



Directorate of Children and Families

Penalty Notice Code of Conduct

(The Education Act 1996, The Anti-Social Behaviour Act 2003 and the Education (Penalty Notices) (England) Regulations 2007 as amended).

This Code applies to all maintained schools; Academies and Free Schools.

this is Redcar & Cleveland

Document Control

Ownership & Review

Name	Grant Smith
Title	Lead for Inclusion
Telephone	01642 444348
Email	Grant.smith@redcar-cleveland.gov.uk

Approver	Clare Mahoney
Review Date	August 2024

Version Control

Version	Date	Author	Changes

1 Rationale

- 1.1 Regular and punctual attendance of pupils at school is both a legal requirement and essential in order for pupils to maximise the opportunities available to them. The Redcar & Cleveland Attendance & Welfare Service (AWS) will continue to investigate cases of non-attendance from school and, following appropriate casework, instigate legal action if applicable. A Penalty Notice is an alternative to prosecution which does not require an appearance in court whilst still ensuring an improvement in a student's attendance. Payment of a Penalty Notice enables parents to discharge potential liability for conviction. Following the implementation of Section 23 of the Anti-Social Behaviour Act 2003 it is possible that certain cases of unauthorised absence can be dealt with way by of a Penalty Notice. Penalty Notices will require the parent of a child of compulsory school age, whose attendance has been unsatisfactory, to pay a fine, currently £60.00 if paid within 21 days or £120.00 if paid within 28 days.
- 1.2 In order to comply with Human Rights' legislation, it is essential that Penalty Notices be issued in a consistent, fair and transparent manner and will be reviewed annually. In addition, the Education (Penalty Notice) (England) Regulations 2007 as amended requires a Local Authority to have in place a Code of Conduct which ensures that the power to use Penalty Notices is applied consistently and fairly and that suitable administrative arrangements are in place.
- 1.3 In line with Regulation 15 Governing Bodies, of the aforementioned regulations, Head Teachers and Chief Police Officer for the area have all been consulted with, with regards to the Code.

2 Legislation

Personnel authorised to operate this Code must have regard to the following legislation and guidance:

- The Race Relations (Amendment) Act 2000
- Data Protection Act 2018
- Children Act 1989
- Crime and Disorder Act 1998
- Special Educational Needs and Disabilities Code of Practice 2015
- Education Act 1996
- The Education and Inspections Act 2006
- The Equality Act 2010
- The Education (Penalty Notice) (England) Regulations 2007 as amended
- The Education (Pupil Registration) (England) Regulations 2006 as amended

The Education (Pupil Registration) (England) Regulations 2006 previously enabled a Head Teacher to grant leave of absence for the purpose of a holiday, as long as the leave of absence was made in advance and that there were special circumstances for granting the leave however, these regulations have been amended by regulations of the same name which came into force on 1st September 2013. The regulations remove all references for holidays and the ability to authorise up to 10 school days of leave, so that leave of absence is **only granted where a request is made in advance and the leave is classed as exceptional circumstances**. There is no statutory definition of what is classed as an exceptional circumstance and it is the decision of the Head Teacher

For further information on statutory duties see Annex 1

2 Procedure for issuing Penalty Notices

- 2.1 It has been locally agreed that within Redcar and Cleveland, Penalty Notices will only be issued by the Attendance & Welfare Service following authorisation from the Senior Attendance Welfare Officer or the Lead for Inclusion. This will ensure that duplicate notices will not be issued or when proceedings for an offence under Section 444 Education Act 1996, have already been commenced. Requests to issue notices from other authorities will also only be considered and authorised by the Senior Attendance Welfare Officer or the Lead for Inclusion. The Service will ensure that the issuing of Penalty Notices is closely monitored and that recipients pay the relevant fine to the Local Authority. In any case where the penalty is not paid within the appropriate period, the AWS reserves the right to instigate action through the courts as required by legislation.
- 2.2 No one parent will receive more than three separate Penalty Notices, resulting from the unauthorised absence of an individual child in any twelve month period. If a parent has been issued with 3 notices previously in any 12-month period that parent may then receive a summons to court.
- 2.3 The Attendance & Welfare Service will consider requests to issue Penalty Notices from schools/colleges in Redcar & Cleveland and neighbouring local authorities. The Attendance & Welfare Service will action these requests providing:
 - a. The circumstances of the case meet the criteria for the issue of a Penalty Notice which are specified in this Code of Conduct, and

this is Redcar & Cleveland

- b. All necessary information is provided to the Attendance & Welfare Service in order to establish that an offence, under Section 444(1) Education Act 1996, has been committed.
- 2.4 Within this Code of Conduct, a parent is defined as per Section 576 Education Act 1996, as follows:
- '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's 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.
- 2.5 In cases requiring the issue of a Penalty Notice(s), each parent will receive a separate Penalty Notice for each child. Should a parent fail or refuse to pay any Penalty Notice issued for this reason, then the evidence provided by the school/college will be the only information laid before the court.
- 2.6 Penalty Notices will not be issued during Truancy Patrols if they are instigated as this could be a health and safety risk. Additionally, not all the information will be available to prove the offence at that time.
- 2.7 Where a Year 11 student is not attending school in the spring term a Penalty Notice should be issued as opposed to a prosecution being taken under Section 444 of the Education Act 1996.

