



Somerset
Council

Penalty Notice Protocol

Information for parents, schools and support services

Last updated: 10/02/2022

To be reviewed in 2024

February 2022

This protocol outlines how Somerset Council supports schools in the promotion of good attendance through Early Help and statutory interventions.

It comes into effect on 11 February 2022 and will be reviewed every two years.

This protocol is underpinned by the multi-agency Early Help support available to schools. This is accessed through Team Around the School and Local Inclusion Support meetings prior to statutory or legal interventions being considered.

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Introduction

Ensuring regular and punctual attendance at school is a legal requirement for parents, carers and those with parental responsibility for school-aged children and essential for children and young people to maximise their educational potential and opportunities.

The Education (Penalty Notices) (England) Regulations 2007 provide for the operation of the penalty notice scheme under Section 444A of the Education Act 1996 and Section 105 of the Education and Inspections Act 2006. These regulations require each local authority to draw up a Code of Conduct which sets out how penalty notices will be issued.

Penalty notices are an alternative to prosecution, providing an opportunity for parents to discharge their liability for an offence under Section 444A of the Education Act 1996 or Section 105 of the Education and Inspections Act 2006, whereby:

- A parent has failed to ensure their child or young person's attendance at school, or;
- An excluded child is found in a public place, during a day and time they would normally be expected in school, without their parent in attendance, while they are subject to a suspension from school (fixed-term exclusion) up to a maximum of five days or within the first five days of a permanent exclusion

This protocol (Code of Conduct) has been produced by the Education Safeguarding Service in consultation with the Education Safeguarding Partnership and reflects the Local Authority's strategic focus on early help, early intervention and prevention.

Guidance and Legislation

This protocol references the following guidance and legislation:

- [Somerset Early Help Framework](#)
- [The Education \(Penalty Notice\) \(England\) Regulations 2007](#)
- [Section 444A of the Education Act 1996](#)
- [Section 105 of the Education and Inspections Act 2006](#)

Rationale

Penalty notices can be used as a means of enforcing attendance where there is a reasonable expectation that their use will secure an improvement in the child's attendance.

Where an educational setting has concerns about the attendance of a pupil, there is an expectation that they will have made the parent or carers aware of their concerns about their child or young person's attendance and provided an opportunity for them to address this.

The setting will need to demonstrate that they have advised the parents that they are at risk of being served with penalty notice or other legal sanction via a penalty notice warning letter.

It is the responsibility of the educational setting to administer penalty notice warning letter to parents. Templates for these are available on the Education Safeguarding Service's resource page.

Educational settings should give due consideration to the possibility that issuing a penalty notice may not bring about improvement to attendance and could place children at increased risk due to additional pressures being placed on their parent or carer.

It is important that penalty notice warning letters advise parents and carers that support is available.

A warning letter may be sent to parents or carers requiring the pupil to attend the school for a specified number of sessions within a fixed period. It is important that any prescribed attendance target is realistic and achievable for the child. In some circumstances, improved attendance may be achieved through the target attendance rate being incremental.

Attendance should be negotiated and recorded in a formal agreement between the school, parent or carer and pupil. During this period there should be no unauthorised absences, should there be any unauthorised absences during this period a penalty notice may be issued.

If parents or carers fail to engage with the school and there is no improvement in attendance or unauthorised attendance increases, the Education Safeguarding Service will consider the school's application for a penalty notice so long as all relevant information is received, and the application is within the guidelines set out in this document.

Instances when a Penalty Notice may not be appropriate

There are circumstances requesting or issuing a penalty notice may not be appropriate.

This may be due to a variety of reasons including, but not limited to:

- Where family circumstances are complex or long-standing
- Where poor attendance is a result of abuse or neglect
- Where the child may be subject to exploitation
- Where a child is looked after (CLA)
- Where a child is subject to an assessment for, or has an Education, Health, Care Plan (EHCP)
- Where a child is subject to a statutory or voluntary intervention (e.g. child in need and child protection plans, early help or multi-agency co-ordinated support)
- Where a previous penalty notice has issued but failed to bring about a change in behaviour and unauthorised absences continue.

In such cases the Local Authority may decide not to issue a penalty notice, but instead support schools, in partnership with other services and professionals, to support children and their families to achieve acceptable levels of school attendance.

