



Bristol City Council

Local Code of Conduct

Penalty Notices for truancy and excluded pupils found in a public place during the school day in accordance with: The Education (Penalty Notices) (England) Regulations 2007 (as amended)

Updated September 2018

1. Rationale

- 1.1.** 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. The Regulations require that each local authority must draw up a Code of Conduct which sets out measures to ensure consistency in the issuing of Penalty Notices. This Code of Conduct is designed to ensure Penalty Notices are issued consistently across Bristol.
- 1.2.** This revised code has been issued following consultation with all state funded Bristol schools.
- 1.3.** Penalty Notices are an alternative to prosecution. They give parents the opportunity to discharge their liability for an offence under section 444 Education Act 1996, or section 103 Education and Inspections Act 2006, by paying a penalty.

2. Issuing Penalty Notices for Bristol Pupils

- 2.1.** The local arrangements in Bristol are that all Penalty Notices will be issued by the City Council on behalf of all schools¹ situated within the city, and alternative education providers used by Bristol City Council to educate statutory school aged pupils. Penalty Notices are issued by the Council using an appropriate database, to prevent the issuing of duplicate notices.
- 2.2.** A co-ordinated approach will be taken to ensure that a Penalty Notice will not be issued in cases where a prosecution is contemplated, or has been commenced by the Local Authority.

3. Circumstances where a Penalty Notice may be issued

3.1 Irregular school attendance

- 3.1.1. If a child of compulsory school age who is a registered pupil at a school fails to attend regularlyⁱⁱ at the school, his parentⁱⁱⁱ is guilty of an offence. (Section 444 Education Act 1996)
- 3.1.2. Regular and punctual attendance of pupils at school is both a legal requirement and essential in order for students to maximise the opportunities available to them.
- 3.1.3. When a pupil's attendance meets the criteria for a Penalty Notice, the expectation is that schools will make a Penalty Notice request to the Local Authority, unless there are reasonable grounds for not doing so.
- 3.1.4. A Penalty Notice may be issued, as an alternative to prosecution, where a pupil has accrued a minimum of 8 unauthorised absence sessions in any 10 week period^{iv}.
- 3.1.5. A Penalty Notice should be used as a sanction where there is a reasonable expectation that its use will secure an improvement or change in pattern of absence.
- 3.1.6. There will be circumstances where it is considered that a Penalty Notice is not appropriate. This may be due to a variety of reasons, including, but not limited to: (a) repeated offences indicating that Penalty Notices are not bringing about a change in behaviour, for example, repeated unauthorised term time leave; (b) the high level of unauthorised absence, including extended unauthorised term time leave cases; and (c) the complex or long standing nature of the particular case. In such cases, the Local Authority may decide not to issue a Penalty Notice, but instead consider instigating a prosecution under Section 444(1) or 444(1A) of the Education Act 1996.
- 3.1.7. Where a school has concerns about the attendance of a pupil, there is an expectation that the school will have made the parent/s aware of the concerns about their child's attendance and the parent/s have had the opportunity to address this. Parents should be aware that if they do not make use of support offered and improve their child's attendance to an acceptable level, this may result in a Penalty Notice. The school will need to show that they have warned the parent/s that they are at risk of receiving a Penalty Notice or other legal sanction. This should at least be evidenced via the sending of a warning letter.

3.1.8. Penalty Notices should not normally be requested where poor attendance is symptomatic of complex family circumstances; in these circumstances the school should take a holistic approach to the issue, and involve other agencies as necessary. The exception to this would be where parents fail to engage with support offered by the school/other agencies. Again, the school will need to show that they have warned the parent/s that they are at risk of receiving a Penalty Notice or other legal sanction.

3.1.9. Where a parent or carer chooses to take their child out of school for a period of leave which has not been authorised by school e.g. taking a holiday in term time, evidence of an individual warning is not a requirement. Instead the school should ensure that it has made the parent/s aware:

- that term time leave of absence is not an automatic right;
- of the school's expectations around parents making and the school granting leave of absence requests; and
- that unauthorised term time leave may result in a Penalty Notice.

Evidence that the parent has been warned could include, but is not limited to: articles in school newsletters; information on the school's website; home-school agreement; school attendance policy; or written evidence of the refusal in the form of a letter, or a section completed by the school on a term time leave of absence request form.

3.2. If an excluded pupil is found in a public place during school hours

3.2.1. If a pupil is excluded, their parent has to ensure the child is not present in a public place in school hours, without reasonable justification, during the first five days of each and every fixed period or permanent exclusion. Where the exclusion is for five days or less, the duty applies to any of the days to which the exclusion relates. (Section 103 Education and Inspections Act 2006.) A school is not deemed to be a public place for the purposes of this legislation.

3.2.2. The school must have followed the Department for Education's statutory guidance for exclusions, which will include warning parents of this provision and the days to which it applies.

3.2.3. If a pupil receives a number of fixed term exclusions and the parent allows the pupil to be in a public place more than twice, the parent may be prosecuted for any third and subsequent occasion that occurs within any 12 month period.

4. Maximum number of notices

- 4.1 A maximum of two Penalty Notices will be issued to a parent in respect of any one child in any 12 month period.

5. Payment of Penalty Notices

- 5.1. The arrangements for payment are detailed on the Penalty Notice.
- 5.2. The penalty is £60 if paid within 21 days, rising to £120 if paid between 22 and 28 days (as at the time of writing. The Penalty amount and related timescales may change in line with legislation changes). **Payment cannot be made in instalments.**
- 5.3. Payment of a Penalty Notice discharges the parent/carer from liability for the period of the offence to which the Penalty Notice relates.

6. Non-payment of Penalty Notices

- 6.1. Non-payment of a Penalty Notice within the prescribed time period may result in prosecution by the Council for the offence to which the Penalty Notice relates.

7. Withdrawal of Penalty Notices

- 7.1. The circumstances when a Penalty Notice will be withdrawn are detailed on the Penalty Notice.

Definitions

- i. 'Schools' means all Department for Education registered educational providers situated within the City of Bristol, for pupils of statutory school age, not including independent schools.
- ii. In April 2017 The Supreme Court gave its judgment on the meaning of what is meant by 'attend regularly' at school for the purposes of section 444 of the Education Act 1996. The Supreme Court decided that "regularly" meant "in accordance with the rules prescribed by the school".
- iii. For the purposes of education law, section 576 of the Education Act 1996 defines a 'parent' as:
 - all natural (biological) parents, whether they are married or not;
 - any person who, although not a natural parent, has parental responsibility for a child or young person (this could be a step-parent, guardian or other relative);

- any person who, although not a natural parent, has care of a child or young person. (A person has care of a child or young person if they are the person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child.)

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

- iv.** '10 week period' means a continuous period of 100 school sessions (which would usually be 50 school days). Days when the school is not in session are not counted (i.e. Inset Days, Bank Holidays, School Holidays and Weekends). The 100 school sessions could span two different terms, or indeed, two academic years.