

Education Attendance Service

Penalty Notices – code of practice

**Code of Conduct**

The purpose of this code of conduct is to ensure that powers are applied consistently and fairly across this authority. Penalty notices offer a swift intervention which may be used to combat truancy issues before they become entrenched.

**Basic Facts**

Section 23 of the Anti-Social Behaviour Act 2003 introduces new powers for designated local authority officers, typically School Attendance Officers (SAO), headteachers (HT) (and deputy headteachers and assistant headteachers authorised by them) and the Police to issue penalty notices. It is expected that most penalty notices will be issued by LAs. The powers came into force on 27 February 2004.

Subsection (1) of section 23 of the Anti-social Behaviour Act 2003 adds two new sections (444A and 444B) after section 444 of the Education Act 1996. These new sections introduced penalty notices as an alternative to prosecution under section 444. S444ZA Education Act 1996 was added by s116 Education Act 2005, and extends the provisions to failure to attend alternative education placements.

**What is a penalty notice?**

* Parents of a registered pupil whose child fails to attend school regularly have committed an offence for which prosecution was the only available sanction prior to 2004 (see Section 444(1) and / (1)(a) Education Act 1996).
* N.B. All those defined as a parent under section 576 of the Education Act are parents for the purposes of these provisions. The parent responsible will usually be the person who has day to day care of the child. As with prosecutions under section 444 of the Education Act 1996, a penalty notice may be issued to each and every parent liable for the offence or offences.
* Amendments have been made to the Education (Penalty Notices) England Regulation 2007 by the [Education (Pupil Registration) (England) (Amendment) Regulations 2012 and 2013](http://www.legislation.gov.uk/uksi/2013/756/contents/made).

The 2007 regulations set out the procedures for issuing penalty notices (fines) to any parent who fails to ensure their child’s regular attendance at school, or fails to ensure that their excluded child is not in a public place unsupervised during the first five days of exclusion.

* Penalty notices provide an alternative to prosecution under Section 444 (1) and 444(1)(a), and enable parents to avoid a potential criminal conviction for an offence under that Section.
* From September 2012 in accord with the Education (Penalty Notices) (England) (Amendment) Regulations 2012, the penalty was increased. The Education (Penalty Notices) (England) (Amendment) Regulations 2013 which came into force on the 1st September 2013 reduced the times in which the penalty must be paid.
* Therefore a penalty is now £60 if the penalty is paid within 21 days and £120 if it is paid within 28 days. (A notice served by post is deemed to have been received on the second day after posting).

**Who can issue a penalty notice?**

* The provisions enable the following to issue penalty notices, (although there is no requirement for them to do so):

- Authorised staff members of the LA;

- Head teachers, and members of school staff authorised by them (limited by regulations to deputy and assistant heads); and

- The Police, Community Support Officers and other accredited persons.

* The penalty notice procedures apply to the parents of children of compulsory school age who are registered at a maintained school, a pupil referral unit, an Academy, a city technology college, a city college for the technology or the arts and include those whose children are in alternative educational provision.

**When is it appropriate to issue a penalty notice?**

* Penalty notices must be issued within the terms of this code of conduct.
* In considering whether the necessary conditions for a penalty notice to be issued are fulfilled, LAs and head teachers should have regard to all their statutory duties including their safeguarding duties.
* The key consideration in deciding whether to issue a penalty notice will be whether it can be effective in helping to get a pupil who is truanting back into school, and whether there is substantive evidence of non-compliance and collusion on the part of the parent.
* A penalty notice is a suitable intervention in circumstances of parentally condoned truancy deemed to constitute unauthorised absence, where the parent is judged capable of securing their child's regular attendance, but is not willing to take responsibility for doing so, for example where the parent has failed to engage with any voluntary or supportive measures proposed. It will be particularly useful as a sanction at an early stage before attendance problems become entrenched and where the LA considers that a prosecution would be too heavy-handed.
* The normal response to a first offence should be a warning rather than a penalty. Should the parent fail to ensure appropriate improvements in attendance, the issue of a penalty notice should follow the warning letter.
* The level of absence at which a penalty notice will be considered will be at least 10 sessions (10 consecutive sessions in the case of term time holidays) of UA over period of 12 school weeks, along with clear and identifiable levels of parental collusion/lack of co-operation with school and LA. However, there may be other circumstances in which a penalty notice needs to be considered. Such situations should be discussed with either the Principal, or Deputy Principal SAO prior to issue of a penalty notice.
* Other factors to be considered alongside this threshold include:-
* Persistent absenteeism – pupils who have been identified within specific schools as PA pupils and there have been insufficient attempts on the part of the parent to rectify the situation.
* Persistent lateness, after close of register (Absence code U – late after register closed / unauthorised absence) AFTER school disciplinary procedures and sanctions have been applied).
* Successive interception from Truancy Patrols.
* Year 11 non-attendance
* Unauthorised Term Time Holidays: The deliberate taking of a holiday in term time where this has created a period of unauthorised absence in a year of at least 10 sessions. In situations where a holiday has been taken the warning letter should be issued immediately, with a further 2 days allowed to enable the parents to receive and respond to the warning. Thereafter, the penalty notice can be issued.

