



Penalty Notice Code of Conduct

Lead committee:- Performance Committee

Last reviewed and approved:- Summer 2023

Next review date:- Summer 2024

BUCKINGHAMSHIRE COUNTY COUNCIL

CODE OF CONDUCT FOR ISSUING PENALTY NOTICES FOR UNAUTHORISED ABSENCE FROM SCHOOL

(Revised June 2019)

1. The Legal Basis

Regular and punctual attendance of pupils at school is a legal requirement under section 7 of the Education Act 1996. **Under section 444 of the Education Act 1996, it is an offence, if the parents fail to ensure regular attendance.** Therefore, parents are responsible for ensuring that their child of compulsory school age receives sufficient full-time education that is suitable to the child's age, ability and aptitude and to any special educational needs, the child may have.

For the purpose of this legislation and Code of Conduct a 'parent' is defined under section 576 Education Act 1996 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 not a natural parent, has the day-to-day care of a child or young person.

For the purpose of the legislation and Buckinghamshire County Council's Code of Conduct, compulsory school age is defined as: -

- Commencing at the start of term on or after a child's fifth birthday and concluding on the last Friday in June of the academic year in which they turn 16.

Under sections 444A and 444B of the Education Act 1996, a Penalty Notice can be issued, as an alternative to immediate prosecution, in cases of unauthorised absences from school.

A Penalty Notice is a notice offering the person the opportunity of discharging any liability to conviction of the offence. The responsibility for authorising absence rests with the school's Head Teacher. The procedural guidance for the implementation of those subsections is contained within The Education (Penalty Notices) (England) Regulations 2007 (No 1867).

In respect of an excluded pupil, The Education and Inspections Act 2006, Section 103 places a duty on parents in relation to an excluded pupil, to ensure that their child is not present in a public place during school hours without reasonable justification during the first five days of each and every fixed term and permanent exclusion.

These days are known as the "specified days of exclusion". Section 104 of the Act requires schools to notify parents in writing that they are responsible for the child during these days. Section 105 of the act, allows for a Penalty Notice to be issued to a parent guilty of an offence under section 103.

2. The Context in Buckinghamshire

Attendance at school is essential for pupil attainment and for safeguarding the child.

Buckinghamshire Local Authority and schools have established a rigorous approach to addressing unauthorised absence from school. The new legislation governing Penalty Notices complements the measures already in place.

3. The Circumstances that Penalty Notices may be Issued

- Irregular school attendance;
- Overt truancy (including pupils found during truancy sweeps);
- Parentally-condoned absences;
- Unauthorised holidays in term-time*;
- Being in a public place during the first five days of an exclusion;
- **Persistent late arrival at school. “Persistent” means at least 10 sessions of late arrival**

*From 1st September 2013, Head Teachers are unable to agree leave of absence during term time unless they are satisfied that there are exceptional circumstances. The fundamental principles for defining ‘exceptional’ are rare, significant, unavoidable and short. And by ‘unavoidable’ it implies that an event could not reasonably be scheduled at another time.

To ensure consistent delivery of Penalty Notices the following criteria will apply:

- There have been at least 10 sessions of unauthorised absence during any 100 possible school sessions – these do not need to be consecutive and the school, in consultation with The County Attendance Team, believe this early intervention will resolve the poor attendance and stop the matter moving toward a prosecution under section 444 of the Education Act 1996.
- If a Head Teacher does not authorise a request from a parent/carer for term time leave and the parent takes the leave. (School must advise parents of this and how the action conforms to the school’s attendance policy). There must be at least 10 continuous sessions of unauthorised term time leave taken. Head Teachers can only authorise absences retrospectively if there are exceptional circumstances.
- Persistently late after the close of the register (coded *U*) and where the threshold of 10 sessions (five days) has been met.
- In certain circumstances, including where ten sessions of absence comprise of unauthorised holidays in term time, a Penalty Notice can be issued without a Formal Warning having been issued previously.
- Where a child who has been excluded is present in a public place during the first five days a Penalty Notice will be issued on the first occasion if appropriate.
- A Penalty Notice may also be issued without a Formal Warning if a Formal Warning has already been issued to the parent/carer previously.

Following the landmark case of Isle of Wight Council v Platt, Parents who take their children out of school on holiday, even if their child has regular attendance, can be prosecuted if they do not have permission from the Head Teacher.

