Torbay Local Area Penalty Notice - Code of Conduct

# 1. General and Background

Section 23(1) of the Anti-Social Behaviour Act 2003 and Section 103 of the Education and Inspections Act 2006 introduced new powers to Section 444 of the Education Act 1996 that enable local education authorities to issue Penalty Notices.

Penalty Notices can be used as an alternative to prosecution under Section 444 and enables parents to discharge potential liability for conviction for that offence by paying a penalty.

This Code of Conduct has been drawn up in line with The Education (Pupil Registration) (England) Regulations 2006, the Education (Penalty Notice) (England) Regulations 2007 amended by The Education (Penalty Notices) (England) (Amendment) Regulations 2013, The DfE Guidance, Working Together to Improve School Attendance, The National Framework and in consultation with Torbay Schools and Devon and Cornwall Police.

The issuing of all penalty notices is based on clear threshold criteria which will need to be applied consistently and equitably across Torbay’s schools.

Any person authorised to issue a notice in Torbay must comply with the guidance set out in the code of conduct.

This Code of Conduct considers the expectations of the Department for Education on the improvement of attendance and the provisions in Ofsted’s school inspection framework, in which there is an expectation that schools use all available means in their attendance strategy to secure best outcomes for pupils, including the use of legal sanctions.

All references to ‘school’ in this Guidance refers to ‘schools and academies’ and should be read in conjunction with Guidance for Schools on Pupil Leave of Absence in Term Time.

# 2. Who May Issue a Penalty Notice?

The Local Authority, schools and the police have the power to issue Penalty Notices following irregular attendance at school. Schools must make clear to the Local Authority whether they will be opting in or out of issuing penalty notices directly. Schools must comply with this Code of Conduct and must give notice to the Local Authority and use the relevant template letter for schools.

Statutory guidance allows Penalty Notices to be issued by a head teacher or someone authorised by them (a deputy or assistant head). In the case of academies, the Principal may delegate this function to their deputy or assistant principals, however described.

# 3. Meaning of Parent

The legal definition of a parent is contained in Section 576 of the Education Act 1996 and refers to any adult who is a natural parent, someone with Parental Responsibility or someone with whom the child lives and who looks after the child, irrespective of their relationship with the child.

The Department for Education clarifies this as below:

*It is important that schools and local authorities are aware that parents may be recognised differently under education law and under family law.*[*Section 576 of the Education Act 1996*](https://www.legislation.gov.uk/ukpga/1996/56/section/576)*states that, in relation to a child or young person, a ‘parent’ includes any person who is not a parent (from which can be inferred ‘biological parent’) but who has parental responsibility for or care of the child.*

*For the purposes of education law, the Department for Education (DfE) considers a ‘parent’ to include:*

* *all biological parents, whether they are married or not*
* *any person who, although not a biological parent, has parental responsibility for a child or young person – this could be an adoptive parent, a step-parent, a guardian or other relative*
* *any person who, although they are not a biological parent and do not have parental responsibility, has care of a child or young person*

*A person typically has care of a child or young person if the child lives with them either full or part time and they look after them, irrespective of what their biological or legal relationship is with the child.*

*If a person is not the biological parent of a child, does not have parental responsibility for the child, and the child no longer lives with them, it is unlikely they will be recognised as a parent. Any disputes about whether a person is a child’s ‘parent’ within the meaning of*[*section 576 of the Education Act 1996*](https://www.legislation.gov.uk/ukpga/1996/56/section/576)*are for the courts to decide.*

[Understanding and dealing with issues relating to parental responsibility](https://www.gov.uk/government/publications/dealing-with-issues-relating-to-parental-responsibility/understanding-and-dealing-with-issues-relating-to-parental-responsibility)

# 4. Who will receive a Penalty Notice?

A Penalty Notice will be issued to each parent of each child whose attendance is poor, whose child was taken on an unauthorised term time holiday or term time leave, or in the cases of exclusion, where the pupil is present in a public place during the first five days.

