



**Doncaster
Council**

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Penalty Notice Code of Conduct

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Doncaster Council

Code of Conduct under the Provision of the Education (Penalty Notices) Regulation 2004 and subsection (1) Section 23 Anti-Social Behaviour Act 2003

INTRODUCTION

The parents or carers are responsible for ensuring their child receives a suitable full-time education either at school or otherwise. For those enrolled at a school this must be punctual and regular. The Supreme Court has defined regular attendance (6th April 2017) to mean “in accordance with the rules prescribed by the school.”

In this context a parent is:

- 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.

(Section 576 Education Act 1996: Definition of a Parent)

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 mean that provisions only apply to ‘parent’ in the singular.

A child reaches compulsory school age on or after their fifth birthday. If they turn 5 between 1st January and 31st March, they are of compulsory school age on 31st March; if they turn 5 between 1st April and 31st August they are of compulsory school age on 31st August. If they turn 5 between 1st September and 31st December, then they are of compulsory school age on 31st December.

A child continues to be of compulsory school age until the last Friday of June in the school year that they reach the age of sixteen.

Doncaster Council believes that all children have the right to and education in which they can thrive and build success for adulthood, and recognises that regular attendance is essential to achieve this. Improving attendance is a key element within the Children and Young Peoples Plan.

Governing Bodies, Headteachers and the Chief Constable of South Yorkshire Police, were consulted and contributed to this code of conduct.

(The Education (Penalty Notices) (England) Regulations 2007)

Doncaster Council expects that all schools have a whole school approach to attendance, which ensures early intervention and support for students with attendance difficulties. Schools and Doncaster Council will work cooperatively and efficiently to ensure the code of conduct is adhered to consistently, fairly and transparently in accordance with Human Rights legislation.

All schools must include reference to the possible use of legal action for unauthorised absence and being in public place when excluded within their school attendance and behaviour policies.

1. LEGISLATION

- 1.1. This Code of Conduct will govern the issuing of education penalty notices across Doncaster Metropolitan Borough Council under Section 23 of the Anti-social Behaviour Act 2003 and subsequent legal amendments.
- 1.2. The Education (Penalty Notices) (England) Regulations 2004 came into force on 27th February 2004 with an update in 2007 and amendments in 2013.
- 1.3. The issuing of a penalty notice provides an alternative to the prosecution of parents under Section 444 of the Education Act 1996. Under the provisions of subsection (1) of section 23 of the Anti-social Behaviour Act 2003, a penalty notice may be issued to the parents or carers responsible. Under these provisions, the penalty is £60 if paid within 21 days of receipt of the notice, rising to £120 if paid after 21 days but within 28 days of receipt.
- 1.4. Should the penalty notice remain unpaid Doncaster Council will prosecute the parent or in certain circumstances (see 4.1) withdraw the penalty notice.

(The Education (Penalty Notices) (England) Regulations 2007)

2. PENALTY NOTICE

- 2.1 Doncaster Council will ensure the smooth administration of the necessary process and in order to fully comply with legislation on Human Rights will also ensure the consistent, fair and transparent application of education penalty notices throughout Doncaster.
- 2.2 A Local Authority has the responsibility for developing the Code of Conduct for Penalty Notice Procedures. Although the regulations make provision for a Head teacher, the police and authorised Local Authority staff to issue Penalty Notices relating to unauthorised absence, the responsibility for issuing Penalty Notices in Doncaster will rest solely with Doncaster Council. This will ensure that all procedures relating to Penalty Notices are consistently applied, that enforcement action is not duplicated and any subsequent court action that may be necessary can be integrated within existing arrangements.
- 2.3 Penalty Notices can only be issued by for absences not authorised by the proprietor of a school where:

- a parent allows their child to be present in a public place during school hours, without reasonable justification, during the first five days of a fixed or permanent exclusion
- a child has been found out of school during school hours without permission (overt truancy) or reasonable justification. This can be during an organised truancy sweep or where found by a police officer or police and community support officer whilst carrying out their daily duties

2.4 Headteachers may request Doncaster Council to issue Penalty Notice Warning letters. Schools must ensure that before requesting a penalty notice warning letter that they have:

- Advised parents, in writing, at the start of the academic year (or when their child commences schools mid-term) of the need for regular attendance and the possible consequences of failing to do so.
- Can evidence the steps taken to support an improvement in attendance.
- In the case of unauthorised leave of absence in term time, have advised parents, in writing, at the beginning of each academic year of the school policy on leave of absence.
- Maintain accurate registration records and a chronology of interventions and parental responses.
- Demonstrated consideration of the child's circumstances.

2.5 Warning letters should contain:

- Details of the child's absence: i.e. dates and number of sessions missed.
- A statement advising parent of their legal duty, including a warning that failure to prevent further unauthorised absence within a specified period for a minimum of 15 school days from issuing the warning letter could result in a Penalty Notice being issued.
- Where the warning letter is linked to unauthorised leave of absence, which the school determine requires a penalty notice, advise that a Penalty Notice will be issued if the unauthorised leave of absence is for 10 sessions or more i.e. 5 school days.
- The name and contact details of a school representative that the parents can contact to try to address any absence concerns.
- An expectation that attendance levels will improve.

2.6 Due to the possibility of any warning letter being included as evidence in further legal action, schools should ensure they have a rigorous and accurate system in place to monitor the impact of any warning letters issued and identify students whose attendance does not improve in a specified period for a minimum of 15

school days, as stipulated in the warning letter. If attendance does not improve significantly, schools should act and request Doncaster Council to issue a penalty notice.

- 2.7 Warning letters are not necessary in cases of an excluded student being found in a public place.

