issued to each such person for each relevant offence.

Usually a parent can receive a maximum of one Penalty Notice per child; subsequent offences will proceed to prosecution.

The LA must consider every aspect of a child's case before considering whether a Penalty Notice would be appropriate.

In the case of unauthorised leave of absence the parent can make representation to the Head Teacher at the time of the leave of absence request. Where the request is refused, and there is an unauthorised absence of 10 or more sessions, the Head Teacher may notify the LA to request a Penalty Notice be issued.

Where all criteria are met the LA will:

- Ensure a formal written warning has been issued to the parent explaining the possibility of a Penalty Notice being issued.
- Penalty Notices will be posted 1<sup>st</sup> Class Royal Mail if there has been no significant improvement in the child's school attendance as required in the warning letter.

## **Section 3**

### **Penalty Notice: in relation to exclusion**

#### **Legal Basis**

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 5 days of each and every fixed period or permanent exclusion as specified in a Notice given to the parent by the School under s104 of the Education and Inspections Act 2006.

The implementation of the Education and Inspections Act 2006 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.

Designated Local Authority Officers are empowered to issue Penalty Notices where pupils are found in a public place during the first 5 days of exclusion.

The Education (Penalty Notice) (England) Regulations 2007 came into force on 1<sup>st</sup> September 2007.

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

The parent is liable for a Penalty Notice if a child is found present in a public place during school hours without reasonable justification during the first 5 days of each and every period of a fixed or permanent exclusion as specified in a Notice given to the parent by the School under s104 of the Education and Inspections Act 2006.

Where more than one person comes within the definition of "parent" a separate Penalty Notice may be issued to each such person for each relevant offence.

The LA must consider every aspect of a child's case before considering whether a Penalty Notice would be appropriate.

The LA recognises that, in some circumstances, it may be necessary for a child to be in a public place during school hours on a day when they are excluded. For example, the child may have a prearranged medical appointment or emergency. Similarly if the parent needs urgent medical help it may be inappropriate to leave the child at home. In all cases it will be for the parent to prove reasonable justification.

A reasonable justification depends upon points of fact and evidence, and will ultimately be decided by the Courts.

### **Procedure for issue**

The EWS, on behalf of the LA, will receive requests to issue Penalty Notices from Cleveland Police. These requests will be actioned provided that:

- All necessary information is provided to the EWS to establish that an offence under Section 103 of the Education Act 2006 has been committed.
- the circumstances of the pupil's whereabouts meets all the requirements of this Code of Conduct.
- The issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.

A parent can receive a maximum of 2 Penalty Notices resulting from an individual child being in a public place during the first 5 days of a fixed period or permanent exclusion; subsequent offences will proceed to immediate prosecution.

## **Section 4**

### **Limitations on Local Authorities issuing Penalty Notices**

A Local Authority may only issue a Penalty Notice in respect of a child: -

- Who is a registered pupil at a school in the area of the Authority
- For whom the Authority has made arrangements for alternative educational provision (whether or not in the area of that Authority)
- Who is not, at the time the notice is given, a registered pupil at any school (whether due to permanent exclusion or otherwise) but resides in the area of that Authority

NB The Local Authority of the school at which the child is registered should issue the Penalty Notice. Where the child has been excluded it would be the Local Authority where the child resides.

### **Procedure for withdrawing Penalty Notices**

A Penalty Notice may be withdrawn by Middlesbrough Council in any case in which the Authority determines that:-

- It ought not to have been issued
- It ought not to have been issued to the person named as recipient
- It contains material errors
- The use of the Penalty Notice did not conform to the terms of this Code of Conduct

Where a Penalty Notice has been withdrawn in accordance with the above, a notice of the withdrawal shall be given to the recipient. Any amount paid by way of penalty in pursuance of that notice shall be repaid to the person who paid it. No proceedings shall be continued or instituted against the recipient for the offence for which the withdrawn notice was issued.

### **Payment of Penalty Notices**

Arrangements for payment will be detailed on the Penalty Notice.

Payment of a Penalty Notice discharges the parent's liability for the offence in question, and they cannot subsequently be prosecuted for the offence covered by the Penalty Notice.

The penalty is £60 if paid within 21 days of receipt of the notice, rising to £120 if paid after 21 days but within 28 days of receipt of the notice. If the penalty is not paid in full by the end of the 28 day period the Local Authority must either prosecute for the offence to which the notice applies or withdraw the notice.

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

Non-payment of a Penalty Notice will result in the withdrawal of the notice and will trigger the prosecution process. Prosecution is for the offence to which the notice relates rather than for non-payment of the notice.

In the case of the prosecution of a parent who has failed to ensure their child attends school regularly the prosecution will be brought by the Local Authority under the provisions of Section 444 Education Act 1996.

In the case of prosecution of a parent who has failed to ensure that their child is not found in a public place during a specified day of exclusion the prosecution will be brought by the Local Authority under the provisions of Section 103 of the Education and Inspections Act 2006.

The parent cannot be prosecuted for the particular offence for which a notice was issued until after the final deadline for payment has passed (28 days after receipt of the notice) and cannot be convicted of that offence if the parent pays a penalty in accordance with the notice.

### **Policy and Publicity**

All school Attendance Policies will include information on the deployment of Penalty Notices and this will be brought to the attention of all parents.

The Local Authority will include information on the use of Penalty Notices and other attendance enforcement sanctions in promotional and public information material.

### **Reporting and Review**

The EWS will report at regular intervals to the Director of Education on the deployment and outcomes of Penalty Notices.

The EWS will review Penalty Notice use at regular intervals and amend the general enforcement strategy as appropriate.

Reviewed September 2019

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