

# **Blackburn with Darwen, Blackpool and Lancashire County Local Authorities**

## **Joint procedures for issuing education-related Penalty Notices**

### Introduction

This document sets out the principles which influence how and when education-related penalty notices will be used. It includes the codes of conduct in respect of notices for attendance and notices for the whereabouts of excluded pupils and also details the procedural arrangements for the administration of such notices. In addition, the detail of the legislation that underpins the issuing of education-related penalty notices can be found in Appendix 1.

### Rationale – penalty notices for non-attendance

Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their education opportunities.

Legal action in the courts may be used as a strategy to improve attendance when parents have failed to secure their children's regular attendance at school or other alternative provision. Penalty notices are simply another enforcement option that is now available to the local authority (LA).

However, it should be noted that sanctions of any nature are for use only where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem.

Furthermore, all parties involved must act within the parameters of the local code of conduct and educational establishments must ensure that the use of penalty notices is outlined in their own attendance policy.

### Rationale – penalty notices for whereabouts of excluded pupils

Parents are expected to make arrangements for the supervision of children who have been excluded from school on any day which is one of the first five school days to which any exclusion relates.

Where the LA is notified that a parent is believed to be failing in their statutory duty to ensure such children are not in a public place, an investigation will be undertaken to establish the basic facts of the case in each instance in order to determine whether an offence is likely to have been committed.

It is expected that in the first instance parents would be reminded of their duty under this legislation and warned as to future behaviour, but subsequently a penalty notice could be issued where the criteria set out in the relevant code of conduct have been met. However, where a child is reported on more than one

occasion during any single episode of exclusion, the LA will only consider a penalty notice for any one offence.

Where there is evidence of repeat episodes which suggest parenting is a significant contributory factor to the pupil's continuing behaviour concerns, schools will be expected to have considered/offered a parenting contract for behaviour before the LA will consider more than three requests for penalty notices in any one academic year.

### Administration of education-related penalty notices

#### Payment of penalty

Arrangements for payment will be detailed on the penalty notice proforma.

Payment of a penalty discharges the parent/carer of liability for the period/episode in question and so they cannot be subsequently prosecuted under other enforcement powers for the absence period/episode already covered by the penalty notice.

Payment of a penalty within 21 days of receipt of the notice is £60 (subject to regulatory change). Payment after this time, but within 28 days of receipt of the notice is £120 (subject to regulatory change).

The LA will retain any revenue from the income generated by education-related penalty notices to help cover the administration and enforcement costs.

#### Non payment of penalty

Non payment of the penalty within the 28 day time limit will trigger the prosecution process under the provisions of section 444 of the 1996 act or section 103 of the 2006 act, except where the notice is withdrawn (as detailed in the criteria below). As with all prosecutions the Code for Crown Prosecutors must be followed and the rules of evidence and criminal procedural rules apply. Therefore the authority must be satisfied that any prosecution meets the "evidential" test and the "public interest" test, as set out in the said Code before proceeding with a prosecution.

#### Procedure for withdrawing penalty notices

Once issued, a penalty notice may be withdrawn where the relevant LA agrees that:

- The penalty notice should not have been issued; or
- The penalty notice is shown to have been issued to the wrong person; or
- It appears to the authority that the notice contains material errors

Where a notice is withdrawn under the first two of the above criteria, the requirements of regulation 8 (3) of the regulations 2007 will be satisfied by the LA.

If an LA ultimately decides not to bring proceedings in respect of the non-payment of a penalty notice, the notice must be formally withdrawn.

### Reporting and review

The three LAs will review the penalty notice procedures at appropriate intervals and:

- Provide an annual report for council members, head teachers and the police, as requested
- Ensure that all relevant statistical information is made available to the Department for Education (DfE)
- Propose amendments to the procedures as and when appropriate

### Issuing penalty notices

Penalty notices will only be issued by first class post (which constitutes good service) and should not be hand delivered, other than in exceptional circumstances. This will ensure that evidential and health and safety requirements are met.

## **Code of Conduct for penalty notices for non-attendance**

### Circumstances where a penalty notice may be issued for non-attendance

To ensure consistent and equitable delivery and the avoidance of duplicate notices being issued, the local delivery of the penalty notice scheme will be managed by the LA.

