

Appendix 1

Stoke-on-Trent City Council: Code of Conduct for the issuing of Penalty Notices 2018

1. Purpose of the code

The Government has made it clear that it expects Local Authorities to have a Code of Conduct in place so that the full range of measures for improving attendance are available to schools. Regular school attendance is both a legal requirement and essential if the children of Stoke-on-Trent are to achieve better outcomes in education and maximise the opportunities available to them. Stoke-on-Trent schools consistently work towards a goal of 100 per cent attendance for all children in school.

The purpose of the local Code of Conduct is to ensure that Penalty Notices are issued consistently and fairly across the Local Authority area, in accordance with the relevant legislation, and that suitable arrangements are in place for the administration of the scheme.

The Education (Penalty Notices) (England) Regulations 2007, No. 1867 specify that each Local Authority must draw up a Code of Conduct which sets out measures to ensure consistency in the issuing of Penalty Notices including:-

- Means of avoiding the issue of duplicate notices;
- Measures to ensure that a notice is not issued when proceedings for an offence under S.444 of the Education Act 1996 [or S.444(1A) of that section] or section 103(3) of the Education and Inspections Act 2006 are contemplated or have been commenced by the Local Authority;
- The occasions when it will be appropriate to issue a Penalty Notice for an offence;
- The maximum number of Penalty Notices that may be issued to a parent in a twelve month period, in respect of any individual child;
- Arrangements for co-ordination between the Local Authority, neighbouring local authorities where appropriate, the police and authorised officers.

Authorised officers are defined in section 444B(4) of the 1996 Act in relation to penalty notices under section 444A of that Act, and in subsection (6) of section 105 of the 2006 Act in relation to penalty notices under that section.

The Code will be reviewed annually in consultation among the local partners, namely:-

- The Local Authority;

- Governing Bodies and head teachers of Schools including Primary, Secondary and Special Schools as well as Academies;
- The Chief Officer of Police for the Police area which includes all or part of the area of the Local Authority.

2. Background Legislation

In February 2004, section 23(1) of the Anti-Social Behaviour Act 2003 added sections 444A and 444B to the Education Act 1996. These sections enable Penalty Notices to be used as an alternative to prosecution and provide parents with the opportunity to discharge liability for conviction of an offence under section 444 by paying a financial penalty to the Local Authority.

Section 103 of the Education and Inspections Act 2006 enables Penalty Notices to be issued to parents in relation to an excluded pupil should they fail to ensure their child is not present in a public place during school hours in the first five days of each and every fixed period or permanent exclusion without reasonable justification.

It is a defence for a person charged with an offence under section 103(3) to provide proof of reasonable justification, for example, that the child or young person needed to attend a pre-arranged medical appointment, or a medical emergency requiring the child to be supervised elsewhere other than at home.

Persons authorised to issue Penalty Notices must have regard to The Education (Penalty Notices) (England) Regulations 2007 as subsequently amended or modified by The Education (Penalty Notices) (England) (Amendment) Regulations 2013 No. 757, any guidance issued by the Secretary of State in relation to School Attendance, Absenteeism and Penalty Notices, together with the following legislation: -

- Disability Discrimination Act 1995
- Data Protection Act 1998
- Human Rights Act 1998
- Equality Act 2010

In relation to all legislation and guidance, regard must be given to any subsequent amendments or modifications to the above documents.

3. Circumstances in which a Penalty Notice warning can be issued

Regulation 15 of The Education (Penalty Notices)(England) Regulations 2007 states that in preparing the Code of Conduct the Local Education Authority must consult with governing bodies, head teachers and the Chief Officer for the Police in the area of the Local Education Authority.

Following consultation with the said consultees it has been decided that the following circumstances may result in the issue of a Penalty Notice:

- a. Where one or both parents persistently fails to ensure their child of compulsory school age attends the school in which they are registered as a pupil or attends at another place of learning and attendance is below 90 per cent in a school term i.e. 12 or more sessions of absence in a 12 week period, and;
- b. Any absence by the child which is not due to the instances stated in the Education Act 1996, namely:-
 - Sickness or unavoidable cause [Section 444(2A)]
 - With leave ie. Authorised absence [Section 444(3)(a)]
 - For religious observance by the religious body to which his/her parent belongs [Section 444(3)(c)]
 - The Local Authority has a duty to make travel arrangements to facilitate the child's attendance at the school and has failed to discharge that duty [Section 444(3B)]; and
- c. Where the school can show evidence to the Local Authority that they have attempted all of the following:-
 - i. Contact by telephone;
 - ii. Contact by letter;
 - iii. Invitation to a formal meeting
- d. Term time leave is taken without obtaining the prior written agreement of the head teacher or an authorised deputy or assistant head teacher and the parents have been warned that a Penalty Notice may result.
- e. Unwarranted delayed return from term time leave without the prior written agreement of the head teacher or an authorised deputy or assistant head teacher
- f. Persistent late arrival of a child after the school register has been closed (Attendance Code U only) being 12 unauthorised late marks in the register within a 12 week period.
- g. A parent's failure to make arrangements to ensure that a child who has been excluded from school on disciplinary grounds is not in a public place at any time during school hours on a day which is during the first five school days of any exclusion, without reasonable justification. [Section 103 of the Education and Inspections Act 2006].

