



Education Attendance Service

Penalty Notices – Code of Conduct

Fixed Penalty Notices – Code of Conduct.

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Fixed Penalty Notices – Code of Conduct.

Code of Conduct:

The purpose of this code of conduct is to ensure that powers are applied consistently and fairly across this Local Authority **London Borough of Hackney**. Penalty Notices offer a swift intervention which may be used as a sanction to improve Non-Attendance issues before they become further entrenched.

Basic Facts:

Section 23 of the Anti-Social Behaviour Act 2003 introduces new powers for designated local authority officers, typically School Attendance Officers (SAO), Head teachers (HT) (and deputy Head teachers and assistant Head teachers authorised by them) and the Police are able issue Penalty Notices. It is expected that most Penalty Notices will be issued by LAs as a sanction to improve **i.e. unauthorised absence from school, the whereabouts of pupils excluded from school (a pupil found unsupervised in a public place during school hours during the first 5 days of exclusion without good reason)**. The powers came into force on 27 February 2004.

Subsection (1) of section 23 of the Anti-social Behaviour Act 2003 adds two new sections (444A and 444B) after section 444 of the Education Act 1996. These new sections introduced Penalty Notices as an alternative to prosecution under section 444. S444ZA Education Act 1996 was added by s116 Education Act 2005, and extends the provisions to failure to attend alternative education placements.

What is a Penalty Notice?

- The law gives powers to the local authority and other designated bodies to issue Penalty Notices where a parent/guardian is considered to have failed in their legal duty to ensure their child's regular attendance at school.
- Parents of a registered pupil whose child fails to attend school regularly have committed an offence for which prosecution was the only available sanction prior to 2004 (see Section 444 (1) and (1A) Education Act 1996).
- N.B. All those defined as a parent under section 576 of the Education Act are parents for the purposes of these provisions. The parent responsible will usually be the person who has day to day care of the child. As with prosecutions under section 444 (1) of the Education Act 1996, a Penalty Notice may be issued to each and every parent liable for the offence or offences.
- Amendments have been made to the Education (Penalty Notices) England Regulation 2007 by the [Education \(Pupil Registration\) \(England\) \(Amendment\) Regulations 2012 and 2013](#).

The 2007 regulations set out the procedures for issuing penalty notices (fines) to any parent who fails to ensure their child's regular attendance at school, or fails to ensure that their excluded child is not in a public place unsupervised during the first five days of exclusion.

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- Penalty Notices provide an alternative to prosecution under Section 444 (1) and 444 (1A) of the Education Act 1996. This alternative enables parents to avoid a potential criminal conviction for an offence under these Sections, a higher Fine and in prosecution cases brought under Section 444 (1A) the risk of a possible custodial sentence (if found guilty of the offence).
- From September 2012 in accord with the Education (Penalty Notices) (England) (Amendment) Regulations 2012, the penalty was increased. The Education (Penalty Notices) (England) (Amendment) Regulations 2013 which came into force on the 1st September 2013 reduced the times in which the penalty must be paid.
- Therefore a Penalty is now £60 if the Penalty is paid within 21 days and £120 if it is paid within 28 days (*Please note: A notice served by post is deemed to have been received on the second day after posting*).

Who can issue a Penalty Notice?

- The provisions enable the following to issue Penalty Notices, (although there is no requirement for them to do so):
 - Authorised members of staff employed by the Local Authority i.e.: Hackney Education Wellbeing & Education Safeguarding Service designated professional's; and
 - Head teachers, and members of school staff authorised by them (limited by regulations to deputy and assistant heads); and
 - The Police, Community Support Officers and other accredited persons.
- The Penalty Notice procedures apply to the parents of children of compulsory school age who are registered at a maintained school, a pupil referral unit, an Academy, Free Schools, City technology colleges, or attend a City technology college of the arts and include those whose children are in alternative educational provision.
- Each Penalty Notice may potentially lead to prosecution. Therefore, in cases where a school has concerns about a pupil's attendance, the school's authorised person for attendance must ensure that contact has been made with the parent or guardian in order to try to resolve any issues and difficulties to avoid having to proceed with a prosecution, which failing all other efforts should be used as a last resort. All contacts and interventions made by the school with the parents to resolve the issues in relation to the possible offence will be recorded and could be used in evidence.

