



## **Appendix E**

# **Code of Conduct for Issuing Fixed Penalty Notices for Child Absenteeism**

**January 2018**

## **PENALTY NOTICE CODE OF CONDUCT**

This code of conduct has been drawn up in line with The Education (Penalty Notice) (England) (Amendment) Regulations 2007.

The purpose of this code of conduct is to ensure that penalty notices are applied consistently and fairly across Herefordshire and that arrangements for their issue and administration are suitable.

### **Legal Framework and Rationale**

If a child of compulsory education age fails to attend regularly at a school at which they are registered or at alternative provision made for them, then the parent may be guilty of an offence under Section 444 of the Education Act 1996.

A parent is guilty of an offence under Section 103 of the Education and Inspections Act 2006 if their child is found in a public place without reasonable justification in the first five days of exclusion.

The definition of a parent under Section 576 of the Education Act 1996 is either:

- The natural parents of a child, whether they are married or not,
- Anyone who has parental responsibility for a child,
- Anyone who has care of a child.

Sanctions currently available under Section 444 of the Education Act 1996 or Section 36 of the Children Act 1989 are supplemented by Penalty Notices to enforce attendance at school where appropriate. Payment of a Penalty Notice discharges the parent's liability for the period in question and they cannot subsequently be prosecuted for the period covered by the Penalty Notice.

### **The responsibility of the Local Authority**

Section 23 of the Anti-Social Behaviour Act 2003 adds two sections to the Education Act 1996 (444A and 444B) which empower designated local authority officers, head teachers (and deputies or assistants authorised by them) or the Chief of Police (or nominated deputy) to issue Penalty Notices in cases of unauthorised absence from school. However, The Education (Penalty Notices) (England) Regulations 2007 give local authorities the lead responsibility for developing this Penalty Notice Code of Conduct under which all partners, named in the Education Act, will operate.

Therefore this code of conduct states that Herefordshire Council, being the local authority, is the only body within Herefordshire able to issue a Penalty Notice for the offences above.

### **The Education Enforcement Team in the Environmental Health & Trading Standards (EHTS) service**

In Herefordshire, Environmental Health & Trading Standards' Education Enforcement Team has responsibility for Penalty Notices on behalf of the Herefordshire Council.

The Team:

- Receives requests to issue Penalty Notices from schools in Herefordshire, West Mercia Police and neighbouring local authorities.
- Issues the Penalty Notices
- Reports annually on the use and outcomes of Fixed Penalty Notices.

### **Circumstances when a Penalty Notice can be issued**

A Penalty Notice is a suitable intervention in circumstances such as:

- Parents' continued failure to engage or respond to the school's attempts to contact them or where parents continually fail to provide an explanation for a pupil's absence in accordance with the school's procedures.
- Holiday during term-time when the school has not authorised the absence and the child has missed at least 10 sessions within a 10 week period.
- Persistent late arrival at school after the registers have closed
- Excluded pupil found in a public place within the first 5 days of any exclusion. (See separate section below)

No more than two Penalty Notices per parent per child will be issued in any rolling twelve-month period.

A penalty notice will be issued to each parent with responsibility (as previously defined) for each child.

Penalty notices will not be issued in respect of an offence when proceeding for that offence arising from the same circumstances are being contemplated or have been commenced by the council.

Other than in specific circumstances, a Penalty Notice will only be issued after a written warning has been sent. A warning letter stating that a Penalty Notice may be issued should be sent when 10 or more sessions of unauthorised absences occur.

Penalty Notices may be issued in cases where a further 10 or more sessions of unauthorised absence accumulate in a 13 school week period (i.e. a school term).

In cases where pupils are not expected to be present for every morning and afternoon session (e.g. attendance at a pupil referral unit), proportionality will be used to determine whether or not a Penalty Notice may be issued. This will be approximately equivalent to 85% attendance (or less) in a 13 school week period where some or all of the absences are unauthorised.

In the specific circumstance of leave of absence in term time where permission has not been sought or permission refused, or the failure of the child to return after an agreed date, schools may request the issue of a Penalty Notice without sending a Penalty Notice warning. It is expected that schools will have responded in writing and made every effort to warn their parents that they may receive a Penalty Notice if the holiday is taken without authorisation. This response constitutes a valid warning to the parent.

Before requesting a Penalty Notice, the police/neighbouring local authorities should contact the Education Enforcement Team to establish whether any action is being undertaken for the period of unauthorised absence.

### **Penalty notices issued to parents of excluded children**

A parent has to ensure that his or her 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.

The days of exclusion when this duty applies 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. The parent is responsible for the child during the specified days upon receipt of the notice.

Section 105 of the Education and Inspections Act 2006 allows for a penalty notice to be issued to a parent committing any offence for failing to ensure that their child is not in a public place on the days specified on the notice given to them. The parent must be notified by the school at the time of the exclusion of their duty and the days to which it relates.