It is incumbent upon the parent in such circumstances to provide proof of reasonable justification, for example, that the child or young person needed to attend a pre-arranged medical appointment, or a medical emergency requiring the child to be supervised elsewhere other than at home.

In light of the above, a letter containing a Penalty Notice warning may be sent out by the head teacher or an authorised deputy or assistant head teacher on Stoke-on-Trent City Council letter-headed paper, signed by a head teacher or an authorised deputy or assistant head teacher and counter-signed by either:

- i. Education Welfare Team Manager; or
- ii. Education Welfare Officer for the school (where appropriate)

4. Authorisation to issue a Penalty Notice (fine)

The Education (Penalty Notices) (England) Regulations 2007 No. 1867 deals with the Issue of Penalty Notices in paragraphs 10. 11. 12 and 13. The authority to issue a Penalty Notice is only given to a head teacher or if they authorise it to a deputy or assistant head teacher [para. 10] – the head teacher cannot authorise any other member of staff to issue a Penalty Notice. However, although a Local Education Authority has the power to issue Penalty Notices there are limits to this as detailed in para. 12. – the child must be a registered pupil at a school in the area of the Local Education Authority; or for whom the Local Education Authority has made arrangements for alternative educational provision (whether or not in the area of the Local Education Authority; or is a child who is not a registered pupil at any school (due to exclusion or otherwise) but lives in the area of the Local Education Authority.

In consultation with the said consultees it has been agreed that the Local Authority will issue Penalty Notices (fines) on behalf of those authorised to issue a penalty notice under The Education (Penalty Notices) (England) Regulations 2007. This will avoid the potential for duplicate notices to be issued, or for notices to be issued when legal proceedings are underway. A Penalty Notice (fine) may be issued once two sessions of unauthorised absence have occurred during the time frame outlined in the Penalty Notice warning. The request for the Penalty Notice to be actioned needs to be sent by a head teacher or authorised deputy or assistant head teacher to the Education Welfare Team Manager at Stoke-on-Trent City Council.

5. Who can be issued with a Penalty Notice

Anyone defined as a ‘parent’ under Section 576 Education Act 1996 is a parent for the purposes of these provisions. The 1996 Act states that ‘parent’ includes any person who is not a parent of the child but has parental responsibility for him or who has care of him. This means a parent can include:

- all natural parents, whether they are married or not;
- any person who, although not a natural parent, has parental responsibility for a child or young person;
- any person who, although not a natural parent, has care of a child or young person.

‘Parental responsibility’ is defined by section 3(1) of the Children Act 1989 as being “all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.

Having care of a young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law.

A parent means 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 a parent in the singular. As with prosecutions under Section 444 Education Act 1996, a Penalty Notice may be issued to each parent liable for the offence. A Penalty Notice must not be issued jointly to both parents, as each parent should be issued with their own Penalty Notice.

6. Maximum number of Penalty Notices that can be issued

The said consultees have agreed that the maximum number of formal written warnings that may be issued in a twelve-month period is two. A parent would be advised, within the Penalty Notice Warning letter, that at this stage they can only make representations to the nominated Senior Local Authority officer. The maximum number of Penalty Notices that can be issued in respect of an individual child in a twelve-month period is two.

7. Amount of Penalty and Payment Arrangements

Regulation 4 of The Education (Penalty Notices)(England) Regulations 2007 states the amount of the penalty payable by a parent and the period within which payment is to be made. The 2007 Regulations were subsequently amended by The Education (Penalty Notices) (England) (Amendment) Regulations 2013 No. 757. The penalty for each parent is £60 for each child, if paid within 21 days of receipt of the Penalty Notice. The penalty increases to £120 if paid after 21 days but within 28 days of receipt of the Penalty Notice. (Service by post is deemed to have been effected, unless otherwise proved, on the second working day after postage by first class post). Arrangements for payment to the Local Education Authority are detailed on the Penalty Notice.

If a penalty is not paid in full by the end of the 28 day period, the Education Welfare Team at Stoke-on-Trent City Council will either prosecute for the offence for which the Penalty Notice has been issued, or withdraw the Penalty Notice. The prosecution is not for non-payment of the Penalty Notice but is a prosecution for irregular school attendance (Section 444(1) Education Act 1996). The reasons for issuing a Penalty Notice need to accord with Section 444 of the Education Act 1996 and associated legislation. There is no statutory right of appeal against the issuing of a Penalty Notice.

A Penalty Notice can only be withdrawn in accordance with Regulation 8 of The Education (Penalty Notices) (England) Regulations 2007, namely, where it should not have been issued or that it should not have been issued to the person named as the recipient or the Penalty Notice contains material errors.

In accordance with Regulation 23 of The Education (Penalty Notices) (England) Regulations 2007 sums of money received by the Local Education Authority in respect of the payment of penalties will be used solely for the purpose of issuing and enforcing Penalty Notices and for the prosecution of recipients who do not pay. If any sums received are not used for those purposes then they must be paid to the Secretary of State.