When is it appropriate to issue a Penalty Notice?

- Penalty Notices must be issued within the terms of the LA Code of Conduct.

In considering whether the necessary conditions for a Penalty Notice to be issued are fulfilled, LAs and head teachers should have regard to all their statutory duties including their safeguarding duties.

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- The key consideration in deciding whether to issue a Penalty Notice will be whether it can be effective in helping to get a pupil who is truanting back into school, and whether there is substantive evidence of non-compliance and collusion on the part of the parent.
- A Penalty Notice is a suitable intervention in circumstances of parentally condoned truancy deemed to constitute unauthorised absence, where the parent is judged capable of securing their child's regular attendance, but is not willing to take responsibility for doing so, for example where the parent has failed to engage with any voluntary or supportive measures proposed. It will be particularly useful as a sanction at an early stage before attendance problems escalate and where the LA considers that a prosecution would be too heavy-handed.
- The normal response to a first offence should be a Penalty Warning rather than to issue a Penalty Notice. Should the parent continue to fail in their duty to ensure appropriate improvements in attendance, the issuing of a Penalty Notice will follow a warning letter.
- The level of absence at which a Penalty Notice will be considered will be at least 10 sessions (10 consecutive sessions in the case of term time holidays or less in some cases) of Unauthorised Absence over period of 12 school weeks, along with clear and identifiable levels of parental collusion/lack of co-operation with school and Local Authority. However, there may be other circumstances in which a Penalty Notice would be considered. Such situations should be discussed with either the Principal Pupils out of School Officer, or Courts Officer prior to a Penalty Notice being issued.

Other factors to be considered alongside this threshold include:-

- For Unauthorised absence – pupils who have been identified within schools as having poor attendance and no reasons have been provided for the absence and there have been insufficient attempts on the part of the parent to rectify the situation.
- Persistent lateness, after close of register (Absence code U – late after register closed / unauthorised absence) AFTER school disciplinary procedures and sanctions have been applied).
- Successive interception from Truancy Patrols.
- Year 11 non-attendance
- **Unauthorised Term Time Holidays:** The deliberate taking of a holiday in term time where this has created a period of unauthorised absence over a period of 12 school weeks reaching at least 10 sessions. The issuing of a Penalty Notice can also be considered when it is apparent that unauthorised absence due to unauthorised holiday in term time is less and covers for an example 6 sessions (3 days). In such circumstances there must be clear evidence to record that the parent has written to the Headteacher to request holiday in term time but permission was declined. The school will also be required to provide with the Penalty Notice referral application proof that the family have in fact taken an unauthorised term time holiday. Where there is evidence a holiday has been taken the LA recommends a warning letter

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should be issued immediately by the school, and taking into account a further 2 days allowed to enable the parents to receive and respond to the warning.

What is the effect of a Penalty Notice?

- Under Section 444(1A) (3) The 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 from of 1st September 2013) and under Section 444 (1A) (4) a parent cannot be convicted of the same offence if they pay a penalty in accordance with the notice. Penalty fines are to be paid to the LA.
- If a Penalty Notice is issued and paid within the timescales identified earlier, but attendance levels do not improve, the Penalty Notice cannot be used as evidence in any subsequent prosecution of parents under Education Act 1996 Section 444 (1) or 444 (1A).
- If the penalty is not paid in full by the end of the 28 day period, the LA must either consider the suitability to prosecute for the offence to which the notice applies or withdraw the notice (which they can only do in limited circumstances set out below). ***Unlike other Penalty Notice schemes the prosecution is not for non-payment of the notice.*** If there is a prosecution by the LA it will follow the usual procedures of a prosecution for irregular attendance under s444 Education Act 1996.
- Payment of a Penalty Notice does not amount to a conviction for a criminal offence.
- DFE expects the LA to prosecute a parent if a Penalty Notice remains unpaid even when the child's attendance has improved. This needs to be discussed in professional supervision, and considered on an individual case basis.

Can a Penalty Notice be appealed or withdrawn?

