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**ST HELENS**  
BOROUGH COUNCIL

**People's Services**  
**Education Welfare Service**

**Penalty Notice Code of Conduct**

The Education (Penalty Notices) (England) (Amendment) Regulations 2024

Updated July 2024

# **Penalty Notice Code of Conduct**

## **Sections 444a and 444b Education Act 1996**

The Education (Penalty Notices) (England) Regulations 2013

### **1. Legal Basis**

- 1.1 Section 444A of the Education Act 1996 empowers designated Local Authority Officers, Head Teachers, (Deputy and Assistant Head Teachers authorised by them) and the Police to issue Penalty Notices in cases of unauthorised absence from school.
- 1.2 The Education (Penalty Notices) (England) Regulations 2004 came into force on 27<sup>th</sup> February 2004. These amendment regulations were amended in 2024 and will come into force on 19<sup>th</sup> August 2024.
- 1.3 The issuing of Penalty Notices must conform to all requirements of the Human Rights Act and all Equal Opportunities legislation. The local authority has the prime responsibility for developing the protocol within which all partners named in the Act will operate. This protocol will govern the issuing of Penalty Notices in respect of unauthorised absence from school within St Helens MBC.

### **2. Rationale**

- 2.1 This code of Conduct governs the issuing of penalty notices relating to unauthorised absence from school within St Helens MBC.
- 2.2 Regular and punctual attendance of pupils at school is both a legal requirement and is essential in order for pupils to maximise their educational opportunities.
- 2.3 \*Parents are responsible for ensuring that their child of compulsory school age receives efficient full-time education that is suitable to the child's age, ability, aptitude and to any special educational needs the child may have, at school or otherwise. Parents normally discharge their responsibility by registering their child at a school.
- 2.4 Where a child is a registered pupil at a school, regular and punctual attendance is a requirement under section 7 of the Education Act 1996. As well as a legal requirement regular and punctual attendance is essential if children and young people are able to maximise the educational opportunities available to them.
- 2.5 In law an offence occurs if a parent fails to secure a child's regular attendance at a school at which they are a registered pupil and when that absence is not authorised by the school and does not meet one of the statutory defences. Penalty Notices are one of a number of legal sanctions available under Section 444, Education Act 1996 or Section 36 of the Children's Act 1989 to enforce attendance at school where appropriate.
- 2.6 Compulsory school age is defined as: Commencing at the start of the term on or after a child's fifth birthday and concluding on the last Friday in June of the school year in which the pupil becomes 16 years of age.
- 2.7 Under the provisions of sections 444a and 444b of the Education Act 1996, the Local Authority may, in cases of unauthorised absence, issue a Penalty Notice

to the parent(s) or carer(s) responsible. Under these provisions the first penalty is £80 if paid within 21 days of the receipt of the notice, rising to £160 if paid after 21 days, but within 28 days of receipt.

- A second penalty notice issued to the same parent in respect of the same pupil is charged at a flat rate of £160 if paid within 28 days.
- The third penalty notice cannot be issued to the same parent in respect of the same child within 3 years of the date of issue of the first. In a case where national threshold is met for a third time (or subsequent times) within those three years, a prosecution will be issued.

2.8 The Education Welfare Service delivers the Local Authority's responsibility in respect of the sections of the Education Act 1996 relating to attendance at school.

2.9 Parents and pupils are supported at school and authority level to overcome barriers to regular attendance. Penalty Notices are never used as a punishment, only as a means of enforcing attendance where there is a reasonable expectation that their use will secure an improvement.

### **3. \*Definition of a Parent**

3.1 The legislative provisions relating to non-attendance apply to all parents who fall within the definition set out in section 576 of the Education Act 1996. This defines a parent as:

- All Natural parents, whether they are married or not.
- Any person who, although they are not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person.
- Any person who, although they are not a natural parent, has care of a child or young person – having care of a child or 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 for these purposes.

3.2 Throughout this document references to 'parent' means each and every parent within the above definition, whether acting jointly or separately and should not be taken to mean the provisions only apply to 'parent' in the singular.

