



# **PENALTY NOTICE CODE OF CONDUCT AND PROCEDURES FOR ATTENDANCE AND EXCLUSION**

**(This applies to all maintained schools, academies and free schools)**

**Reviewed and Updated June 2017**

## **Code of Conduct for Penalty Notices** **(Anti-Social Behaviour Act 2003, Section 23)**

### **1. Rationale**

Regular and punctual attendance of students at school is both a legal requirement (Section 7 of the Education Act 1996) and essential for students to maximise the opportunities available to them to reach their full potential. It is parent(s)/carers responsibility to ensure their child/ren receive(s) efficient full-time education that is suitable to their child's age, aptitude and to any special educational needs the child may have.

Education-related penalty notices were introduced by the Anti-social Behaviour Act 2003 which amended section 444 of the Education Act 1996 to allow parents to be issued with a penalty where they failed to ensure their child of compulsory school age (5-16) and school registered had regular attendance.

Section 103 of the Education and Inspections Act 2006 also requires parents of excluded pupils to ensure that their child is not found present in a public place during school hours in the first five days of their exclusion from school without a justifiable reason.

The Education (Penalty Notice) (England) (Amendment) Regulations 2012 effective from 1<sup>st</sup> September 2012 increase the amount payable from a parent when a Penalty Notice has been issued. This applies to any parent who fails to ensure the regular attendance of their child who is of compulsory school age and who is a registered pupil at a school or who fails to ensure their child who is subject to an exclusion from school is not found in a public place during school hours without a justifiable reason.

The Education (Penalty Notices) (England) (Amendment) Regulations 2013 effective from 1<sup>st</sup> September 2013 reduce the timescales for paying a penalty notice bringing attendance penalty notices in line with other types of penalty notices. Parents must, from 1<sup>st</sup> September 2013, pay £60 within 21 days or £120 within 28 days. Penalty Notices are still issued per parent per child.

If parents fail in their duties they commit an offence either under section 444A of the Education Act 1996 or section 103 of the Education and Inspections Act 2006 and can be served with a penalty notice by an authorised officer. Full payment of the penalty discharges the parent from liability for prosecution.

Penalty Notices offer a means for swift intervention, which the Local Authority will use to improve attendance as an early measure to prevent non-attendance becoming entrenched.

The Attendance and Exclusion Team will continue to investigate causes of unauthorised absence from school through the Attendance Procedures, instigating statutory action where appropriate.

Stockton-on-Tees Local Authority will ensure the smooth administration of the necessary process in order to fully comply with the legislation on Human Rights and ensure the consistent, fair and transparent application of Penalty Notices. This Code of Conduct will govern the issuing of Penalty Notices in Stockton-on-Tees Borough Council.

This Code of Conduct was reviewed following the case of *Isle of Wight Council (Appellant) v Platt (Respondent)* [2017] UKSC 28 which was heard in the Supreme Court in 2017. That case clarified the definition of "regular attendance" and found that "regular" means in accordance with school rules. If the school requires that a child attends i.e. the school have not authorised a request for leave of absence during term time then the parent/carers commits an offence if he takes the child out of school.

## **2. Guidance and Legislation**

**2.1** Personnel authorised to operate this Code must have regard to the following legislation and guidance:

- The Race Relations (Amendment) Act 2000
- The Race Relations (Statutory Duties) Order 2001
- Disability Discrimination Act 1995
- Data Protection Act 1998
- Children Act 1989
- Crime and Disorder Act 1998
- Special Educational Needs and Disabilities Code of Practice 2015
- Education Act 1996
- The Education and Inspections Act 2006
- The Equality Act 2010
- The Education (Penalty Notice) (England) (Amendment) Regulations 2012
- The Education (Penalty Notice) (England) (Amendment) Regulations 2013
- The Education (Pupil Registration) (England) (Amendment) Regulations 2013

### **2.2 Section 576 Education Act 1996: Definition of a Parent**

The education-related provisions of the Anti-Social Behaviour Act 2003 apply to all parents who fall within the definition set out in this section of the Education Act 1996. This defines '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 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.