- There is no right of appeal against the issue of a Penalty Notice.
- LAs may only withdraw a penalty notice in the following circumstances:
 - Where it ought not to have been issued i.e. where it has been issued outside the terms of the local code of conduct or where no offence has been committed;
 - Where it has been issued to the wrong person; or
 - Where the notice contains material errors.
- If a parent disagrees with the contents of a warning letter, or has any other complaints about the procedure of the LA or school, they should put their concerns and objections in writing to the LA within 10 school days of the receipt of the warning letter.

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- Similarly, if a parent receives the Penalty Notice and does not agree with the conditions under which it has been issued, they may write to the LA to identify their concerns, and this must be received within 14 days of the issue of the Penalty Notice. No correspondence will be entered into after the 14 day period, and the parent must pay the Penalty Notice or face the possibility of further proceedings for irregular school attendance.
- All correspondence should be addressed to the Courts Officer at Hackney Education. **Contact details are included on Page 8 for the Courts Officer.**

Administering Penalty Notices:

- Other than in exceptional circumstances the liable parent /guardian will receive a formal written warning of the possibility of a Penalty Notice being issued and given an appropriate period of time to make an improvement. It is important to note that discretion will be applied in situations where there is short term improvement, but a continued pattern of erratic attendance thereafter. If a written warning has been issued, and attendance improves within the specified period but deteriorates thereafter the Penalty Notice can be issued without further warning.
- Within the London Borough of Hackney, the Penalty Notice is issued by post or in some cases by email, usually following the issue of a warning letter as described above. Consideration of whether to issue a Penalty Notice can take place within:-
 - Education Attendance Service professional supervision
 - LA Attendance Legal Planning Meeting
 - Consultation Meeting in School involving a member of the Attendance Service
- No Penalty Notices are issued by the Head teacher without prior consultation and discussion with a Manager from the Wellbeing & Education Safeguarding Service in order to avoid duplication of process and to ensure fairness and equality. It is also imperative to ensure that a Penalty Notice is not issued in conjunction with an LA prosecution for failure to ensure the regular attendance of a statutory school age child.
- Consultation needs to take place with other LA Educational Welfare Services if it is proposed that a Penalty Notice is issued to parents of a pupil on roll at a Hackney school, but resident in another authority, or resident in Hackney but attending school in another authority, in order to avoid the potential for duplication of legal work or other crucial information relating to the case.

Payment of Penalty Notices:

Arrangements for payment will be detailed on the Penalty Notice. Payment of a Penalty Notice discharges the parent /guardian of liability for an offence covering the period in question and they cannot be subsequently prosecuted under other enforcement powers for the period covered by the Penalty Notice.

- Payment of a Penalty Notice within 21 days is £60 and the payment after this time but within 28 days is £120. The Education Attendance Service retains any revenue

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from Penalty Notices to cover enforcement costs (collection or prosecuting in the event of non-payment).

- Non-payment of a Penalty Notice will result in consideration of further intervention (Legal Sanctions) to improve attendance, such as Parenting Orders, Parenting Contracts or Parental Prosecution for failing to ensure the regular attendance of a statutory age child.
- Please note that due to the current COVID-19 restrictions which in some cases has resulted in temporary closure to some of our buildings and disruption to services, Penalty Notice payments can be settled by card, over the phone by calling **020 8820 7459 on Tuesdays and Thursdays between 9:00 am and 12:00 pm ONLY**.
- Payments can only be made during those times highlighted above. Please be aware you are unable to dispute the issuing of a Penalty Notice via the payment line. The current advice is not to present at Hackney Education in person as this method of payment cannot be accepted.

Reporting and Reviewing:

The Principal Pupils Out of School Officer and the Courts Officer will report to the Director for Education at Hackney Education on the deployment and outcomes of Penalty Notices.

The Principal Pupils Out of School Officer or the Courts Officer will review Penalty Notice procedures at regular intervals and amend the general enforcement strategy as appropriate. Please ensure where possible that you read Hackney Education School Attendance Local Guidance applicable from 8th March 2021. This document can be obtained via Hackney Education website.

All correspondence should be addressed to the: Courts Officer at Hackney Education. **Email:** Attendance.Education@Hackney.gov.uk **Directline:** 0208-820-7284.