8. Procedures for issuing Penalty Notices

The issuing of Penalty Notices will be undertaken by staff authorised by Stoke-on-Trent City Council. A Checklist for schools and a Penalty Notice Warning Letter in respect of offences

under sections 444(1) and 444(ZA) of the Education Act 1996 respectively, has been prepared by the Education Welfare Service and copies of these are shown in the appendices.

9. Pupil watch/truancy sweeps

Where a child is located on a truancy patrol then unless there is a justifiable reason for the child's absence from attending school the following procedure will occur:-

- Child is located during a truancy patrol;
- Letter is sent to parent advising them that if the child is located during a truancy patrol a Fixed Penalty Notice will be issued to the parent, unless they can prove there was a justifiable reason for the child's absence from school;
- If the absence is found to be unauthorised then the head teacher's Certificate of Attendance for the absent child is to be made available for the evidential period
- The evidence of the child's absence from school must have been reported by an Education Welfare Officer, a Police Officer or a Police Community Support Officer whilst taking part in a Local Authority approved truancy operation.

Where a parent fails or refuses to pay a penalty issued in these circumstances, then the evidence provided by the head teacher will be laid before the court, alongside a witness statement completed by the reporting officer, copies of the Penalty Notice and a Certificate of Confirmation of Non-payment of the Fixed Penalty. This will be done after 28 days have elapsed since the Penalty Notice was deemed to have been received by the parent for the child. From that point, the Education Welfare Team will make an application for a hearing in the Magistrate's Court to be scheduled for a date within 21 days, subject to court availability.

10. Holidays in term time

A parent must obtain prior written permission from the head teacher of the school where the child is registered as a pupil if they want to take their child out of school during term time.

They can only do this if:

- a parent the child normally lives with makes a written application to the head teacher at least four weeks in advance of the proposed absence during term time.
- there are exceptional circumstances, in which case the period of notice may be reduced but should nevertheless be at least two working days' written application prior to the proposed absence.

The head teacher (or an authorised deputy or assistant head teacher) has absolute discretion regarding whether or not a child's absence from school is to be permitted during term time and if so, the period of absence to be permitted.

A parent can be fined for taking a child on holiday during term time without the prior written permission of the head teacher (or an authorised deputy or assistant head teacher) at the school where the child is registered as a pupil.

Unauthorised leave of absence (holidays) taken during term time

A parent will be expected to complete a holiday application form at least four weeks in advance of the proposed holiday. The form will include information about the use of Penalty Notices as a consequence of leave of absence taken in term time without the head teacher's prior written authorisation.

Where a parent has taken a child out of school for a holiday or other leave of absence without prior written authorisation, there should be evidence on the attendance certificate of unauthorised absence. The head teacher will notify the Local Authority that an unauthorised leave of absence has taken place and will complete the following documents:-

- A completed pro-forma witness statement;
- A Certificate of Attendance for the period in question;
- A copy of the advisory letter sent to the parent;
- A copy of the holiday application form from the parent and reply from the head teacher;
- A completed referral form

If a holiday form has not been completed but a head teacher has sufficient evidence that the child has been absent from school due to an unauthorised holiday/leave of absence then the head teacher or their authorised representative should provide this evidence in the witness statement and submit the following documents to the Education Welfare Service:-

- A completed referral form
- A completed pro-forma witness statement
- A Certificate of Attendance for the period in question

On receipt of these, the Education Welfare Service will issue a Fixed Penalty Notice by first class post to the parent. Where a parent fails or refuses to pay a penalty issued in these circumstances, then the evidence provided by the head teacher will be laid before the court, alongside a witness statement completed by the reporting officer, copies of the Penalty Notice and a Certificate of Confirmation of Non-payment of the Fixed Penalty. This will be done after 28 days have elapsed since the Penalty Notice was deemed to have been received by the parent. From that point, the Education Welfare Team will make an application for a hearing in the Magistrates' Court to be scheduled for a date within 21 days subject to court availability. The prosecution of the parent will be on the grounds that the parent has failed to ensure the child has regularly attended the school with whom he is registered as a pupil rather than for non-payment of the amount detailed in the Penalty Notice.

11. Copy of Penalty Notice to be supplied to the Local Education Authority

A person issuing a Penalty Notice must provide a copy to the Local Education Authority which is named as the recipient for any payment of the penalty.

12. Records

Pursuant to Regulation 20 of The Education (Penalty Notices)(England) Regulations 2007, a Local Education Authority must keep records of Penalty Notices, namely, a copy of each Penalty Notice issued with a record of all payments made and the dates of such payments together with details about whether the Penalty Notice was withdrawn and the grounds for such a withdrawal, as well as information as to whether the recipient was subsequently prosecuted for the offence for which the Penalty Notice was issued.

13. Information to the Secretary of State

A Local Education Authority must supply the Secretary of State with such information as he may require in respect of Penalty Notices.

14. Compliance with the Code of Conduct

Any person issuing a Penalty Notice must do so in accordance with the Code of Conduct, any regulations regarding Penalty Notices and any directions issued by the Secretary