For further information on statutory duties see Annex 2

3. General criteria for the issuing of a Penalty Notice

For issues of non-school attendance (contrary to Section 444(1) of the Education Act 1996):

- 3.1 Where concerns arise regarding the attendance of a child the Attendance and Welfare Service may consider issuing a parent (s) with a formal warning letter in the following (non-exhaustive) circumstances:
- Where a child, during the previous 24 school weeks, has had at least 10% unauthorised absence marks recorded on the attendance register. or;
 - The parent has a previous conviction for an offence contrary to section 444 of the Education Act 1996 or;
 - Where the parent of a child continually fails to provide a reasonable or acceptable explanation for a pupil's absence.

this is Redcar & Cleveland

Before a decision is made regarding the issue of a penalty notice.

If the school have a service level agreement with our Attendance and Welfare Service we will endeavour to support parents in ensuring the regular school attendance of their children. We will use a multi-agency approach, taking the views of the parents and children into consideration where possible and appropriate.

To do this the following (non-exhaustive) methods would have been considered/used prior to the issue of any Warning Letter/s or Penalty Notice/s:

- Home visits
- Meetings
- Referrals to other agencies for support

3.2 In the aforementioned circumstances, a formal warning letter may be issued to parent(s), advising that in order to avoid a Penalty Notice being issued to them the student should record no unauthorised absences during a specific fifteen school day period. Parent(s) should receive the warning letter no later than three days before the monitoring period commences. This period will be monitored before a decision with regards to issuing a penalty notice or not to issue a penalty notice is made. The local authority will also take into consideration any instance where it appears a parent deliberately or wilfully acted to circumvent the manner in which this policy operates.

3.3 If unauthorised absence (s) is/are recorded during the dates specified on the warning letter, the Penalty Notice may be issued to parent(s).

3.4 For issues of unauthorised absence:

- A separate Leave of Absence Policy applies, and consideration is given for issuing Penalty Notices during the following:
- Anytime in September;
- For any student whose attendance was below 95% within the previous 12 calendar months measured from the date before the first day of the leave of absence (including both authorised and unauthorised absences);
- Any time during formal external examinations and assessment periods including preparation time (school will provide evidence to support this);
- If a holiday warning letter or Penalty Notice has been issued for a holiday taken in the previous 12 calendar months, measured from the date before the first day of the leave of absence regardless of overall attendance during the previous 12 month period.

For further information on statutory duties see Annex 1

4. Procedure for withdrawing Penalty Notices

4.1 A Penalty Notice may be withdrawn by Redcar & Cleveland Local Authority in any case in which the authority determines that:

- (a) it should not have been issued, or
- (b) it should not have been issued to the person named as the recipient, or
- (c) it contains material errors or
- (d) Where a notice is not paid and the authority decides not to prosecute. In such circumstances the regulations require that the penalty notice is withdrawn.

4.2 Where a Penalty Notice has been withdrawn in accordance with the above, a notice of the withdrawal shall be given to the recipient and 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 in connection with which the withdrawn notice was issued or for an offence under Section 444(1) of the Education Act 1996 arising out of the same circumstances.

5. Payment of Penalty Notices

Methods of Payment:

- By Credit or Debit card
- Internet: Go to https://www.civicaepay.co.uk/Redcar/Webpay_Public/Webpay/Default.aspx and select "Education Fine" on the left hand side to make a card payment 24/7.
- Telephone the Contact Centre on 01642 774774 to make a card payment during office hours.

6. Appeal

There is no statutory right of appeal once a notice has been issued.

7. Administration of the Penalty Notice Scheme

All financial penalties are payable to Redcar and Cleveland Council. Regulation 23 of the aforementioned regulations prescribe that sums received through the payment of penalty notices should be used for the issuing and enforcing of the penalty notices and prosecuting recipients who fail to pay the notices.

Annex 1 Statutory Duties

1. Statutory Duties of Redcar and Cleveland Council

1.1 The Local Authority is a relevant enforcer for the purposes of the Education Act 1996. Enforcement can be affected through a number of formalised routes including Penalty Notices and prosecution of parents/carers for irregular attendance and School Attendance Orders.