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

## **3. Procedure for the Issue of Penalty Notices**

**3.1** Penalty Notices will be issued by the Attendance and Exclusion Team, with the agreement of the Attendance and Inclusion Manager. The Attendance and Inclusion Manager will ensure that the issuing of Penalty Notices is closely monitored and evaluated and complements the other duties carried out by the Attendance and Exclusion Team.

**3.2** No Penalty Notice will be issued without the issue of the relevant warning notice and the pursuance of relevant assessment of the individual case.

**3.3** The Attendance and Exclusion Team will issue Penalty Notices by First Class Post, thereby reducing the risk of aggression/violence from hand delivery.

**3.4** No one parent will receive more than two separate Penalty Notices resulting from the unauthorised absence of an individual child in any twelve month period.

**3.5** The Attendance and Exclusion Team on behalf of Stockton Borough Council will receive and administer all referrals for the issue of Penalty Notices from all schools in its area including

academies and free schools. Referrals may also be accepted from Cleveland Police Force. These requests will be actioned providing:

- The information received meets the criteria for the issue of a Penalty Notice which is specified in the Code of Conduct and;
- All necessary information is provided to the Attendance and Exclusion Team in order to establish that an offence has been committed under Section 444 (1) of the Education Act 1996.

**3.6** The Attendance and Exclusion Team will ensure that duplicate Penalty Notices are not issued and that any action taken is compliant with the relevant legislation and that no conflict arises with other statutory interventions.

**3.7** Each parent will receive a separate warning letter and Penalty Notice for each child.

#### **4. Criteria for Issuing a Penalty Notice**

**4.1** That the issuing of the Penalty Notice would be effective in getting the pupil back into education.

**4.2** The parent must not have a previous conviction for non attendance and attendance procedures must not be currently instigated.

**4.3** A minimum absence of 10 sessions (5 school days) which are classed as unauthorised during the past 6 school weeks must be on the pupils attendance register.

**4.4** In cases of parents condoning absence identified through a truancy patrol. The parent must be issued a warning by the Local Authority and a period of 3 weeks monitoring instigated before the penalty notice is issued. A minimum absence of 10 sessions (5 school days) which are classed as unauthorised during the past 6 school weeks must be on the pupils attendance register.

**4.5** Where it is believed that the issuing of the Penalty Notice would assist in re-engaging Key Stage 4 pupils in their education. A minimum absence of 10 sessions (5 school days) which are classed as unauthorised during the past 6 school weeks must be on the pupils attendance register.

**4.6** In cases of unauthorised leave of absence for the purpose of a family holiday the Head teacher/ Principal of the School/ Academy should issue to the parent a warning letter incorporating their decision not to authorise the leave. A minimum absence of 10 sessions (5 school days) for taking holiday leave during the current term without permission of the school must be accrued and forwarded to the Local Authority Attendance and Exclusion Team. A copy of the warning letter issued by the Head teacher and all relevant and requested referral information should be sent to the Attendance and Exclusion Team before a Penalty Notice can be issued. (Please see Appendix 7 for Penalty Notice Checklist)

**4.7** Following a referral from Cleveland Police, the pupils absence is checked and found that a minimum absence of 10 sessions (5 school days) which are classed as unauthorised during the past 6 school weeks is on the pupils attendance register.

**4.8** In cases where the pupil has been found to be in a public place during school hours without reasonable justification. The letter of exclusion sent by the Head teacher at the point of exclusion is considered to be the warning letter in these instances.

#### **5. Withdrawal of a Penalty Notice**

**5.1** The Local Authority may withdraw a Penalty Notice in any case which the Authority determines:

- (i) An offence has not been committed;
- (ii) It was issued outside the terms of the Code of Conduct;
- (iii) It ought not to have been issued to the person named as the recipient;
- (iv) If the parent can prove it was issued to the wrong address; or
- (v) It contains material errors

**6. Where a Penalty Notice has been withdrawn in accordance with the above**

- 6.1** A notice of the withdrawal shall be given to the recipient. Any amount paid by way of penalty in pursuance of that notice shall be repaid to the person who paid it.
- 6.2** In relation to a withdrawn penalty notice no prosecution shall be commenced for those circumstances against the recipient of the notice for an offence under section 444 of the Education Act 1996.

## Appendix 1

### Penalty Notice Warning Letter – Unauthorised Absence

Dear.....

