



St. Helens  
Council

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## **People's Services**

Penalty Notice Code of Conduct

**Anti-Social Behaviour Act 2003**  
(Incorporating 2007, 2012 and 2013 amendments)

**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 regulations were amended in 2007 and 2012 and 2013.
- 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 or carer 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 penalty is £60 if paid within 21 days of the receipt of the notice, rising to £120 if paid after 21 days, but within 28 days of receipt.
- 2.8 The Education Welfare Service delivers the Local Authorities responsibility in respect of the sections of the Education Act 1996 relating to attendance at school.
- 2.8 Parents and pupils are supported at school and authority level to overcome barriers to regular attendance through a broad continuum of assessment and intervention strategies. Sanctions of any nature are for use only where parental non co-operation in this process is either absent or deemed insufficient to resolve the presenting problem. Sanctions 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 4, 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 2013. These amendments remove references to family holiday and extended leave as well as the statutory threshold of ten 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 Truancy Sweeps**

Following a Truancy Sweep, enquiries will be undertaken with the school of any pupil who is stopped. In cases where the school have recorded the absence of the pupil as unauthorised and the evidence shows that the pupil has been stopped on a previous Truancy Sweep within a year a Penalty Notice may be issued, subject to the attendance threshold in section 4 having been met, without recourse to any casework.

## **4.3 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 pupils attendance. In addressing cases of parentally condoned absence, 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.

## **4.4 Persistent Lateness**

In cases of persistent late arrival at school after the register has closed, subject to the provisions laid down in section 4. 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.

## **4.5 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.

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

- 4.6.1 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.

- 4.6.2 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.
- 4.6.3 Where a case is open to the Education Welfare Service and the attendance of a child exceeds 40 absences over a ten week period a Penalty Notice will not normally be issued. Consideration should be given to instigating legal proceedings under section 444(1) of the Education Act 1996.

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

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

- 5.1 The use of Penalty Notices shall be restricted to one per pupil, per parent in any single academic year.
- 5.2 Where families contain more than one non-attending pupil who meets the criteria for issuing a Penalty Notice, multiple issues may occur, but this should be subject to careful consideration and co-ordination.
- 5.3 Where a school have identified a pattern of unauthorised absence the pupil concerned must have missed at least 20 school sessions (10 school days) due to unauthorised absence within a ten-week period of time.
- 5.4 The school should ensure that the liable parent or carer receives a formal warning of the possibility of a Penalty Notice being issued, and shall be given a maximum of 15 school days to effect an improvement, except where the absence involves a holiday in term time.
- 5.5 In cases where leave of absence is taken in term time without or against school permission, and it can be shown that the parent/carer understood that permission had not or would not be given, and where this leave of absence has given rise to a period of 20 or more total unauthorised absences within the current term without the school authorising the leave of absence in advance.
- 5.6 Where a pupil has arrived late, after the registers have closed, on 10 occasions within a 10 school week period and where the school can demonstrate that the parent has been warned that a consequence of late arrival may result in a Penalty Notice being issued.
- 5.7 Where a pupil has been stopped on a truancy sweep, a Penalty Notice may be issued if the pupil has had a minimum of three separate periods of unauthorised absence within 10 school weeks or has missed 20 unauthorised sessions within the previous 10 school weeks.
- 5.8 The Authority may issue a Penalty Notice in other appropriate circumstances where it is satisfied that an offence has been committed and believes that a parent should be given the opportunity of discharging their liability without initial recourse to formal legal proceedings.

- 5.9 Should the parent or carer fail or refuse to pay any Penalty Notice under sections 4.3, 4.4 or 4.5 above, the evidence provided by the school will be the only evidence laid before the Court. There will be no automatic Education Welfare Service involvement.

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 consistent and equitable delivery, retain home-school relationships and allow for cohesion with other enforcement sanctions.
- 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 and Neighbouring Authorities should be sent direct to:

People's Services  
Education Welfare Service  
Gamble Avenue  
St Helens  
WA10 6LR

- 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-Authority 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. Prompt and accurate transfer of data between Authorities is essential when pupils from another Authority are stopped on Truancy Sweeps.

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 family circumstances / ability to pay are set against the likelihood of securing an improved attendance by issuing a Penalty Notice (this to include cases of possible multiple issue to any one family)
- 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 10 working days of receipt and where all criteria are met will issue a penalty Notice
- 6.9 Notices will only be issued by post and never as an on the spot action, this is to ensure that all evidential requirements are in place and to meet Health and Safety procedures.

## **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 or carer 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 Penalty Notice within 21 days is £60 and payment after 21 days but within 28 days is £120 (amended 1<sup>st</sup> September 2013).

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

Non-payment of a Penalty Notice will result in the withdrawal of the notice and may trigger the Fast-Track 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 (Achievement and Inclusion). Report to the Education Scrutiny Panel will include details of the use of Penalty Notices. The Dept of Education also requires annual submission of data via PRAB regarding Penalty Notices. Details of Penalty Notice use will also be included in any reports following Truancy Sweeps, where appropriate.