Head teachers have the discretion to authorise term time leave and this should be authorised as an exception rather than the rule. There is no entitlement of up to two weeks term time leave for each academic year.

Schools can issue Penalty Notices for unauthorised term time leave without a prior court warning.

Schools will consider:

• The pupil’s overall attendance pattern and the number of absences

• Whether the school had previously informed all parents in writing of the leave in term time policy and the requirement to apply for permission and the legal consequences of taking an unauthorised leave.

The pupil must have returned to school and the school has deemed and marked the absence with code “G” unauthorised leave before the Penalty Notice or Notices can be issued. If there is no request for leave, a penalty notice may be issued based on unauthorised absence.

A maximum of two Penalty Notices may be issued per parent, per child, in a 3 year period.

Where two parents take three children on unauthorised leave, a total of six notices may be issued.

A Penalty Notice is a method by which a parent may discharge potential liability for conviction of an offence for the period referred to in the Penalty Notice, either under:

• Section 444 of the Education Act 1996

• Section 105 of the Education and Inspections Act 2006

# 5. Payment of Fines

The amount of the first penalty notice within a 3-year period to be paid is:

• £80 if paid within 21 days of receipt of the Penalty Notice

• £160 where the lesser fine of £80 has not been paid within 21 days, but where the higher amount is paid within 28 days of receipt

The amount of the second penalty notice incurred by the same parent for the same child, within a 3-year period to be paid is:

* £160 if paid within 28 days. There is no option for this second penalty notice to be discharged at the lower rate of £80.

Payment of the notice discharges the parent’s liability for the period in question and they cannot be subsequently prosecuted under other enforcement powers for the period covered by the notice.

Revenue generated from the fines is used to cover enforcement. If the revenue is greater than enforcement costs, it may be retained by the local authority to support interventions to improve school attendance. Any monies not spent in this way are transferred to the Secretary of State. Schools do not receive any revenue from Penalty Notices.

Schools must not accept payment of penalty notices. The payment must be paid directly to the Local Authority using our online payment system. Details of the online payment system is included with each penalty notice.

The Local Authority will maintain a record of all Penalty Notices.

If a Penalty Notice is paid within 28 days, parents will discharge their liability for the period of absence in the Notice. If attendance continues to be poor, the local authority decides whether the case should proceed either to:

• Magistrates Court

• Family Proceedings Court

If attendance continues to be at an unacceptable level, there may also be a review period. The ultimate decision for statutory action will be made by Legal Services.

# 6. Unpaid Penalty Notices

If the Penalty Notice is not paid in full by the 28th day, we will instigate a prosecution. The Local Authority may use the fact that a Penalty Notice was issued and remains unpaid as evidence. Unlike other Penalty Notice Schemes, the prosecution would not be for non-payment of the fine, but for the original offence of failing to ensure a child’s regular attendance at school.

# 7. Circumstances in which Penalty Notices may not be issued

If the parents choose not to cooperate, or there are many instances of unauthorised absence, the Local Authority may decide to issue proceedings in the Magistrates’ Court under Section 444 of the Education Act 1996 and dispense with the issue of a Penalty Notice. The decision will be made by the Head of Service after consideration of the case.

# 8. Exclusions

Section 103 of the Education and Inspections Act 2006 places a duty on parents in relation to an excluded pupil. A parent has 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 suspension or permanent exclusion.

The days of exclusion or suspension when this duty applies are known as ‘specified days of exclusion’ and will be detailed in a notice given to the parent under section 104 of the 2006 Act. The parent is responsible for the child during the specified days upon receipt of the notice.

Sections 100 and 101 of the Education and Inspections Act 2006 place a duty on the school or Local Authority to make provision for the excluded child’s full-time education from the sixth day of a suspension or exclusion in a school year. Once provision is made, the parent’s duty to ensure that their child is not in a public place becomes a duty to ensure the child attends the provision (the duty under Sections 444(1) and 444(1A) of the Education Act 1996).