#### Education Act 1996 – School Attendance

It has come to my attention that your child .....DoB: ..... is not in regular attendance at ..... School and was absent from school during the period [DATE] to [DATE].

Section 7 of the Education Act states:

“The parent of every child of compulsory school age shall cause her to receive efficient full time education suitable-

- (a) to her age, ability and aptitude, and
- (b) to any special educational needs she may have, either by regular attendance at school or otherwise

**Section 444 of the Education Act 1996**, says:

“If a child of compulsory school age, who is a registered pupil at a school fails to attend regularly at the school, her parent is guilty of an offence”.

If the reasons given for your child’s irregular school attendance are not satisfactory, then the Local Authority may take legal proceedings against you for failure to comply with the Law. This may result in:

- A Penalty Notice payable up to **£120** fine
- Prosecution under Section 444 (1) Education Act 1996, where if convicted you may be fined up to **£1,000**.
- Prosecution under Section 444 (1a) Education Act 1996 where if convicted you may be fined up to **£2,500 and/or 3 months imprisonment**.

**You are hereby given notice that if your child is not returned to school forthwith, you may be liable for a Penalty Notice.**

I trust it will not be necessary to take enforcement proceedings in this respect.

Yours sincerely,

Attendance Officer/ Attendance Co-Ordinator  
On behalf of Stockton-on-Tees Borough Council

## Appendix 2

### Warning Letter – Unauthorised Holiday in term time

Dear

#### Education Act 1996 – School Attendance

I note your request to take your child (insert name of child), (d.o.b.....) out of school for a holiday during term time during the dates.....to .....

The Education (Pupil Registration) (England) (Amendment) Regulations 2013 states that Head teachers may not grant any leave of absence during term time unless;

- an application has been made in advance to the head teacher by a parent with whom the pupil normally lives with; and
- the proprietor (Head teacher) or person authorised by the Head teacher considers that leave of absence should be granted due to the **exceptional circumstances** relating to that application

After carefully considering your application I have decided **not to authorise** your request for holiday leave as I am not satisfied that the exceptional circumstances criteria has been met.

[Childs name] is expected in school during these dates and any absence will be considered unauthorised absence unless medical evidence is provided to detail otherwise.

I must warn you that failure to ensure your child's attendance is an offence under Section 444 of the Education Act 1996.

If the reasons given for your child's absence from school are not satisfactory then the Local Authority may take legal proceedings against you for your failure to comply with the law. This may result in:

- A Penalty Notice requiring the payment of a penalty of up to **£120** , failure to pay the penalty due will result in prosecution before Teesside Magistrates Court
- Prosecution under Section 444 (1) Education Act 1996, where if convicted you may be fined up to **£1,000**.
- Prosecution under Section 444 (1a) Education Act 1996 where if convicted you may be fined up to **£2,500 and/or 3 months imprisonment**.

I ask that you work with the school to ensure that your child attends school everyday.

Yours sincerely,

Head teacher/ Principal

## Appendix 3

### Penalty Notice

#### Section 444 Education Act 1996

#### Please read the notes attached carefully

If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.

**To:** «Name\_of\_Parent»

**Of:** «Address1», «Address2», «Postcode»

You are a parent of «Pupil\_Name» (called in the notice “the pupil”) who is a registered pupil at «School». Between «Date\_From» and «Date\_To» the pupil failed to attend regularly at the school.

This notice gives you the opportunity to pay a penalty fine instead of being prosecuted for the offence given above. The amount of the penalty is £60/£120 in accordance with the table overleaf. If you pay this penalty within the time limits set out below, no further action will be taken against you in connection with the offence set out in this notice.

Payment should be made within 21 days. If paid after 21 days but within 28 days, the penalty is doubled to £120. Payment should be made to Stockton Borough Council and can be made in person or by return of the attached remittance slip and a cheque.

Late or part payments will not be accepted and no reminders will be sent. **If payment is not received by «Last\_Payment\_Date» you may be prosecuted for the offence and subject to a fine of up to £1,000.**

This notice is issued by [Name of Officer], Attendance Officer/Attendance Co-Ordinator, Stockton on Tees Borough Council.

Date of issue: «Date\_of\_Issue»

#### Contact Details

If you have any queries about this notice please contact your child’s school in the first instance.

