



## **NON-SCHOOL ATTENDANCE AND PENALTY NOTICES CODE OF CONDUCT**

**(With effect from January 2021)**

*The Secretary of State for Education has issued a disapplication notice relating to the offence to fail to secure a child's regular attendance at school under section 444 Education Act 1996. Therefore, Warwickshire County Council will not be issuing penalty notices or prosecution proceedings for school absences that occur during the period of the disapplication notice, namely 7 January 2021 and 6 February 2021 and/or any subsequent disapplication's.*

### **1. LEGAL FRAMEWORK**

- 1.1. Section 23 of the Anti-Social Behaviour Act 2003 introduced new powers for designated Local Education Officers, Head teachers (and Deputy or Assistant Head teachers authorised by them) and the police to issue penalty notices for unauthorised absence from school.
- 1.2. The Education (Penalty Notices) (England) Regulations 2004 came into force on 27<sup>th</sup> February 2004. This was updated with, The Education (Penalty Notices) (England) Regulations 2007 and amendment Regulations 2012, followed by additional amendment Regulations 2013 (coming into force on 1st September 2013).
- 1.3. Regular and punctual attendance at school is a legal requirement under Section 7 of the Education Act 1996.
- 1.4. Under Section 444 of the Education Act 1996, an offence occurs if a parent/carer fails to secure a child's regular attendance at school at which they are a registered pupil, and the absence is not authorised by the school and none of the statutory defences apply.
- 1.5. Penalty notices must be issued in a manner which conforms to all requirements of the Human Rights Act and all relevant Equal Opportunities Legislation.
- 1.6. Section 576 Education Act 1996 defines 'parent' as:
  - Any natural parent, whether married or not;
  - Any parent who, although 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.

### **2. RATIONALE**

- 2.1. Penalties must be applied consistently and fairly.
- 2.2. The County Council is responsible for developing the protocol within which all partners named in the Act will work.
- 2.3. Regular and punctual attendance at school is both a legal requirement and essential for pupils in order to maximise their educational opportunities.

- 2.4. Penalty Notices supplement the existing sanctions currently available for this offence and offer a means of swift intervention which can be used to combat truancy problems before they become entrenched.
- 2.5. Parents and pupils will continue to be supported by their school, by the Warwickshire Attendance Service and appropriate services to overcome apparent barriers to regular attendance, through a range of intervention strategies.
- 2.6. Penalty Notices and other sanctions will be used only where parental cooperation in this process is either absent or deemed insufficient to resolve the presenting issue.
- 2.7. A key consideration in deciding whether to issue a penalty notice for truancy will be whether it can be effective in helping to get the pupil who is truant back into school or an alternative provision.
- 2.8. Penalty notices should be used as an early deterrent to prevent patterns of unauthorised absence developing and to supplement, rather than replace the use of, the wider powers already available. As with current legislative action, they are to be used for the enforcement of attendance and not for use as a punishment for absence.
- 2.9. They will be used as a means to support parents to meet their responsibilities in law, and where there is a reasonable expectation that their use will secure an improvement.
- 2.10. 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.
- 2.11. They can only be used for periods of unauthorised absence and the defences in law replicate those already in place for enforcement actions under the provisions of Section 444 of the Education Act 1996.
- 2.12. The Education (Pupil Registration) (England) Regulations 2006 as amended by the Education (Pupil Registration)(England)(Amendments) regulations 2013 govern the authorisation of Leave of Absence. Penalty notices can be issued if Leave of Absence is not authorised by the school, it is referred to the Local Authority and the child is absent from school during the period requested.
- 2.13. Great care will be taken to ensure that notices are properly issued and only issued for offences where the local authority is willing and able to prosecute for the offence or irregular attendance.
- 2.14. Any prosecution would be for the offence to which the notice relates rather than non-payment of the notice and will follow the usual procedures of a prosecution for irregular attendance (including considering an education supervision order as an alternative, or in addition to prosecution).