Although head teachers and the police are empowered to issue penalty notices, the offence under Section 103 of the Act allows the excluded pupil's presence in a public place where there is reasonable justification for him/her being there. Attempts should be made to speak to the child or the parents for an explanation. There needs to be an investigation of evidence before a notice is issued. It is not intended that Penalty Notices are issued as an 'on the spot' remedy and, save in exceptional circumstances, schools should, in the first instance, report suspected breaches of Section 103 to Herefordshire Council.

Consideration will be given to the number of times an excluded child can be apprehended, including the parents' action or inaction, as well as the justification put forward and the parents' overall attitude towards their responsibilities.

A Penalty Notice should not generally be issued for a first offence; a parent should receive a warning that a Penalty Notice may be issued if the pupil is found on a second or subsequent occasion.

### **Procedures for issuing a Penalty Notice**

Herefordshire Council will issue Penalty Notices in Herefordshire. This will ensure consistent and equitable delivery across the county. It will also ensure that other strategies or legal processes are not jeopardised and that duplicate notices are not issued. Herefordshire Council will ensure that the issuing of the notices is closely monitored.

Whenever there is a possibility that a case could result in a Penalty Notice or in legal proceedings, schools should ensure that the parent is aware of this and understands the consequences of failing to ensure their child's regular attendance.

Requests to issue Penalty Notices should be submitted to the Education Enforcement Team in Environmental Health & Trading Standards directly.

Schools will:

- Complete the Penalty Notice referral form and supply documents as specified on the referral form by email via the secure email system (anycoms) to Environmental Health & Trading Standards.
- In regard to unauthorised holiday absence, schools will make every effort to forward requests for a Penalty Notice to Herefordshire Council within 15 school days of the unauthorised absence.

Other local authorities and the police will:

- Complete the Penalty Notice referral form and supply documents as specified on the referral form and send by post to:

Education Enforcement Team,  
Environmental Health & Trading Standards,  
Herefordshire Council,  
8 St Owen Street,  
Hereford.  
HR1 2PJ

The Education Enforcement Team will:

- check that the criteria for issue of a Penalty Notice are met,

- contact the referrer via email regarding the outcome of the request,
- Issue the Penalty notice, making every effort to action requests within 15 school days.

### **Service of Notices**

A notice may be served by:

- Giving it to the recipient, or
- Leaving it at the recipient's usual or last known address, and/or
- Sending it to the recipient at that address by first class post.

Service by post shall be deemed to have been effected, unless the contrary is proven, on the second working day after posting the notice by first class post.

### **Payment of a Penalty Notice fine**

Arrangements for payment are detailed on the Penalty Notice. The Penalties are as follows:

- If paid within 21 days, the penalty is £60.
- If paid after 21 days, but within 28 days, the penalty is £120.

Herefordshire Council will not accept payment after 28 days and will, proceed to prosecution if the fine is unpaid, unless there are grounds not to do so.

Payment is to be made to Herefordshire Council. Revenue generated from the penalty notices will be used to cover the costs of issuing the notices, the enforcement necessary and the cost of prosecuting recipients who do not pay.

### **Withdrawal of a Penalty Notice**

There is no statutory right of appeal against the issuing of a penalty notice. Penalty notices may only be withdrawn for the following reasons:

- Where it is determined that the notice should not have been issued;
- Where notice should not have been issued to the person named as the recipient; or
- Where it appears to the council that the notice contains material errors.

Where a Penalty Notice has been withdrawn, a notice of the withdrawal shall be given to the recipient and any amount paid will be refunded. No legal proceedings shall be continued or instigated against the recipient for the offence for which the withdrawn notice was issued.

## **Legal Proceedings**

Unlike other Penalty Notice schemes, legal proceedings would not be for non-payment of the Penalty Notice. When legal proceedings are taken under Section 444 of the Education Act 1996 or Section 103 of the Education and Inspections Act 2006, Herefordshire Council's enforcement and prosecution policy will be followed.

If the Penalty Notice is not paid in full before the expiry of the period for paying it, Herefordshire Council may instigate legal proceedings or withdraw the Penalty Notice, in accordance with Herefordshire Council's enforcement and prosecution policy. Part payment cannot be accepted.

The legal proceedings will not be instigated for the particular offence for which the Penalty Notice was issued until after the deadline for payment has passed (28 days) and cannot be convicted of that offence if they pay the penalty in accordance with the terms of the Penalty Notice.

If a penalty is not paid, Herefordshire Council will use the fact that a Penalty Notice was issued and unpaid as evidence in subsequent legal proceedings. The 'penalty notice request forms', certified by head teachers as an accurate record of the unauthorised absence, may be used as evidence to support legal proceeding.

## **Monitoring and Review**

The Education Enforcement Team maintains records of Penalty Notices including:

- the number of requests to issue a Penalty Notice
- the number of Penalty Notices issued
- the number of penalties paid,
- the number of requests for withdrawals, notices withdrawn and the grounds of the withdrawal
- the number and outcome of cases taken to court

This code of conduct will be reviewed along with the council's Enforcement and Prosecution Policy and will be amended accordingly. Penalty Notice fines may also vary to those published in this code of conduct, depending on any future update by statute, guidance or order.