«Name\_of\_Parent»

«Address1»

«Address2»

«Postcode»



## Amount of Penalty

The amount of the penalty is as follows:

When Paid	Date Payment Must be Received by	Amount Due
If paid within 21 Days	«Day_21»	£60
If paid between 22 and 28 Days	«Day_28»	£120

## Code of Conduct

This notice is issued with a local code of conduct drawn up by Stockton on Tees Borough Council Local Authority. Any questions or correspondence about the code should be addressed to Attendance & Exclusion, Engagement and Learning Team, 1<sup>st</sup> Floor Kingsway House, West Precinct, Billingham, TS23 2NX - Tel: 01642 526173.

## Withdrawal

This notice may be withdrawn by Stockton on Tees Borough Council Local Authority if it is shown that it should not have been issued to you or has not been issued to you in accordance with the local Code of Conduct. If you believe that the notice was wrongly issued to you, you must contact the Local Authority to ask for it to be withdrawn as soon as possible, stating why you believe the notice to have been incorrectly issued. The Local Authority will consider your request and will contact you to let you know whether the notice is withdrawn. If the notice is not withdrawn and you do not pay, you will be liable to prosecution for the offence that your child has failed to attend school regularly.

## Prosecution

If you do not pay the penalty, and the notice is not withdrawn, you will be prosecuted for the offence of failing to ensure your child's regular attendance at school. You will receive a separate summons for this which will give you notice of the time and date of the court hearing. You will be able to defend yourself and would be advised to seek legal representation; in some circumstances you may be entitled to Legal Aid.

## Payment Method

An information leaflet on payment methods is enclosed, along with the invoice for payment.

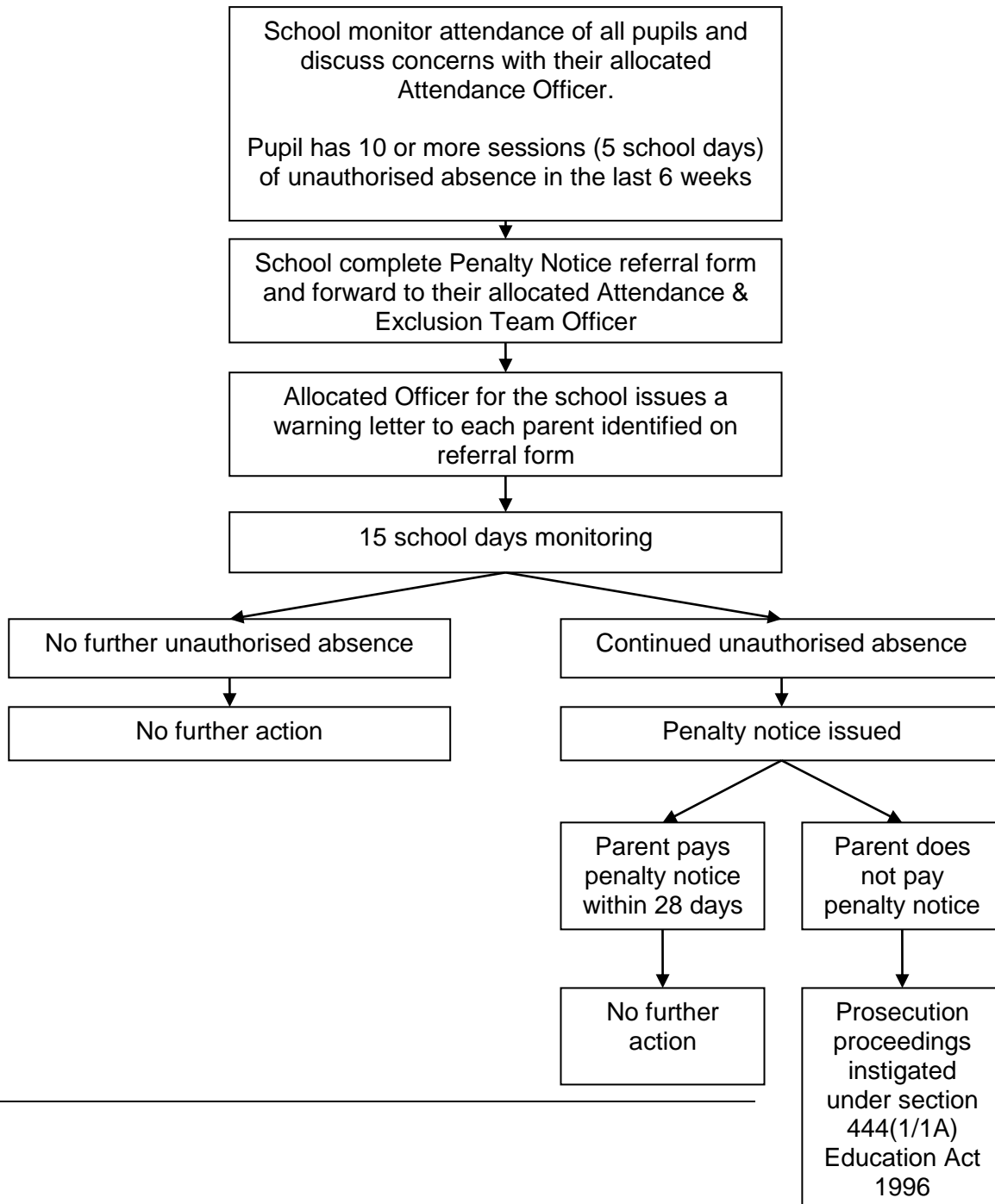
## Take Note:

Compulsory school age is defined as beginning from the start of the term commencing on or after the child's fifth birthday. A child continues to be of compulsory school age until the last Friday of June in the school year that they reach sixteen.

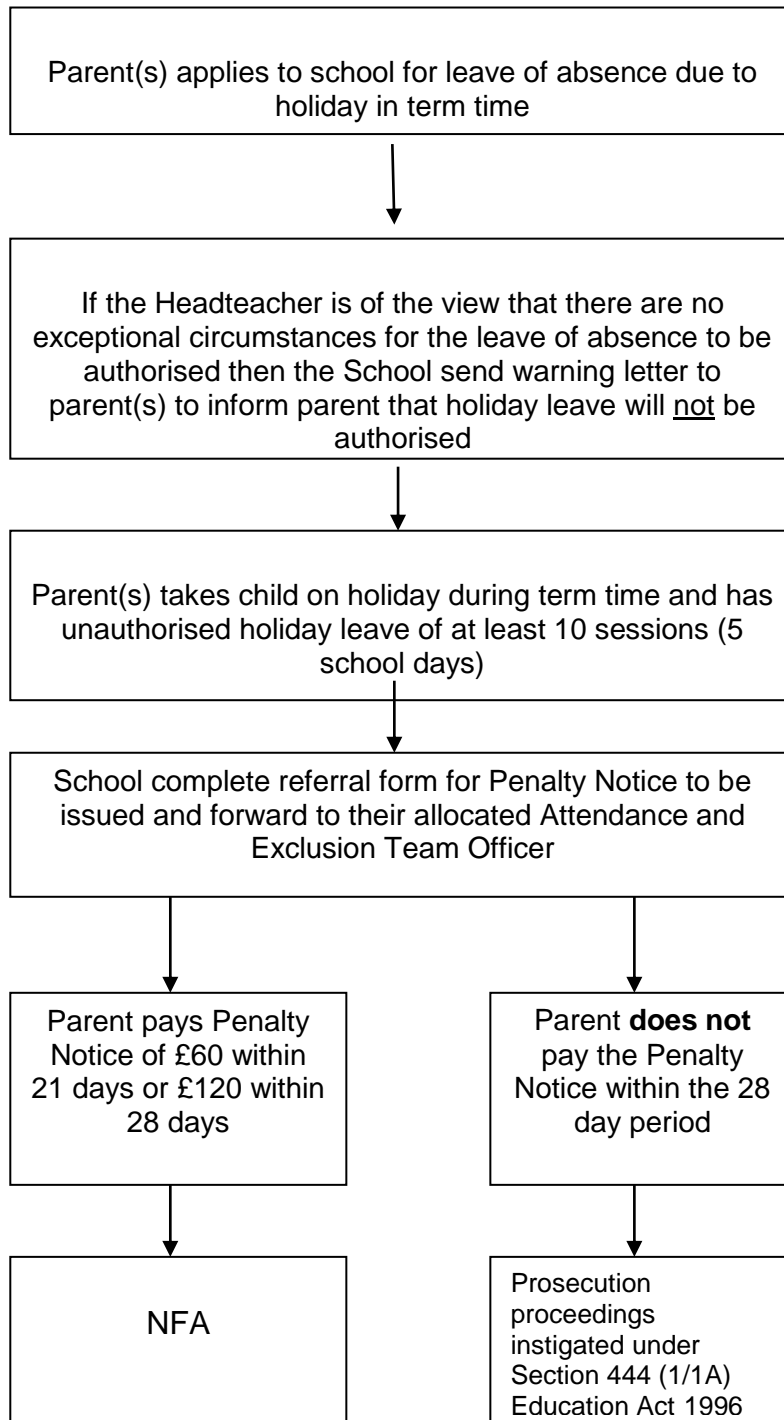
Schools are required to take an attendance register twice a day: at the start of the morning session and once during the afternoon session. The register shows whether the pupil is present, engaged in an approved educational activity off-site, or absent. The register must show whether any absence is authorised or unauthorised. Authorised absence is where the school has either given approval in advance for a pupil of compulsory school age to be away, or has accepted an explanation offered afterwards as satisfactory justification for absence. All other absences must be treated as unauthorised.