A penalty notice for non-attendance can only be issued in cases of **unauthorised** absence. Any schools submitting requests must adhere to the guidance on the marking of registers. This guidance can be found on the DfE website.

The circumstances in which a penalty notice for non-attendance may be issued include:

- Unauthorised absence
- Unauthorised leave
- Unwarranted delayed return from authorised leave
- Persistent late arrival after the register has closed

Each case will be considered individually. In addition, when considering issuing a penalty notice for unauthorised leave, the LA will take into consideration any relevant advice issued to schools on granting leave of absence.

A minimum evidential requirement of ten (10) school sessions lost to unauthorised absence by any pupil in any one term, **and/or** fourteen (14) sessions lost to unauthorised absence over two consecutive terms, will be required to trigger the process.

Due to time constraints arising from s127 Magistrates Court Act 1980, where the absences that are required meet the trigger cover a period of more than 12 weeks, it may not be possible to prosecute such cases, therefore any such applications may not be accepted.

Requests for penalty notices **must be** submitted to the LA no later than six school weeks after the original offence was committed.

Where the LA is of the opinion that a pupil's level of attendance is so low that initiating proceedings in the magistrates' court would be more appropriate, the LA reserves the right not to issue a penalty notice. Similarly, the issuing of penalty notices in relation to pupils approaching the end of their compulsory education may not be considered an appropriate intervention. Each Local Authority will make a determination on the cut-off date at which requests of this nature will not usually be actioned. Any exceptions to this would be considered on a case by case basis.

The number of penalty notices for non-attendance which can be issued is restricted up to a maximum of 3 per pupil, per parent, in any one school year. However, there is no restriction on the number of times a formal warning may be given about the possible issue of a penalty notice.

Each LA will only be responsible for considering the issuing of penalty notices for children who are on the roll of a school within their authority.

Where pupils reside within the Lancashire, Blackpool or Blackburn with Darwen local authority area but are on roll at a school in another authority the LA for the school will decide on the appropriate action to be taken.

If required, cross-border discussions will take place between the relevant LAs.

#### Procedure for issuing penalty notices for non-attendance

The relevant nominated officer(s) for each LA will issue penalty notices for non-attendance on behalf of their respective LA in Lancashire. This will help ensure consistent and equitable delivery, maintain home/school relationships and complement other enforcement measures.

Penalty notices will only be issued by first class post (which constitutes good service) and should not be hand delivered, other than in exceptional circumstances. This will ensure that evidential and health and safety requirements are met.

Requests from schools and the police to issue penalty notices will be considered by the LA provided that:

- All relevant information is supplied in the specified manner
- The circumstances of the pupil's absence meet all the evidential requirements of this code of conduct
- The issuing of a penalty notice will not conflict with other intervention strategies already in place or other enforcement measures already being processed.

The LA will respond to all such requests within 10 school days, providing all criteria are met. They will then either confirm that penalty notice procedures will be implemented or that other, more appropriate, interventions will be explored.

In cases of unauthorised absence, other than notification of intention to take unauthorised leave of absence, the LA will:

- Issue a formal written warning to the parent/carer of the possibility of a penalty notice being issued

- In the same letter, set a period of 15 school days during which the pupil's attendance will be closely monitored
- Issue a penalty notice through the post at the end of the 15 day period if the required level of improvement has not been achieved.

When a penalty notice is requested for unauthorised leave of absence, the LA may issue a warning letter relating to the period of the planned absence, but reserve the right to issue penalty notices without a warning letter. Warning letters may not issued, for example, in instances where leave of absence is either not requested by parents in advance or requested with insufficient notice for a warning letter to be sent.

## **Code of Conduct for penalty notices for the whereabouts of excluded pupils**

### **Circumstances where a penalty notice may be issued for the whereabouts of excluded pupils**

To ensure consistent and equitable delivery and the avoidance of duplicate notices being issued, the local delivery of the penalty notice scheme will be managed by the LA.

A penalty notice for the whereabouts of excluded pupils can only be issued in cases where the parents of a formally excluded child fail in their duty to ensure that he/she is not in a public place during school hours (without reasonable justification) on a day which is one of the first five school days of any fixed period or permanent exclusion.