3. ISSUING A PENALTY NOTICE

- 3.1. Penalty notices will be issued by Doncaster Council to the parents of a child where any of the following occur:

- The child has had 10 sessions, or more, of absence in a period not exceeding 13 weeks and meets the terms of a prosecution under Section 444(1) of the Education Act 1996, and the school or Doncaster Council has previously issued a warning letter giving the opportunity to improve attendance over a specified period.
- The child has 10 sessions of unauthorised leave of absence in term time and the Headteacher has advised the parent in writing that the leave of absence does not constitute the Headteachers view of an exceptional circumstance.
- The child has taken leave of absence in term time of not less than 10 sessions, without parents requesting authorisation from the school.
- Exclusion has taken place and the parent has allowed the child to be present in a public place during school hours, without reasonable justification, during the first five days of a fixed or permanent exclusion.

- 3.2 Penalty notices will be issued to each parent for each child. The exception to this would be where a parent has taken a child on unauthorised leave of absence without the consent of the other parent.

- 3.3 Where it is known by a school that children from one family attend more than one school and request leave of absence, the schools should agree the decision with each other. Doncaster Council will not issue Penalty Notices if decisions made by schools about children in the same family are inconsistent. Failure by a parent to declare the existence of other children and school attended will invalidate this clause.

- 3.4 Schools should note that when requesting a Penalty Notice to be issued by Doncaster Council the Headteacher or a member of the Senior Leadership Team responsible for attendance should confirm the request on the form submitted to Doncaster Council.

Schools need to submit:

- A completed Penalty Notice request form. **It is vital that all details are double-checked and are accurate in relation to the form, as**

inaccuracies will result in the Penalty Notices either not being issued or withdrawn. All Full names of parents need to be included

- An accurate certificate of attendance for the period in question
 - A copy of the warning letter sent to the parent **or**
 - A copy of refusal to authorise absence for leave in term time sent to the parent *or*
 - A copy of a letter from the Headteacher advising the parent that they have taken the child on a leave of absence without requesting authorisation from the school.
- 3.5 On receipt of the above a local authority officer will check the form for accuracy and check if the student is an active case to an Education Welfare Officer, Children's Social Care or other services and agencies.
- 3.6 If all details appear accurate and there are no extenuating circumstances that the council becomes aware of Doncaster Council will issue a penalty notice within 10 working days.
- 3.7 Doncaster Council will track payment of the penalty notice and inform the school at the end of each month of the outcomes of any penalty notices issued on their behalf.

Issuing a notice for excluded students in a public place.

- 3.8 A Penalty Notice for excluded students may only be issued where it can be wholly established that:
- The student has been excluded (either fixed-term or permanently) from a school, academy or alternative provision in the Doncaster Council area and that the school or alternative provider has followed all agreed processes in notifying parents and Doncaster Council.
 - The student has been permanently excluded from a school outside Doncaster Council area but is a resident of Doncaster.
 - The parent or carer received notice of their responsibility for the first five days of the exclusion, those five 'specified days of exclusion' were clearly identified and the possible consequences of failing to adhere to this were explained.
 - During school hours, the student was present in a public place without reasonable justification within the first five days of a fixed or permanent exclusion.
 - The parent cannot prove that the student had reasonable justification to be in a public place during an exclusion.

Each penalty notice request should include the following documents:

- Completed Penalty Notice request form
- Copy of the exclusion letter sent to the parent
- Records of any other relevant communications with the parent
- Evidence that the student was present in a public place during a prohibited period, without reasonable justification.

4. WITHDRAWAL OF A PENALTY NOTICE

4.1 A penalty notice, once issued, may be withdrawn if Doncaster Council determines that it meets at least one of the following criteria:

- It ought not to have been issued
- It ought not to have been issued to the person named as the recipient
- It contains material errors
- It is unpaid and Doncaster Council decides it is not in the public interest to take no further action.

4.2 When a Penalty Notice is withdrawn Doncaster Council will notify the parent and the referrer who has requested the Penalty Notice.

4.3 There is no statutory right of appeal against the issuing of a Penalty Notice.

5. PAYMENT OF PENALTY NOTICES

5.1 Arrangements for payment will be detailed on the Penalty Notice. Payment of a Penalty Notice discharges the parent or carer of liability for the period in question and cannot subsequently be prosecuted for the period covered by the Penalty Notice.

5.2 Payment of a Penalty Notice within 21 days is £60 and payment after this time but within 28 days is £120.

5.3 Payment of the Penalty Notice in full discharges the parent of the offence for the period stated within the notice and cannot be subsequently prosecuted for that period. However, prosecution under S444 Education Act 1996 may be considered for repeat offences over a two-year academic period, without the need for a further Penalty Notice.

Doncaster Council retains any revenue from Penalty Notices to cover the cost of enforcement.

6. NON-PAYMENT OF PENALTY NOTICES

- 6.1 Non-payment of a Penalty Notice will result in a prosecution under Section 444 of the Education Act 1996 on the basis that the parent has failed to secure their child's regular school attendance. The non-payment of the Penalty Notice cannot be used as a reason for prosecution.
- 6.2 Where a parent fails or refuses to pay a penalty notice Doncaster Council will notify the school and request:
- a Headteacher's certificate of attendance
 - a completed witness statement
 - To ensure the legal timeframe is maintained schools **must** return the documentation to Doncaster Council within 10 working days (includes school closure periods) otherwise, the case will not be processed for prosecution.

The evidence laid before the Magistrates' Court will include the above plus the Certificate of Confirmation of Non-payment of the Penalty Notice and any other relevant paperwork.

This will be done after 28 days have lapsed since the Education Penalty Notice was received and the court hearing will be scheduled for a date within 21 days subject to court availability.