Schools, not parents, authorise absence. Schools must adhere to DfE Guidelines in authorising absence. Schools should be consistent in applying the same rules in authorising absence.

**Penalty Notices for Unauthorised Absences**

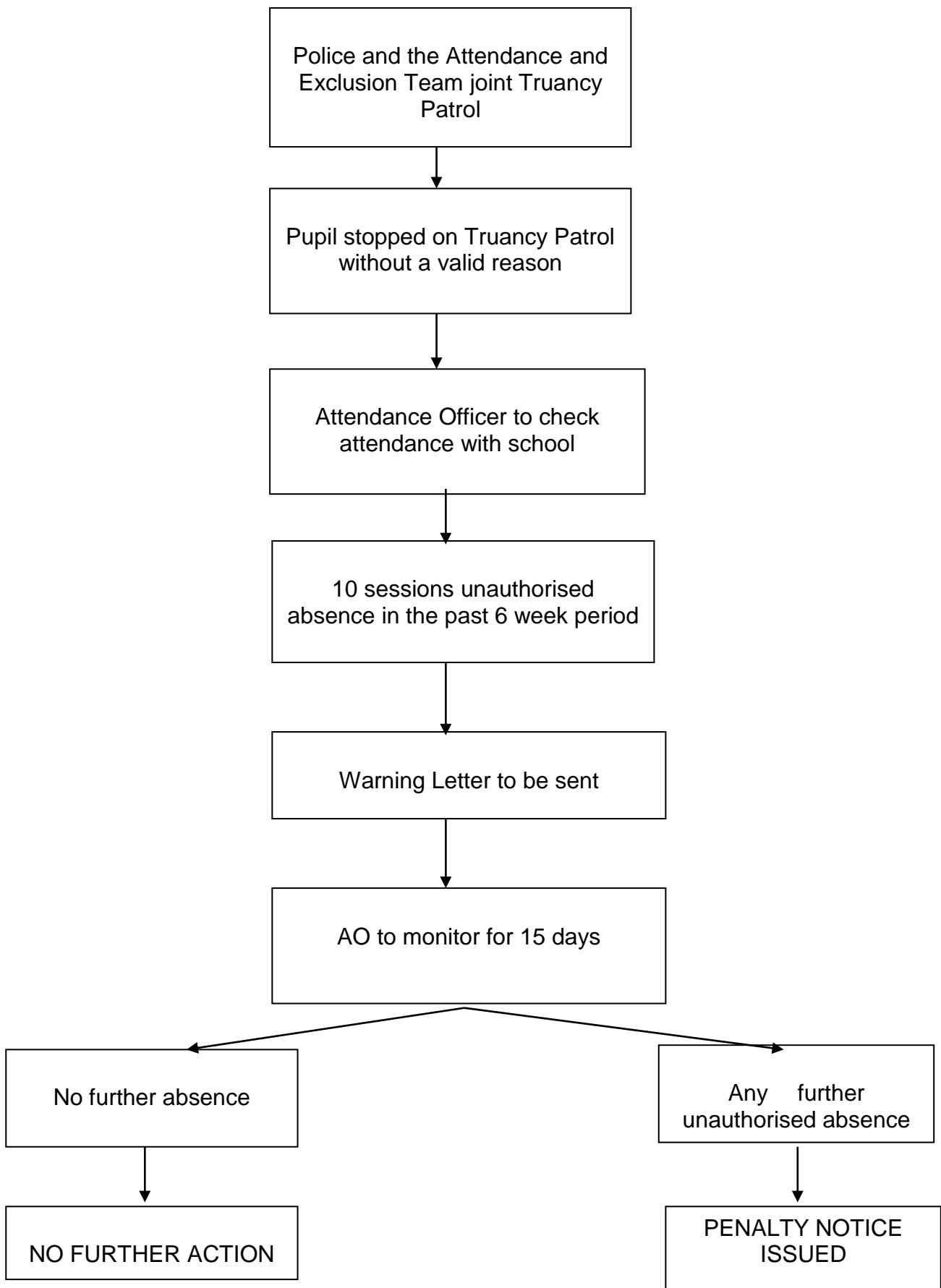


**Penalty Notices for Holidays Taken in Term Time**



Appendix 6

**Penalty Notices for Truancy Patrols**



**PENALTY NOTICE REFERRALS  
CHECKLIST FOR SCHOOLS**

**Full name of parent.**

**Correct and up to date address.**

**Parent's date of birth (if available).**

**School have attempted to resolve attendance issues - t/c and/or h/v.  
(Please attach documented evidence of action taken)**

**All absences have been investigated and there is lack of evidence  
provided by parent or parentally condoned truancy evident**

**Pupils who are educated off-site have had their unauthorised absence  
thoroughly investigated (the Alternative Education provider has not  
sent the pupil home illegally or failed to provide provision).**

**In cases of Holidays in term time warning letters are dated with parents  
correct names and addresses present on the letter and have been signed  
by the Head Teacher.**

**Warning letters have been sent per parent per child**

**The referral has been discussed with and signed by the head teacher.**



**ATTENDANCE & EXCLUSION TEAM  
PENALTY NOTICE REFERRAL FORM  
CONFIDENTIAL**