Section 105 of the Education and Inspections Act 2006 allows for a penalty notice to be issued to a parent committing an offence under section 103 (failing to ensure their child is not in a public place on the days specified on the notice given to them). The notice allows the parent to pay a penalty as a way of discharging any liability for the offence. The parent must be notified by the school at the time of the exclusion of their duty and the days to which it relates.

9. When is it appropriate to issue a Penalty Notice?

## Threshold Criteria

Before being issued with a penalty notice a parent will always receive a warning detailing the consequences of their child’s continued unauthorised absence, or the taking of leave in term-time without authorisation, or in the case of exclusion or suspension, their child being in a public place within the first five days.

This warning will be issued by:

• Schools by letter in non-attendance cases

• School correspondence, such as a newsletter, in cases of parents taking children on term-time holidays without authorisation

• the initial exclusion notification letter from the school if the child has been excluded or suspended.

A penalty notice may be issued if:

• a registered pupil has been absent for more than 10 sessions in any 10 week period, or

• there has been a period of unauthorised absence (not less than 10 school sessions) which has been specifically condoned by the parent e.g. a parent choosing to take their child on a term-time holiday without authorisation

• a registered pupil has been late (after the close of registration) for 10 or more sessions in any six week period and the Local Authority is satisfied that there is sufficient evidence to show the parent has committed an offence under s444(1) or s444(1A) of the Education Act 1996, and a Notice to Improve has been served either by the school, and a penalty notice has not been issued in the past 12 months for the same child

• an offence has been committed under S103 of the Education and Inspections Act 2006 where a pupil had been found in a public place without reasonable justification in the first five days of an exclusion or suspension.

• a pupil has been stopped during a truancy patrol but only after due consideration when all the facts are known and the threshold for serving the notice has been met and agreement is reached with Head of Service to ensure that it is appropriate to serve the notice.

If a child has received a penalty notice in the previous 12 months, alternative processes are necessary, for example prosecution in the Magistrates Court for the period in question or an application to the Family Proceedings Court for an Education Supervision Order.

Reasonable justification will be considered in each individual case but will include instances where it is not appropriate to leave a child alone in the home.

Information will be given to anyone stopped on a truancy patrol about the possible support and sanctions used to address non-attendance.

# 10. Declining to Issue a Penalty Notice

The Local Authority will determine if it is appropriate to serve a notice by ensuring one is not issued when:

• a prosecution has commenced

• a notice has already been issued

• they are not satisfied that there is sufficient evidence to show the parent has committed an offence under S444(1) or S444(1A) Education Act 1996.

The LA may decline to issue Penalty Notices or Penalty Notice numbers enabling schools to issue a notice if:

* this Code of Conduct has not been adhered to
* there is a need to explore a case further
* there is significant delay in making the request
* There has been insufficient time for a support offer (such as an Early Help allocation) to the family to be effective

This provision is in place to deal with instances where the school makes decisions in good faith but may lack all of the information when making the request.

# 11. Withdrawal of a Penalty Notice

Once issued a penalty notice may only be withdrawn if:

• proof has been established that the penalty notice has been issued to the wrong person

• the notice has been issued outside the terms of this code of conduct

• no offence has been committed

• in the instance of exclusion or suspension reasonable justification was evidenced by the parent.

The Local Authority will refund any payments made for any wrongly-issued Penalty Notice.

Parents with a credible claim not to have received a Penalty Notice will be re-sent the original Notice, allowing time to pay the initial, lower, amount.

Notices are usually issued by first class post or using the Gov.Notify system and are deemed to have been received within two days.

Penalty Notices must be paid in full and the Local Authority will not accept part payments or payments in instalments.

# 12. Representation

There is no statutory right of appeal against the issuing of a penalty notice.

The Local Authority will examine any evidence provided that would show that a mistake had been made. Parents will be required to provide documentary evidence to support an argument and must deal directly with the Local Authority and not the school.