### **4. Circumstances in which a Penalty notice may be issued**

A Penalty Notice may only be issued in cases of unauthorised absence. The issuing of a Penalty Notice may be considered appropriate, subject to the threshold test in section 5, in any of the following circumstances:

#### **4.1 Unauthorised Holidays in Term Time**

Please note that amendments have been made to the 2006 regulations, in the Education (Pupil Registration) (England) (Amendment) Regulation 2024. These amendments remove references to family holiday and extended leave as well as the statutory threshold of 5 school days.

The amendments make clear that Head teachers may not grant any leave of absence during term time unless there are exceptional circumstances. Head teachers should determine the number of school days a child can be away from school if the leave is granted.

Head teachers should consider authority guidance and issue a warning letter if they refuse to authorise a request for leave of absence in term time. In such cases the Education Welfare Service may issue a Penalty Notice without recourse to any assessment or casework.

## **4.2 Parentally condoned absence**

Following a period of casework by the Education Welfare Service, or where the school have attempted to engage the parent, but the parent has been unwilling to engage or has failed to secure an improvement in the pupil's attendance. In addressing these cases, penalty notices may offer a prompt and potentially effective deterrent to unauthorised absence as an alternative to other enforcement provisions where this can be demonstrated.

## **4.3 Persistent Lateness**

In cases of persistent late arrival at school after the register has closed, subject to the provisions laid down in section 5. Penalty Notices offer a speedy and prompt manner of addressing an issue that affects not only the Education of the pupil who is late but also other pupils.

## **4.4 In a Public Place whilst excluded from school**

When a pupil is stopped in a public place by a Police Officer or Community Support Officer during the first five days of exclusion from school a Penalty Notice may be issued except where it is demonstrated that the Young Person is on the way to, or from, home and a place where his education has been arranged for, e.g. a PRU or public library.

## **4.5 Non-issuing of Penalty Notices**

4.5.1 A Penalty Notice will not be issued where there has previously been a prosecution against the parent under section 444 of the Education Act 1996. In such circumstances consideration of further legal interventions should be considered.

4.5.2 Where a school or the Police have requested a Penalty Notice it will not be considered where a pupil's attendance is below 70% during the academic year. Pupils with such serious levels of attendance should be referred to the Education Welfare Service for consideration of on-going casework and / or a higher level of legal intervention.

## **5. Thresholds for Issuing \*\*Penalty Notices**

*\*\*175. Penalty notices are issued to parents as an alternative to prosecution where they have failed to ensure that their child of compulsory school age regularly attends the school where they are registered or, in certain cases, at a place where alternative provision is provided. Penalty notices can be used by all schools (with the exception of independent schools) where the pupil's absence has been recorded with one or more of the unauthorised codes and that absence(s) constitutes an offence. A penalty notice can be issued to each parent liable for the offence or offences. They should usually only be issued to the parent or parents who have allowed the absence (regardless of which parent has applied for a leave of absence).*

To ensure consistent and fair delivery of Penalty Notices, the following criteria for their use shall apply:

- 5.1 Where a school have identified a pattern of unauthorised absence the pupil concerned must have missed at least 10 school sessions (5 school days) due to unauthorised absence within a ten-week period of time.
- 5.2 The school should ensure that the liable parent is offered the opportunity to meet and discuss any support requirements to improve attendance. Following this the parent will receive a notice to improve outlining the steps necessary to avoid a Penalty Notice being issued and shall be given a minimum of 15 school days to affect an improvement, except where the absence involves a holiday in term time.
- 5.3 In cases where leave of absence is taken in term time without or against school permission, and it can be shown that the parent understood that permission had not or would not be given, and where this leave of absence has given rise to a period of 10 or more total unauthorised absences within a 10-school week period, without the school authorising the leave of absence in advance.
- 5.4 Where a pupil has arrived late, after the registers have closed on 10 occasions within a 10-school week period, the parent will be offered the opportunity to meet and discuss any support requirements to improve attendance. Following this the parent will receive a notice to improve outlining the steps necessary to avoid a Penalty Notice being issued.
- 5.5 Schools must consider every aspect of a pupil's circumstances before judging whether or not to request a Penalty Notice.