**PUPIL DETAILS**

Name of Pupil: \_\_\_\_\_ School: \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_ Year Group: \_\_\_\_\_ M/F: \_\_\_\_\_ Date of Referral: \_\_\_\_\_  
 Name of Parent/Carer: \_\_\_\_\_ Telephone No: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ Postcode: \_\_\_\_\_  
 Ethnicity: \_\_\_\_\_ LAC:  FSM:  SEN Status: \_\_\_\_\_  
 Referred by: \_\_\_\_\_ Position within School: \_\_\_\_\_

**SCHOOL ACTION PRIOR TO REFERRAL  
(Please state school action taken and outcome to improve attendance)**

\_\_\_\_\_

**REASON FOR REFERRAL**

Truancy Patrol Date:  
 \_\_\_\_\_  
 Unauthorised leave for the purpose of a family holiday in term time (must be a minimum of 10 unauthorised sessions code G):  
 From: \_\_\_\_\_ To: \_\_\_\_\_  
 10 unauthorised sessions absence within six week period:  
 From (W/C): \_\_\_\_\_ To (W/E): \_\_\_\_\_

**Declaration:**

I confirm that the details contained on this form are true to the best of my knowledge and belief.

Signed: \_\_\_\_\_ (Head Teacher/Principal) Date: \_\_\_\_\_

Name: \_\_\_\_\_

**Please attach an up to date printout of attendance and/or copy of warning letter sent to parent/carer.**  
 Please return this form to the Attendance & Exclusion Team, Engagement & Learning Team, 1st Floor Kingsway House, West Precinct, Billingham, TS23 2NX - Tel: 01642 5287325 - Fax: 01642 527183

**FOR OFFICE USE ONLY:**

Date \_\_\_\_\_ Printout attached: Yes  No   
 Received: \_\_\_\_\_ Proceed: Yes  No   
 AO Initials: \_\_\_\_\_

