

North Tyneside Council

Penalty Notice Code of Conduct

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North Tyneside Council

Code of conduct:

Issuing Penalty Notices for unauthorised absence from schools

This local code sets out the procedures and terms under which Penalty Notices for unauthorised absence can, and should, be issued by North Tyneside Council. It applies to statutory school age children from age 5 to 16 and to all maintained schools and academies within the borough of North Tyneside Council. All authorised persons must issue Penalty Notices in compliance with this code.

The code is to be read in conjunction with:

Guidance for Schools and Academies on Prosecutions for Non School Attendance and Information for Schools on Unauthorised Leave of Absence during Term Time.

Legal background

Sections 444A and 444B of the Education Act 1996 empower authorised officers of the local authority, Head teachers (and Deputy Head teachers if authorised by them) and the Police, to issue Penalty Notices to parents in cases of unauthorised absence from school.

The Education (Penalty Notices) (England) Regulations 2007 (as amended) require the Local Authority, in consultation with all of the above, to develop a code of conduct for issuing Penalty Notices. Any person issuing a Penalty Notice for the unauthorised absence of a North Tyneside student must do so within the terms of this Code of Conduct.

The definition of a parent includes: all natural parents, whether they are married or not; any person or body who has parental responsibility for a child; and any person who, although not a natural parent, has care of a child. Having care of a child means that a person with whom a child lives and who looks after a child, irrespective of their relationship with that child, is considered to be a parent in education law (see Section 576 of the Education Act 1996 and the Children Act 1989).

Rationale for issuing Penalty Notices

Regular and punctual attendance at school is a legal requirement, as well as essential if pupils are to maximise their potential.

In law, parents/carers are committing an offence if they fail to ensure the regular and punctual attendance of their child at the school at which the child is registered, unless the absence has been authorised by the school. Only schools have the power to authorise or grant a leave of absence.

A range of sanctions to enforce regular school attendance exist under Section 444 of the Education Act 1996 and Section 36 of the Children Act 1989. The purpose of a Penalty Notice is to offer a swift intervention for cases of unauthorised absence before the problem becomes too entrenched.

The purpose of the Code of Conduct is to ensure that the Penalty Notices are issued consistently and fairly across the area that comes under the control of North Tyneside Council (“the Council”) and that suitable arrangements are in place for the administration of the scheme.

The issuing of Penalty Notices must conform to all requirements of the Human Rights Act 1998 and the Equality Act 2010.

North Tyneside Council’s Attendance and Placement Service will consider the use of Penalty Notices in the following situations:

- for all cases of unauthorised absence where attendance is below 90%
- for any situation where unauthorised leave of absence is for a holiday during term time. In relation to term time holidays, the child’s level of attendance will not be an influencing factor. If the leave of absence is refused by the school, then a Penalty Notice can be issued.

Before issuing Penalty Notices

Schools should take all reasonable steps to ensure good attendance without the use of the Penalty Notice Code of Practice.

In cases where a school has concerns about a pupil’s attendance, the school should have first ensured that contact has been made with the parent/carer in order to try to resolve any difficulties.

If the issuing of a Penalty Notice is under consideration for general poor attendance (below 90%), the school should contact the Attendance and Placement Team. The Attendance and Placement Team will then send a Penalty Notice Warning letter to the parent/carer.

The letter will include:

- Details of the pupil’s absence as a % of the possible sessions attended. This will usually be attendance below 90%.
- a reminder of the responsibilities of the parent regarding attendance at school
- The consequences for the parent in failing to ensure their child’s regular attendance in particular, warning that further unauthorised absences could result in a Penalty Notice or prosecution within the Magistrates Court.

If this warning does not effect a significant improvement in attendance (above 90% following receipt of the letter) then a Penalty Notice will be issued.

The Department for Education (DfE) guidance indicates that a Penalty Notice can be issued for a first offence in exceptional circumstances, for example where a parent takes a child on holiday during term time without the school authorising the absence. Parents should be made aware of this. The Attendance and Placement Team will not be required to issue a warning letter for unauthorised attendance due to a term time holiday taken without school approval.