## **6 Procedure for issuing Penalty Notices**

- 6.1 The Education Welfare Service will issue Penalty Notices in St Helens on behalf of the Authority. This will ensure a consistent approach.
- 6.2 In cases where the Penalty is not paid within the appropriate period of time, 28 days, the Education Welfare Service will instigate action through the Courts as required by the legislation for the original offence under section 444(1) of the Education Act 1996.
- 6.3 The Education Welfare Service will receive requests to issue Penalty Notices from schools, Merseyside Police, including Community Support Officers, and Neighbouring Local Authorities. Any requests to issue notices must be accompanied by relevant information provided in a specified manner and the

circumstances of the unauthorised absence from school match those detailed in the Code of Conduct.

Requests from schools to issue Penalty Notices, Merseyside Police should be emailed direct to:

[fixedpenaltyattendance@sthelens.gov.uk](mailto:fixedpenaltyattendance@sthelens.gov.uk)

Neighbouring Authorities should be emailed direct to:

[crossborder.penaltynotice@sthelens.gov.uk](mailto:crossborder.penaltynotice@sthelens.gov.uk)

6.4 With regard to Neighbouring Authorities the following practice has been agreed:

- The Authorities will take responsibility for the issuing of Penalty Notices for their own pupils as defined by the school attended in accordance with their local protocols.
- That there will be prompt Cross-Border contact in every case where a Penalty Notice is being considered and where there is reason to suspect that siblings within the family may attend schools in more than one Authority.
- The initial point of contact within the Education Welfare Service will be the Senior Education Welfare Officer with specific responsibility for co-ordinating legal enforcement work.

Action will be taken on requests provided that:

- All relevant information is supplied in the specified manner
- The circumstances of the pupil's absence meets all the requirements of this Protocol
- The issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.

6.5 Due to confidentiality warning letters must be addressed and sent to parents individually and not as a couple.

6.6 Requests for Penalty Notices should only be made for individuals and cannot be made for a couple. Each parent must be treated individually.

6.7 The parent's full name including the forename and title e.g. Mr, Mrs, Ms, Miss must be given together with a working telephone number when making a request for a Penalty Notice. All information should be checked to ensure accuracy including names, addresses, spelling, dates of birth, etc.

6.8 The Education Welfare Service will respond to all requests within 15 working days of receipt and where all criteria are met will issue a Penalty Notice

6.9 Notices will only be issued by post.

## **7. Procedure for withdrawing Penalty Notices**

Once issued, St Helens MBC may only withdraw a Penalty Notice in the following circumstances:

- Proof has been established that the Penalty Notice was issued to the wrong person
- The use of the Penalty Notice did not conform to the terms of the protocol
- It appears to the Authority that the notice contains material errors
- The Penalty Notice has not been paid and the Authority has not instituted proceedings and is not considering proceedings.

There is no right of appeal against the issuing of a Penalty Notice

## **8. Payment of Penalty Notices**

Arrangements for payment will be detailed on the Penalty Notice.

Payment of a Penalty Notice discharges the liability of the parent for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Penalty Notice.

Payment of a first Penalty Notice within 21 days is £80 and payment after 21 days but within 28 days is £160 (amended 19<sup>th</sup> August 2024). Payment of a subsequent Penalty Notice within 28 days is £160 (amended 19<sup>th</sup> August 2024).

## **9. Non-payment of Penalty Notices**

Non-payment of a Penalty Notice will result in the withdrawal of the notice and may trigger the Prosecution process under the provisions of Section 444 of the Education Act 1996.

## **10. Policy & Publicity**

All school Attendance Policies will need to include information on the use of Penalty Notices and this should be brought to the attention of all parents.

The Authority will include information on the use of Penalty Notices and other attendance enforcement sanctions in promotional and public information material.

## **11. Reporting & Review**

The Education Welfare Service will report at regular intervals on the use of Penalty Notices. This will include an annual report to the Assistant Director (Education and Learning). Report to the Attendance and Behaviour Board will include details of the use of Penalty Notices. The Dept of Education also requires annual submission of data via PRAB regarding Penalty Notices.