

### **Cumberland Council Local Code of Conduct under The Education (Penalty Notices) (England) Regulations 2007 (as amended) and Section 444A of the Education Act 1996**

#### **Introduction**

Penalty Notices can be issued to parents as a direct alternative to prosecution for failing to ensure regular attendance of their child(ren) (for unauthorised absences from school).

Unauthorised absences potentially justifying a penalty notice include cases of unacceptable general levels of attendance and also where the child is taken on holiday during term time.

Whilst the penalty notice in each case (general poor attendance or holiday) is for the same thing (unauthorised absence) the Council is of the view that it is helpful to address each separately in its code of conduct.

As a general guide if a Penalty Notice has been previously issued to a parent(s) it is less likely a further Penalty Notice will be issued (and prosecution is more likely).

This local code sets out the procedures, necessary requirements and terms under which Penalty Notices can be issued in Cumberland.

The code must be adhered to, to ensure that the powers are applied consistently, transparently and fairly.

Any authorised person should issue Penalty Notices in compliance with this code of conduct.

Cumberland Council Access and Inclusion Team is responsible for the overall administration of the penalty notice scheme and this code sets out our arrangements for the procedures/steps required to ensure the operation of the scheme.

#### **(Relevant) Guidance and Legislation**

**Authorised persons using this code must adhere to the following legislation and guidance:**

- *The Children Act 1989*
- *The Education Act 1996*
- *The Human Rights Act 1998*
- *The Anti-Social Behaviour Act 2003*
- *The Children Act 2004*
- *The Education (Penalty Notices) (England) Regulations 2007, as amended*
- *The Equality Act 2010*
- *Data protection Act 2018*

- *Special Educational Needs & Disability Code of Practice: 0-25 years (Jan 2015)*
- *Working together to improve school attendance (DfE statutory guidance) (19 August 2024)*

### Specific relevant legislation

#### Definition of a parent (for the purposes of Penalty Notices)

##### **Section 576 of the Education Act 1996 in effect states the following are parents:**

- all natural parents, whether they are married or not
- any adult who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person
- any adult who, although not a natural parent, has care of a child or young person

Having care of a child or young person includes the following situations:

- The child living with the adult (either permanently or for a sufficient time – eg part of the week/stays over)
- An adult having some parental influence/control of the child (which will include an adult living elsewhere who has a role in taking/collecting the child from school)

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.

#### Parental duty to ensure attendance at school

##### **Section 7 Education Act 1996**

Parents of children of compulsory school age who are on roll at a school have a legal duty to ensure their child attends regularly at school

#### Compulsory school age

##### **Section 8 Education Act 1996**

Compulsory school age is defined as:

Commencing at the start of term commencing on or after the child's 5<sup>th</sup> birthday. Concluding on the last Friday in June in the school year that the pupil becomes 16.

#### Offence of failing to ensure regular attendance which can result in a Penalty Notice being issued

##### **Section 444(1) Education Act 1996**

The parent of a child of compulsory school age who is a registered pupil at a school and whose child fails to attend regularly (unauthorised absence) commits an offence.

### Who can issue Penalty Notices?

#### Section 444A and Section 444B Education Act 1996

Enables authorised personnel to issue Penalty Notices as an alternative to prosecution under section 444(1).

In Cumberland Access and Inclusion officers at the Council are authorised to issue Penalty Notices in the name of the current Director of Childrens' Services. Such Notices enable parents to discharge potential liability for conviction for that offence by paying a penalty.

### Effect of a Penalty Notice

A Penalty Notice is a direct alternative to prosecution. A 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) and cannot be convicted of that offence if s/he pays the penalty in accordance with the notice. Penalties are to be paid to Cumberland Council.

**Each parent is required to pay a fixed penalty of £80, rising to £160 if this is not paid within 21 days.**

From September 2024, each parent can only be issued with 2 Penalty Notices for the same child in a 3-year period.

If a second Penalty Notice is issued within 3 years of the first notice the penalty is £160.

If unauthorised absence continues to be an issue after 2 Penalty Notices have been issued in any 3 year period (from September 2024) then a further Penalty Notice cannot be issued within that 3 year period and prosecution is likely

### FAILURE TO PAY PENALTY NOTICE

**If you do not pay the penalty in 28 days it is likely a prosecution will result for an offence under S.444 (1) Education Act 1996 unless the Penalty Notice is withdrawn.**

### Withdrawal of Penalty Notice

Cumberland Council can only withdraw the notice:

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

### Penalty Notices for holidays in term time

#### When can a school refer a case to the Local Authority?

- Whilst there is a National Threshold at which point a school must consider whether to refer a case to the Local Authority (10 sessions unauthorised absence in a rolling period of 10 school weeks) each school must consider in each individual case whether a referral is made. Schools are best placed to make that individual judgement and should not adopt a blanket approach of referring every case that meets the National Threshold. **Reaching the National Threshold does not mean a referral must be made.**
- Schools must provide specific reasons to the Local Authority (over and above a generic statement that the Threshold is reached) why it considers a particular case may be suitable for a Penalty Notice
- Schools can consider referring if National Threshold for a Penalty Notice is not met but circumstances may justify consideration of a Penalty Notice (eg families taking several term time holidays below threshold or repeated absences for birthdays or other family events)

#### Local Authority approach in determining whether a Penalty Notice is issued:

This list of non-exhaustive factors will be considered by the Local Authority in determining whether (or not) to issue a Penalty Notice:

#### Factors indicating a Penalty Notice is more likely:

- Previous holiday (or holidays) taken in term time particularly within the last 12 months
- Parent(s) have been warned by the school that taking a particular holiday may result in a Penalty Notice or prosecution
- Parent(s) have been warned previously by the Local Authority for taking a holiday
- Other (generalised) unauthorised absences within the last 12 months
- Important tests/exams missed
- More than one pupil misses school (siblings at the same school or in different schools)

#### Factors indicating a Penalty Notice is less likely:

(**Note** – In cases where the Local Authority do not issue a Penalty Notice it will send a formal warning letter to the parent(s))

- No previous holidays in the last 12 months

- Parent(s) not warned by the school that taking a particular holiday may result in a Penalty Notice or prosecution
- No other (generalised) unauthorised absence within the last 12 months
- The holiday results in no more than 10 sessions being missed
- A Penalty Notice has been issued previously (particularly within the last 12 months either for a holiday or generalised poor attendance) in which case prosecution is more likely.

(**Note** – Some cases may fall somewhere between in which case a balancing exercise will be conducted)

### **Evidence required from schools in the event a referral is made:**

- Registration certificates covering the holiday period, the academic year to date and the previous academic year (if siblings at the same school then for both)
- Section 9 statement from the Attendance Officer or equivalent (exhibiting any guidance provided to parents concerning holidays (eg at the start of the year), any request for the holiday and response, (if no request is made evidence how the school know/believe it was a holiday) any warning to the parent(s) of the risk of a Penalty Notice or prosecution (either before the holiday was taken or afterwards or both) and any previous holidays taken within the last 12 months – requests/responses/evidence it was a holiday, any evidence of education for the child(ren) being affected by the holiday
- Head teachers' certificate.