Schools must published their attendance policy in the current academic year and this must include warning to parents that Penalty Notices can be issued in instances where a child takes an unauthorised absence in relation to term time holiday.

Circumstances in which a Penalty Notice may be issued

Penalty Notices can only be issued in cases where a pupil of compulsory school age has been absent or late and the absence or lateness has not been authorised by the school.

North Tyneside Council will issue a Penalty Notice for any unauthorised absence where the pupil has been:

- absent for 10 or more half-day sessions (five school days) of unauthorised absence during any 100 possible school sessions – these do not need to be consecutive;
- persistently late (coded U) for up to 10 sessions (five days) after the register has been closed;
- absent for any public examinations of which dates are published in advance
- absent for any formal school assessments, tests or examinations where the dates have been published in advance;

Consideration will be given to cases where the issuing of a Penalty Notice would conflict with other intervention strategies in place or other sanctions already being processed.

If, after a warning letter has been issued, there is sufficient irregular attendance to merit a Penalty Notice, it must be issued unless there are exceptional reasons against taking this action.

Unauthorised Leave of Absence (Term-Time Holiday)

Head teachers should not authorise absence from school purely for the reason of a family holiday. If a parent/carer feels they have an exceptional circumstance they must speak with the Head teacher prior to making any arrangements or taking any absence.

Amendments to the 2006 Pupil Registration Regulations 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 of absence is granted.

Parents are legally responsible for ensuring their children receive education in accordance with Section 7 of the Education Act 1996 and if on a school roll that they regularly attend school.

Schools will also need to give consideration to parent/carers who have inflexible leave arrangements (this will include service personnel), and where this has been confirmed by the employer.

Parents must be requested to complete a Request for Leave of Absence form provided by the school. All requests must be made in writing. Schools must reply in writing to any request.

A referral for a Penalty Notice for unauthorised leave of absence due to a term time holiday should only be made once the family has returned from holiday, but no later than **15 days** after their return. Any Penalty Notices issued will not take into consideration the child's attendance to date. As the matter is one of unauthorised leave of absence then all time off could result in a referral for a Penalty Notice.

Who may issue a Penalty Notice?

The Attendance and Placement Service are responsible for issuing Penalty Notices on behalf of North Tyneside Council.

When to issue a Penalty Notice

If the warning letter has not solved the problem or if the child is taken on a term time holiday without approval of the school, the school should record their considerations and decision to make a referral for a Penalty Notice. This is required as evidence.

A Penalty Notice issued must be addressed to one parent, but a Penalty Notice may be issued to each parent liable for the offence or offences.

There is no restriction on the number of Penalty Notices which can be issued if attendance does not improve or if multiple holidays are taken during term time.

Payment of Penalty Notices

Arrangements for the payment will be detailed in the documentation provided with the Penalty Notice. Penalties are to be paid to North Tyneside Council.

If paid within 21 days of receipt of the Penalty Notice, the fine is £60. If not paid within 21 days the penalty is automatically increased to £120 to be paid within 28 days.

Any revenue resulting from payment of penalties will be retained by the Council and is used to cover the enforcement costs. Payment of the Penalty Notice discharges a parent's liability for the period in question and means that they cannot subsequently be prosecuted under any other enforcement powers for the period covered by the Penalty Notice.

Non-payment of Penalty Notices

It is possible that non-payment of a Penalty Notice will lead to a prosecution under Section 444, Education Act 1996. The prosecution is not for the non-payment of the Penalty Notice but for the original unauthorised absence.

The parent will be issued with a letter advising that legal proceedings will be taken if the Penalty Notice is not paid within 28 days.

Withdrawal of a Penalty Notice

There is no statutory right of appeal against the issuing of a Penalty Notice. Furthermore, once issued, a Penalty Notice can only be withdrawn if it is established that it should not have been issued, e.g. where it has been issued outside of the terms of the Code of Conduct, or where no offence has been committed or where it has been issued to the wrong person.