The notice allows a parent to pay a penalty as a way of discharging any liability for the offence on the days specified. However, the parents must have been explicitly notified by the school of this duty/liability at the time of their child's exclusion **and** the specific days to which it relates.

Consequently, schools will be required to provide the LA with proof of notification and the means of delivery when making a request for a parent to be issued with a penalty notice for the whereabouts of an excluded pupil.

However, a parent has a defence if they can prove reasonable justification. A competent justification which is capable of being regarded as reasonable will depend on the parents "facts" being backed up by proof. It is unlikely that any justification will be held to be reasonable unless it stands up on these facts.

The maximum number of penalty notices for the whereabouts of an excluded pupil that can be issued is restricted to 1 per pupil, per parent **in any one exclusion period**, up to a maximum of five in any one school year.

However, after three such requests, no further notices will be issued in one school year until the school provides evidence that a parenting contract (behaviour) has been considered in order to support the parent(s).

There is no restriction on the number of times a formal warning may be given about the possible issue of a penalty notice.

Where pupils reside within the Lancashire, Blackpool or Blackburn with Darwen local authority area but are on roll at a school in another authority the LA for the school will decide on the appropriate action to be taken.

If required, cross-border discussions will take place between the relevant LAs.

## Procedure for issuing a penalty notice for the whereabouts of excluded pupils

The relevant nominated officer(s) for each LA will issue penalty notices for the whereabouts of excluded pupils on behalf of the LA in Lancashire and will automatically consider their use in all cases brought to their attention.

There are provisions in the legislation to enable the following to issue penalty notices, though there is no requirement to do so

- Authorised Local Authority staff
- Head teachers and where authorised, deputy and assistant heads
- The police, community support officers and accredited persons.

Lancashire Constabulary have confirmed that they will not issue penalty notices in respect of excluded pupils under these provisions, nor will they formally request the LA to issue such penalty notices. However, where the police (or community support officers) believe an offence may have been committed under this legislation, they will share information with the relevant LA so that enquiries can be made.

Although head teachers are empowered to issue penalty notices, they may not be sufficiently informed to do so as the offence under section 103 of the 2006 act allows an excluded pupil's presence in a public place where there is reasonable justification for them being there. As such, each individual case must be examined on its own merits

Consequently, schools should report suspected breaches of section 103 to the LA so that the facts of the case can be ascertained before a penalty notice is considered.

The LA will investigate matters such as the method of notification to parents, the number of times an excluded pupil has been apprehended, the parents' actions or inactions that resulted in the excluded pupil being in a public place when they shouldn't have been there, the justification, if any, put forward by the parents and their overall attitude towards their responsibilities.

Some sets of circumstances will be more straightforward than others, for example, parents who claim to be unable to control their child or to be physically intimidated by them will need to prove this to be the case, unless it is self-evident. Although it is unlikely that such a justification would be held to be reasonable, it could still count towards mitigation. In such cases, where there is not already an assessment in place, schools will be advised to consider whether it would be appropriate to initiate such a process.

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## **Appendix 1 – Legislation**

In this document “Joint Procedures for Issuing education-related Penalty Notices” the 96 Act means The Education Act 1996, the 2006 Act means The Education & Inspections Act 2006, and the Regulations 2007 means The Education (Penalty Notices ) (England) Regulations 2007, as amended.

Relevant Sections include:

### **Children Act 1989**

The definition of “parent” means all natural parents, whether they are married or not; and includes any person who, although not a natural parent, has parental responsibility and/or care for a child or young person.

### **The Education Act 1996**

Section 4	Meaning of “school”
Section 7	Duty of parents to secure education of children of compulsory school age
Section 8	Definition of compulsory school age
Section 444(1)	Offence: Failure to secure regular attendance at school of registered pupil
Section 444(1A)	Penalty notice in respect of failure to secure regular attendance at school of registered pupil
Section 444B	Penalty notices: supplemental
Section 444ZA	Application of section 444 to alternative educational provision
Section 576	Meaning of “parent”

### **Education & Inspections Act 2006**

Section 103	Duty of parent in relation to excluded pupil
Section 104	Notice to parent relating to excluded pupil
Section 105	Penalty notice in respect of presence of excluded pupil in public place