### **3. CIRCUMSTANCES WHERE A PENALTY NOTICE MAY BE ISSUED:**

- 3.1. A Penalty Notice can only be issued in cases of unauthorised absence.
- 3.2. Use of Penalty Notices will be restricted to two per pupil per academic year.
- 3.3. Parents will receive a formal written warning before the Local Authority proceeds to issue a penalty notice. However, this is not necessary where a request for leave of absence during term time has not been made in advance of a child being absent from school.

- 3.4. Penalty Notices may be considered appropriate for persistent absence when input from the Warwickshire Attendance Service has failed to affect a return to school.
- 3.5. A Penalty Notice can be issued in any of the following specific circumstances:
- 3.5.1. **Attendance targets (for persistent absence):**  
Where at least 10 sessions (5 school days) are lost due to unauthorised absences in any 100 session (50 school day) period.
- 3.5.2. **Truancy Sweeps:**  
Where a pupil is stopped on a truancy sweep and there is not a valid reason for the absence from school, the Local Authority will send a letter to the parent(s) advising them that further unauthorised absences over the following 15 school day period may result in a penalty notice being issued. Prior to a notice being issued the Local Authority will consult with schools to agree this action.
- 3.5.3. **Leave of Absence during term time:**  
The Education (Pupil Registration) (England) (Amendments) Regulations 2013 came into force on 1<sup>st</sup> September 2013 and amended the 2006 regulations removing the reference to 'holiday', 'extended leave' as well as the statutory threshold of ten school days. The amended regulations state the head teacher (or authorised person) may not grant any leave of absence during term time unless there are "exceptional circumstances" that apply to that application. The head teacher should consider each application on a case-by-case basis and on its own merits. It is at the head teacher's discretion if the exceptional circumstances warrant the authorisation of the leave and should also determine the number of days the pupil should be absent for. Head teachers should make clear to parents the date on which the pupil will be expected to return to school. All requests for leave of absence must be made in advance and by the parent/carer with whom the child normally resides.  
A Penalty Notice will be issued when leave of absence has been taken but the school have not received and authorised a request for the same in advance (where it can be clearly demonstrated that the parent/carer understood that permission had not be given).  
The law does not set a minimum number of sessions for which a Penalty Notice for Leave of Absence during term time will be issued. Warwickshire County Council will consider each referral on a case by case basis and on its own circumstances, once the absence has occurred.
- 3.5.4. **Excessive delay return from holiday:**  
Where leave has been granted by the head teacher, parents should be informed by letter of an agreed return date and what will occur if the pupil fails to return to school on the date stated. The Education (Pupil Registration) (England) Regulations 2006 also enables schools to delete from their roll pupils who have failed to attend on the agreed return date. Following this date, reasonable enquiry should occur by

the school and local authority to ascertain the pupil's whereabouts in an attempt to locate the pupil prior to deletion.

**3.5.5 Persistent Late Arrival at School:**

When a pupil persistently arrives late, schools should investigate the reason for this and offer support where appropriate to rectify the situation. Where the arrival time is after the close of registration period, the late mark, code U, an unauthorised absence should be recorded. The same process applies when requesting and issuing a penalty notice as that of the persistent absence process.

#### **4. PROCEDURE FOR ISSUING PENALTY NOTICES**

##### **4.1. PROCEDURE FOR ISSUING PENALTY NOTICES FOR PERSISTENT ABSENCE**

The Local Authority shall consider the issue of a penalty notice after the sending of an advisory letter and monitoring for a period of 6 weeks (30 school days) if further unauthorised absence occurs and the following are in place:

- A signed copy of the Memorandum of Understanding/ written agreement with school / education provider.
- A referral form is completed and submitted to the Warwickshire Attendance Service with all the necessary information and supporting relevant documentation.
- The circumstances of the absence meet the criteria according to the protocol.
- The period of absence is not being considered for proceedings according to Section 444 (1) or (1A) of the Education Act 1996.
- The issue of a Penalty Notice does not conflict with other intervention strategies in place by the Local Authority or by other agencies where the circumstances are known to the Local Authority.
- A copy of the pupil's attendance record which demonstrates at least 10 sessions (5 school days) were lost to unauthorised absence in the 100 sessions (10 Weeks).
- Prior to referral a minimum period of 30 school days given for the attendance to improve, evidencing the continued support offered by school.