4. The Procedure for Issuing Penalty Notices

- Within Buckinghamshire, the responsibility for issuing Penalty Notices and managing arrangements for their payment and the collections of monies rests with The County

Attendance Team. This ensures that all procedures relating to Penalty Notices are consistently applied, that enforcement action is not duplicated and that any subsequent court action is integrated into the existing attendance procedures.

- Penalty notices will only be issued within the terms of the Code of Conduct. The County Attendance Team will ensure that penalty notices are properly issued and only issued for offences where the Buckinghamshire County Council is willing and able to prosecute.
- Penalty Notices will only be issued by post and never as an 'on the spot' action; this is to ensure that all evidential requirements have been met and that Health and Safety requirements are also met.
- No parent will receive more than two separate Penalty Notices resulting from the unauthorised absence of an individual child in any one academic year. Penalty Notices will be issued to each parent / carer of the child exhibiting the relevant patterns of unauthorised absence and, where appropriate, in respect of more than one child.
- In cases where families contain more than one child with unauthorised absence, multiple issuing of Notices may be necessary but this will be the subject of careful consideration by The County Attendance Team and discussion with the Head Teacher. **Furthermore, the Local Authority may carry out checks with other schools in the county where there are siblings attending different schools, and if appropriate may issue a Penalty Notice in respect of each child.**
- The County Attendance Team will consider requests from schools, the Police, other agencies such as Social Care or the Youth Offending Service and neighbouring authorities as appropriate for issue of a Penalty Notice.

5. The Procedure for payment of Penalty Notices:

- Arrangements for payment will be provided with the Penalty Notice.
- Payment of a Penalty Notice discharges the parent of liability for the attendance period in question. S/he cannot subsequently be prosecuted 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.
- The County Attendance Team will send a Certificate of Payment of Penalty Notice to the payee.
- Buckinghamshire County Council retains any revenue from Penalty Notices to cover enforcement costs (collection or prosecution in the event of non-payment).

6. Procedure to address Non-Payment of Penalty Notices

- If after 28 days the notice remains unpaid, The County Attendance Team will send a Certificate of Non Payment of Penalty Notice to the parent/carer.
- Non-payment of a Penalty Notice may trigger a prosecution under the provisions of section 444 of the Education Act 1996 on the basis that the parent has failed to secure regular school attendance. NB The prosecution is for the Non Attendance and NOT the non- payment of the Penalty Notice.

- In respect of an excluded pupil, non-payment of the Penalty Notice may trigger a prosecution for the offence under Section 103 of the Education and Inspections Act 2006.

7. The Procedure for Withdrawing Penalty Notices

Guidance only allows a Penalty Notice to be withdrawn in the following circumstances:

- Proof has been established that the Penalty Notice was issued to the wrong person.
- The issuing of the Penalty Notice did not conform to the terms of this Code of Conduct.
- It ought not to have been issued i.e. no offence has been committed.
- If there are material errors in the Penalty Notice.

Where a Penalty Notice is withdrawn in accordance with the above, a Notice of Withdrawal shall be given to the recipient. Once the notice has been withdrawn any amount paid towards the Penalty Notice in pursuance of that notice shall be repaid to the payee.

If a Penalty Notice is withdrawn, as a result of the above circumstances, no proceedings shall continue or be instigated against the recipient for the offence in connection with which the withdrawal notice was issued or for an offence under Section 444 (1/1A) of the Education Act 1996 or under Section 103 Education and Inspections Act 2006 arising out of the same circumstances.

Where the Local Authority has neither instituted proceedings nor is contemplating such proceedings against the recipient of the offence, the notice must be withdrawn.

8. Policy and Publicity

- Buckinghamshire County Council will provide information on the use of Penalty Notices in publicity campaigns outlining the importance of school attendance, and with its range of leaflets, which are available to parents.
- All policies in schools relating to school attendance should include information on the utilisation of Penalty Notices and this sanction should be brought to the attention of all parents.

9. Reporting & Review

- The Education Entitlement Manager will report at regular intervals on the use and outcomes of Penalty Notices.
- The Education Entitlement Manager will review and amend the use of Penalty Notices at regular intervals and amend the strategy as appropriate.

If you wish to make any comment regarding this Code of Conduct please direct all communication to the Education Entitlement Manager at:

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County Hall
Walton Street
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