Penalty Notices for Unauthorised Term-Time Leave

When a parent or carer chooses to take their child out of school for a period of leave, which has not been authorised, evidence of a warning letter is not required. Education settings should, however, ensure that it has made the parent or carer aware:

- That term-time leave of absence is not an automatic right
- Of the settings expectation around parents making requests for term-time leave and being granted leave of absence
- That unauthorised term time leave may result in a penalty notice

Making parents and carers aware of the above can include, but is not limited to: articles in newsletters, information on the website, home-school agreement, school attendance policy or written evidence in the refusal in the form of a letter or a section completed by the school on the term time leave of absence request form.

Education settings can submit a request for a penalty notice as a result of unauthorised term-time leave using the online request form.

Requests can only be considered when:

- Any leave taken has resulted in ten or more consecutive unauthorised absences marked with the G code
- Reasonable evidence is submitted with the request to show the parent or carer has been made aware of the points listed above.

Excluded Pupils in a Public Place During School Hours

If a pupil is excluded, the parent or carer must ensure that the child or young person is not present in a public place in school hours, without reasonable justification, during the period of the fixed term exclusion, up to and including five school days.

Similarly, where pupils are permanently excluded the above applies for the first five days.

A school is not deemed to be a public place for the purposes of the legislation, Section 103 of the Education and Inspections Act 2006.

Issuing Penalty Notices for Somerset Pupils

Legislation allows head teachers, the police and local authorities to issue penalty notices.

The local arrangements in Somerset are that penalty notices will be issued via the local authority on behalf of all educational settings in respect of pupils who are of statutory school age.

Penalty notices can be issued to each parent (or person with parental responsibility) and for each child when it is deemed that an offence has been committed.

This protocol ensures that penalty notices are administered consistently and fairly across the local authority. The Education Safeguarding Service fulfils this duty on behalf of the Local Authority.

Procedure for issuing penalty notices

The local authority may agree to issue a penalty notice when:

1. The educational setting has issued a warning notice to parents that their child or young person is not attending school regularly
2. The educational setting has provided opportunities for the parent or carer to work collaboratively with the school to improve attendance
3. Offered support has not been engaged with and/or has not led to a sufficient improvement in the child's attendance
4. The school has referred the pupil to Team Around the School (TAS) or Local Inclusion Support meetings (LIS) for discussion and consideration of additional multi-agency support *
5. Unauthorised absence levels continue to escalate
6. Issuing a penalty notice will not compromise any support currently in place for the child.

The Education Safeguarding Service will proceed with issuing the penalty notice so long as it does not conflict with other interventions or statutory work and that attempts to engage children, parents and carers in early help services has been evidenced.

Appendix A – Penalty Notice Flowchart outlines the process educational settings should follow when managing attendance issues.

* In cases where inclusion at a TAS or LIS meeting is not possible, schools may seek support from ESS who may step into an existing multi-agency meeting to determine what support may be offered.

Payment of Penalty Notices

The terms for the payment of penalty notices are defined by the penalty notice regulations:

- Penalty notices must be paid within 28 days of issue
- The penalty is £60 if paid within 21 days, rising to £120 on day 22
- Payments received after day 28 will be regarded as non-payment
- The owing amount must be paid in full – part payments cannot be accepted
- Separate penalty notices must be issued to (and paid by) individual parents or carers

Arrangements for payment are detailed on the penalty notice.

Paying a penalty notice discharges the parent or carer from any liability for the offence to which the penalty notice relates.

Failure to pay a penalty notice within the prescribed time may result in prosecution by the Local Authority for the original offence under Section 444 of the Education Act 1996.

In the unlikely event that a part payment is accepted by our system, the payment will be refunded, and the penalty notice considered unpaid.

The circumstances when a penalty notice may be withdrawn are detailed on the penalty notice.

Under this protocol, all payments received from penalty notices will be collected by the Local Authority to help administer the process.

The Local Authority will report to schools and the police when a penalty notice has been issued for pupils found in a public place, detailing the outcome of action taken.

Appendix A – Penalty Notice Flow Chart

This flow chart outlines the process educational settings are expected to follow when there are concerns about a child's attendance. The chart assumes that these concerns continue throughout.

At every stage, due consideration must be given to any safeguarding concerns and the suitability of any statutory or legal work in relation to absence from school. The decision to instigate and pursue any legal proceedings rests with the Education Safeguarding Service.