##### **4.2. PROCEDURE FOR ISSUING PENALTY NOTICES FOR LEAVE OF ABSENCE DURING TERM TIME**

The Local Authority will only issue penalty notices requested by a school in instances of unauthorised leave of absence where each of the following can be demonstrated:

- The school have published their attendance policy or a newsletter in the current academic year which includes a warning to parents that penalty notices can be issued in instances where a child takes an unauthorised leave of absence.
- A request for leave of absence was received from the parent. Where a written request has been received, a copy of the application form or written request should be submitted. If a verbal request was received the head teacher should include notes detailing the discussion/meeting with the parent.

- Written notification to the parent(s) of the head teacher's/authorised person's decision to refuse the period of absence including the reasons for the decision.
  - A copy of a letter from Warwickshire Attendance Service advising the parent the matter has been referred to them and a penalty notice will be issued.
  - Evidence of attendance for the relevant period signed by the head teacher.
- 4.3. The taking of leave of absence during term time without making an advance request for the same to gain the school's permission and where this has resulted in a period of unauthorised absence may result in action. In such cases, a separate Penalty Notice will be issued for each child in the family. In these circumstances a warning letter may not be issued. Clear documentary evidence must be provided by the school/academy which demonstrates that the parent/carers made the admission and understood that permission had not been given.
- 4.4. **PROCEDURE FOR ISSUING PENALTY NOTICES REQUESTED FROM OTHER LA'S/POLICE**
- The Local Authority may receive requests to issue penalty notices from neighbouring LAs and/or the Police. Warwickshire Attendance Service will investigate and action if:
- The circumstances of the case meet the criteria as specified in this Code of Conduct, and
  - All necessary information is provided to Warwickshire Attendance Service in order to establish that an offence under Section 444(1) Education Act 1996 has been committed.
  - The issue of a Penalty Notice would not conflict with other intervention strategies already in place, or other enforcement sanctions already being processed.
  - There is a reasonable expectation that the use of a Penalty Notice would improve attendance.

## **5. PAYMENT OF PENALTY NOTICES**

- 5.1. Payment of a penalty notice is £120 within 28 days with a reduction to £60 if paid within 21 days.
- 5.2. Payment in full discharges a parent/carers liability for the period in question.
- 5.3. The Local Authority will provide the school with confirmation of the payment of the penalty fee although it retains this revenue to cover the costs of issuing or enforcing notices.
- 5.4. All penalty notices will be issued and monitored by the Local Authority. This will ensure consistent and equitable delivery and ensure cohesion with other enforcement action.

## **6. NON-PAYMENT OF PENALTY NOTICES**

- 6.1. If payment is not received within 28 days the local authority will consider prosecution for the unauthorised absence.
- 6.2. A letter is sent to the parent informing of the Local Authority's intention to pursue legal proceedings for the period of absence in question.
- 6.3. Non-payment of a Penalty Notice will result in action being taken by the Local Authority.
- 6.4. The instigation of legal proceedings for unauthorised absence from school under S444 (1) or S444 (1A) of the Education Act 1996 may also be considered where it is deemed to be appropriate.

- 6.5. The prosecution is not for the non-payment of the notice but is for failure to ensure regular attendance at school.

## **7. PROCEDURE FOR WITHDRAWAL**

- 7.1. Once a penalty notice has been issued, it can only be withdrawn in the following circumstances:
- It ought not to have been issued i.e. where it has been issued outside the terms of the Code of Conduct or where no offence has been committed; or
  - It has been issued to the wrong person; or
  - It contains material errors.

## **8. MONITORING AND REVIEW**

- 8.1. The Local Authority will monitor and evaluate the outcomes of penalty notices in terms of improvement in school attendance, payment and any subsequent legal action.
- 8.2. The use of the notices will be reviewed at regular intervals and the enforcement strategy of the Local Authority may be amended accordingly.
- 8.3. As part of the administration of Penalty Notices and on behalf of the Local Authority, data will be provided at the beginning of each academic year to the Parental Responsibility Measures Attendance Census.