# 13. Operational Details Local Authority Issues Penalty Notice

• Schools will follow up all cases of:

o more than 10 unauthorised absence sessions in any 10 week period

o any unauthorised holiday or leave of absence in term time amounting to 10 unauthorised sessions or more

o 10 or more late arrivals (after the close of registration) in any six week period

• Schools will monitor pupil attendance regularly and agree statutory action with the LA as needed (including the issue of Penalty Notices)

* the LA will maintain a record of all referrals from schools for unauthorised absence and make an assessment of the individual circumstances at PACE meetings
* in cases of persistent unauthorised absence, parents will be warned by letter from the school of the possibility of statutory action, and if there is any more unauthorised absence a penalty notice will be issued
* in the event of unauthorised holidays or persistent lateness, a penalty notice will be issued directly when the school has already sent a formal warning letter
* In the event that a single school issues a penalty notice for an unauthorised holiday, the LA will issue penalty notices for any siblings attending other Torbay schools who also went on the holiday.
* schools will have policies to ensure that a parent has received an appropriate warning following unauthorised holidays or persistent lateness and in their exclusion or suspension letters advising of the parents’ duty to ensure their child is not in a public place and may receive a penalty notice.
* a penalty notice issued by the school will usually be delivered by post but in some circumstances will be delivered by post and by hand

# 14. Good Practice for Schools

Before a Penalty Notice is issued, Head teachers and Principals should ensure that:

* Parents are aware of the school’s policy on leave of absence and the LA are sent a copy of the notification
* Consideration is given to the use of an Attendance Contract.
* In the case of poor attendance over a period, a Notice to Improve (section 15) has been issued.
* Each request for leave of absence is considered on its merits
* Special consideration is made for family situations and religious issues
* They inform the LA if they decide to issue their own Penalty Notices
* Parents are informed of the reasons for refusal of leave in term time and a copy of the decline letter is sent to the LA with the legal referral paperwork.
* Where schools decide to issue their own Penalty Notices, the parents are sent a court warning letter
* Exclusion or suspension correspondence reminds parents of their duty to supervise their excluded child during the first five days of exclusion or suspension.
* Where schools decide to issue their own Penalty Notices, only head teachers or principals or those authorised by them (senior leaders or principals) may sign Penalty Notices.
* School registers have the appropriate registration absence code as an extract from the register is required in the event of court action
* Attendance Certificates signed by the head teacher or principal are sent to the LA
* Requests for the Local Authority to issue Penalty Notices are made within 10 school days of the child’s return to school following unauthorised term time leave
* Penalty Notices for poor school attendance should be issued not more than 3 months after the first unauthorised absence

# 15. Notice to Improve

A Notice to Improve is a final opportunity for a parent to engage in support and improve attendance before a penalty notice is issued. If the national threshold has been met and support is appropriate but offers of support have not been engaged with by the parent or have not worked, a Notice to Improve should usually be sent to give parents a final chance to engage in support.

The Notice to Improve is expected to include:

1. Details of the pupil’s attendance record and details of the offences.
2. The benefits of regular attendance and parents’ duty under section 7 of the Education Act 1996.
3. Details of the support provided so far.
4. Opportunities for further support and the option to access previously provided support that was not engaged with.
5. A clear warning that a penalty notice may be issued, or prosecution considered if attendance improvement is not secured within the improvement period.
6. A clear timeframe for the improvement period of between 3 and 6 weeks.
7. Details of what sufficient improvement within that timeframe will look like.
8. The grounds on which a penalty notice may be issued before the end of the improvement period.

The school will usually issue the Notice to Improve but the LA will also have the capacity to do so.

# 16. Review

This code of conduct will be reviewed on a regular basis and may be amended depending on the outcome of the previous year’s operation and changes in legislation.

# 17. Signature



**Nancy Meehan**

Director of Children’s Services

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