**What is the effect of a penalty notice?**

* Under Section 444(1A)(3)The parent cannot be prosecuted for the particular offence for which the notice was issued until after the final deadline for payment has passed (28 days after receipt of the notice from of 1st September 2013) and under Section 444 (1A)(4) a parent cannot be convicted of the same offence if they pay a penalty in accordance with the notice. Penalty fines are to be paid to the LA.
* If a penalty notice is issued and paid within the timescales identified earlier, but attendance levels do not improve, the penalty notice cannot be used as evidence in any subsequent prosecution of parents under Education Act 1996 Section444 (1)/444(1)(a).
* If the penalty is not paid in full by the end of the 28 day period, the LA must either prosecute for the offence to which the notice applies or withdraw the notice (which they can only do in limited circumstances set out below). *Unlike other penalty notice schemes the prosecution is not for non-payment of the notice.* If there is a prosecution by the LA it will follow the usual procedures of a prosecution for irregular attendance under s444 Education Act 1996.
* Payment of a penalty notice does not amount to a conviction for a criminal offence.
* DFE expects the LA to prosecute a parent if a penalty notice remains unpaid even when the child’s attendance has improved. This needs to be discussed in professional supervision, and considered on an individual case basis.

**Can a penalty notice be appealed or withdrawn?**

* There is no right of appeal against the issue of a penalty notice.
* LAs may only withdraw a penalty notice in the following circumstances:

- Where it ought not to have been issued i.e. where it has been issued outside the terms of the local code of conduct or where no offence has been committed;

- Where it has been issued to the wrong person; or

 Where the notice contains material errors.

* If a parent disagrees with the contents of a warning letter, or has any other complaints about the procedure of the LA or school, they should put their concerns and objections in writing to the LA within 10 school days of the receipt of the warning letter.
* Similarly, if a parent receives the penalty notice and does not agree with the conditions under which it has been issued, they may write to the LA to identify their concerns, and this must be received within 14 days of the issue of the penalty notice. No correspondence will be entered into after the 14 day period, and the parent must pay the penalty notice or face the possibility of further proceedings for irregular school attendance.
* All correspondence should be addressed to the Principal School Attendance Officer at Hackney Learning Trust.

**Administering Penalty Notices**

* Other than in exceptional circumstances the liable parent / carer will receive a formal written warning of the possibility of a Penalty Notice being issued and given an appropriate period of time to effect an improvement. It is important to note that discretion will be applied in situations where there is short term improvement, but a continued pattern of erratic attendance thereafter. If a written warning has been issued, and attendance improves within the specified period but deteriorates thereafter the penalty notice can be issued without further warning.
* Within the London Borough of Hackney, the penalty notice is issued by post, usually following the issue of a warning letter as described above. Consideration of whether to issue a penalty notice can take place within:-
* An Education Attendance Service professional supervision
* A LA Planning Meeting or Court Strategy Meeting
* A Consultation Meeting in School involving a member of the Attendance Service

No penalty notices are issued by Head teacher without prior consultation and discussion with a Manager from the Education Attendance Service, in order to avoid duplication of process and to ensure fairness and equality. It is also imperative to ensure that a penalty notice is not issued in conjunction with an LA prosecution.

Consultation needs to take place with other LA Educational Welfare Services if it is proposed that a penalty notice is issued to parents of a pupil on roll at a Hackney school, but resident in another authority, or resident in Hackney but attending school in another authority, in order to avoid the potential for duplication

**Payment of Penalty Notices**

Arrangements for payment will be detailed on the Penalty Notice.

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

Payment of a Penalty Notice within 21 days is £60 and the payment after this time but within 28 days is £120.

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

Non payment of a Penalty Notice will result in consideration of further intervention to improve attendance, such as Parenting Orders, Parenting Contracts or Prosecution.

## Reporting and Reviewing

The Principal School Attendance Officer will report to Hackney Learning Trust Executive on the deployment and outcomes of Penalty Notices.

The Principal School Attendance Officer will review Penalty Notice procedures at regular intervals and amend the general enforcement strategy as appropriate.

All correspondence should be addressed to Principal School Attendance Officer at Hackney Learning Trust.