1.2 Redcar and Cleveland Council employs a core group of personnel to ensure these statutory duties are met and quality assured.

1.3 The areas of legislation that Redcar and Cleveland Council has responsibility for include:

- School Attendance Order - Section 437 Education Act 1996. If it appears to Redcar and Cleveland Council that a child of compulsory school age in the area is not receiving suitable education, either by regular attendance at school or otherwise, a notice will be served in writing to the parent(s) requiring them to satisfy the Local Authority (LA) within a period specified in the notice that the child is receiving such education.

- Prosecution under Section 444(1) and 444(1A) Education Act 1996. If a child of compulsory school age who is a registered pupil at a school is failing to attend regularly at the school, parent(s) may be guilty of an offence.

The term 'compulsory school age' is the period of time in a child or young person's life during which a parent or guardian has a duty to provide an education, for example, by sending them to school or by providing home schooling

- Penalty Notices (inserted into sections 444A and 444B of the Education Act 1996 by section 23 Anti-social Behaviour Act 2003; and Section 105 of the Education and Inspections Act 2006). Empowers designated LA officers, head teachers (deputy and assistant headteachers authorised by them) and the police to issue Penalty Notices in cases of unauthorised absence from school, and for parental failure to ensure that their child is not present in a public place during school hours without reasonable justification during the first five days of exclusion. Redcar and Cleveland Council has written a Code of Conduct which specifies how Penalty Notices will be issued.

- Education Supervision Orders (ESO) pursuant to section 36 (The Children Act 1989). Before instituting proceedings for an offence of irregular attendance or failure to comply with a school attendance order, the Education Act requires that the LA consider whether it would be appropriate to apply for an ESO instead of, or as well as, prosecuting the child's parents.

2. Statutory Duties of Schools and Academies

2.1 Schools' responsibilities relating to attendance are detailed in the Education (Pupil Registration) (England) Regulations 2006 as amended. These responsibilities include:

- advising Redcar and Cleveland Council of any pupil who fails to attend regularly or has had 10 or more days of continuous unauthorised absence;
- taking a register twice each day (at the start of the morning session and once during the afternoon);
- marking pupils for each session indicating, with the appropriate code, whether each was present, absent, engaged in an approved educational activity off-site or unable to attend due to exceptional circumstances (unavoidable school closure, lack of school/LA transport and not within walking distance or widespread travel disruption due to local/national emergency); and
- complying with statutory registration & deletion procedures.

2.2 Where there are concerns about pupil absence, schools should seek to intervene early and maintain a chronology and record of all contacts regarding pupil absence with the pupil, parent and other agencies. This is of great importance, as schools will be required to produce this as evidence if legal intervention is subsequently used.

2.3 For the purposes of school attendance, 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) and any person who, although not a natural parent, has care of a child or young person.

2.4 Registration is a key aspect of excellent practice. Registers are legal documents and school leaders should ensure systems for recording attendance and absence is always accurate. Schools should maintain an up to date knowledge of pupil registration regulations by accessing information from the Department for Education (DfE) website. The DfE provides guidance on the use of National Attendance Codes which are used when completing the school census.

2.5 Where a Headteacher/Externally employed Attendance Agency wishes to refer a matter to Redcar and Cleveland Council for legal proceedings to be considered under s444 (1) or (1A) Education Act 1996, they should complete the EW1 Single Agency Referral Form (SARF) form which can be located here:



EW1 SARF.doc

this is Redcar & Cleveland

Annex 2 Process for Requesting Penalty Notice(s) in Respect of Unauthorised Leave

- Headteacher receives request from parent to grant permission for leave during term time OR Headteacher is notified that a family has taken a family holiday without seeking prior permission;
- Headteacher considers whether the request could be considered to fall under the heading of 'exceptional circumstances'. The headteacher may request additional information to support this consideration. If the request is not being made as a result of 'exceptional circumstances' OR where no request for leave is sought, then the Headteacher must notify the parent, in writing, of their decision to refuse to grant permission for leave. The code for this absence must be unauthorised, and parents must be informed that any refusal to adhere to this decision places the parent(s) at risk of being issued with Penalty Notice(s), as per Redcar and Cleveland Council procedure/Code of Conduct.
- Headteacher to await the response of parent(s) and, if the family holiday goes ahead, during term time, then the period of absence must be clearly recorded as 'G' on the official attendance register (thus ensuring that it is recorded as an unauthorised family holiday);
- Once the student has returned to school, Headteacher to complete the EW1 Single Agency Assessment Form (SARF). Evidence to be included:
 1. The letter sent to parent(s) notifying them that the absence would not be authorised and warning them that the matter would now be passed to the Local Authority;
 2. A copy of the student's registration certificate which clearly shows the period of absence which has been coded as G (unauthorised family holiday).
 3. A copy of the student's registration certificate for the previous academic year.
 4. A copy of the Holiday warning letter (issued in last 12 months) if applicable.
 5. A copy of School/Academy Leave Of Absence Policy.

Upon receipt of the relevant documentation, the Attendance and Welfare Team will check to determine whether the criteria to issue a Penalty Notice to each parent in respect of the unauthorised leave has been met. Penalty Notices will be sent by way of first-class post. Each Parent will be given 21 days to pay £60 for each child, should the fine(s) fail to be paid it will double to £120 and the parents will be given

a further 7 days to make payment in full. Parents failing to pay within 28 days will face prosecution under section 444 Education Act 1996.

Where court proceedings are instigated as a result of non-payment, the Attendance and Welfare Service will be responsible for providing a section 9 witness statement. The Headteacher of the relevant school will be required to provide a signed statement of attendance, a proforma of which will be provided to the Headteacher by our court file administrator. If you have any queries/questions in relation to this process, please do not hesitate to contact the Attendance and Welfare Team on AWS@redcar-cleveland.gov.uk.

Annex 3 Evidential and Public Interest Tests

1. Evidential Test

1.1 In each case the Council will consider whether there is a realistic prospect of conviction. This will involve considerations of whether evidence (e.g. copies of the registers, statements, letters reports) is admissible, reliable and credible. If a case does not pass the evidential stage it must not proceed, no matter what level of non-attendance is involved.

1.2 The Council officers will consider any information presented by the parent in order to ascertain whether any of the statutory evidences are likely to be available.

2. Public Interest Test

2.1 Prior to undertaking any enforcement action, each individual case will be assessed to ensure that it is in the public interest to proceed. A prosecution will not usually take place if the prosecutor is satisfied that the public interest factors tending against prosecution outweigh those tending in favour of a prosecution.

2.2 Subject to receiving relevant information, the Council will consider whether there are any factors which tend to lower the culpability of the parents concerned or otherwise suggest that it may be disproportionate or unreasonable to proceed with a criminal case.

2.3 It should be understood that the presence of any public interest mentioned below (or a combination of them) is not determinative of whether a criminal prosecution should proceed be permitted to proceed. However, the following is a nonexclusive list of factors which if present and known to the LA Officer may be considered by the relevant officer considering the public interest test.

Sample factors which tend to suggest that a prosecution might not be in the public interest		
1.	Very high levels of attendance	It is settled law that attendance, otherwise than in accordance with the schools' rules, is not "regular attendance". However, it is acknowledged that if the overall percentage of attendance is particularly high (e.g. over 96% over a given school term) then it may not be in the public interest to pursue a prosecution.
2.	Temporary health issues with the concerned Parent	If a parent is temporarily ill and this was the cause of the child's absence it may suggest that repetition of the non-attendance is less likely. A low likelihood of a repetition is likely to suggest that the public interest is not served by a prosecution.
3.	Relevant health or psychological issues with the child	It is recognised that psychological factors the child may inhibit the child from attending school regularly:- • Stress and anxiety; • Socialisation problems; • Bullying whilst at school. If these factors are present it may suggest that other interventions rather than a criminal prosecution of the parent have a better prospect of assisting in achieving regular attendance.

4.	Temporary family difficulties:-	Relationship breakdown; Domestic abuse, Substance / alcohol abuse; Financial pressures; It is recognised that in temporary situations of exceptional hardship may suggest the Council may wish to consider a broader range of options rather than criminal prosecutions.
5.	The age of the child	If a child is almost 18 years of age, there may be limited benefit in prosecuting.
6.	Issues related to destabilisation of the family unit	It is recognised that certain parents in certain professions may face substantial prejudice as a result of receiving a criminal offence (particularly a recordable criminal offence).
Sample factors which tend to suggest that a prosecution may be the public interest		
1.	Very poor levels of attendance	If the level of attendance is particularly poor then a criminal prosecution may be entirely necessary and proportionate.
2.	Parental knowledge of a child's none-attendance.	Although the question of a parent's knowledge is strictly only a component of the aggravated offence under Section 444(1)(a), it would aggravate any offending if the parent knew of the non-attendance and failed to take any steps to curtail the none-attendance.
3.	A lack of engagement by the parent with relevant educational authorities	The Local Authority aims to work in partnership with those they seek to regulate. A lack of engagement by the parent may suggest that a more formal means of enforcement is necessary.
4.	Previous convictions for the same offence	Previous convictions may suggest that the parent has a clear understanding of their legal duties but has continued to permit none-attendance.

If Redcar and Cleveland determines it is not appropriate or in the public interest to proceed with a prosecution, it will inform the school setting out the reasons why.