Directorate of Children and Families

Penalty Notice Code of Conduct

(The Education Act 1996, The Anti-Social Behaviour Act 2003 and the Education (Penalty Notices) (England) Regulations 2007 as amended).

This Code applies to all maintained schools, Academies and Free Schools.

Document Control

Ownership & Review

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1 Rationale

1.1 Regular and punctual attendance of pupils at school is both a legal requirement and essential in order for pupils to maximise the opportunities available to them. The Redcar & Cleveland Attendance & Welfare Service (AWS) will continue to investigate cases of non-attendance from school and, following appropriate casework, instigate legal action if applicable. A Penalty Notice is an alternative to prosecution which does not require an appearance in court whilst still ensuring an improvement in a student's attendance. Payment of a Penalty Notice enables parents to discharge potential liability for conviction. Following the implementation of Section 23 of the Anti-Social Behaviour Act 2003 it is possible that certain cases of unauthorised absence can be dealt with way by of a Penalty Notice. Penalty Notices will require the parent of a child of compulsory school age, whose attendance has been unsatisfactory, to pay a fine, £160 if paid within 28 days, and £80 if paid within 21 days.

1.2 In order to comply with Human Rights' legislation, it is essential that Penalty Notices be issued in a consistent, fair and transparent manner and will be reviewed annually. In addition, the Education (Penalty Notice) (England) Regulations 2007 as amended requires a Local Authority to have in place a Code of Conduct which ensures that the power to use Penalty Notices is applied consistently and fairly and that suitable administrative arrangements are in place.

1.3 In line with Regulation 15 Governing Bodies, of the aforementioned regulations, Head Teachers and Chief Police Officer for the area have all been consulted with, with regards to the Code.

2 Legislation

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

- The Race Relations (Amendment) Act 2000
- Data Protection Act 2018
- 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) Regulations 2007 as amended
- The Education (Pupil Registration) (England) Regulations 2006 as amended

3 Framework for issuing Penalty Notices

3.1 National Threshold for the consideration of a Penalty Notice:

A Penalty Notice must be considered when the threshold is met; being 10 sessions of unauthorised absence in a rolling period of 10 school weeks.

The 10 sessions can either be as a result of unauthorised absence for a holiday taken in term time or any combination of unauthorised absences , such as a holiday in term time and sessions of arriving late after the register has closed.

The 10 sessions can be consecutive e.g. 10 sessions of a holiday in one week or non-consecutive e.g. 6 sessions of unauthorised absence taken in one week followed by 1 session of absence per week for the next 4 weeks.

The period of 10 school weeks can span different terms and different school years.

3.2 Is Support appropriate in the case?

When the threshold has been met to issue a Penalty Notice, schools must consider whether support is appropriate in the particular case and if so, school must continue with the support without issuing a Penalty Notice or

In cases where support being offered is not working or should the parent have failed to engage with the support offered, then a Notice to Improve should be issued.

Should support and/or a Notice to Improve failed to have worked, a Penalty Notice may be offered.

If support is not appropriate in the particular circumstances i.e. for unauthorised absences due to term time holiday a Penalty Notice should be issued subject to the following:

- Is a Penalty Notice the best available option to improve attendance and change parental behaviour or would another form of legal intervention be more suitable?
- Is the issuing of a penalty Notice in the ca appropriate considering any obligations under the Equality Act 2010 and;
- Whether it is in the public interest to issue a Penalty Notice.

If the answer is yes to the above, then a Penalty Notice may be issued.

Schools and Academies are expected to use a multi-agency approach, taking the views of the parents and children into consideration where possible and appropriate.

In cases where support is appropriate, consider on a case-by-case basis.

Has sufficient support already been provided?

Sufficient support will include first day calling, meeting with the child, meetings with parents, attendance action plan/attendance contracts, school plans, reasonable adjustments, signposting to single agency support, consideration of child's special educational needs and a need for an EHCP, and to offer an Early Help Assessment where multi agency support is needed.

The following (non-exhaustive) methods would have been considered/used prior to the issue of a Notice to Improve:

- Home visits
- Meetings
- Referrals to other agencies for support

3.3 Notice to Improve:

A Notice to Improve is the final opportunity for a parent to engage with support before a Penalty Notice is considered.

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 be sent to the parents.

A Notice to Improve will not be issued where support is not appropriate, for example in the case of unauthorised absences a result of holiday.

An authorised officer can choose not to issue a Notice to Improve.

The Notice to Improve should include:

a. The pupil's attendance record and details of the offence(s)
b. The benefits of regular attendance and parents' duty under section 7 of the Education Act 1996
c. Detail the support provided so far.
d. Opportunities for further support and the option to access previously provided support that was not engaged with if appropriate
e. A clear warning that a penalty notice may be issued, or prosecution considered if an improvement in attendance is not secured within the improvement period
f. A clearly specified timeframe for the improvement period of between 3 and 6 weeks.
g. Details of what sufficient improvement within that timeframe will look like in the case "e.g. no unauthorised absence within the specified period."
h. The grounds on which a penalty notice may be issued before the end of the improvement period.

What sufficient improvement looks like will be determined on a 'case by case' basis and should be specified in the Notice to Improve.

If sufficient improvement is not made, then the Local Authority may issue a Penalty Notice.

Where it is apparent that sufficient improvement is not being made e.g. where a Notice to Improve states that there should be no authorised absences recorded during a 6-week period, but unauthorised absences are recorded at the start of the period, then a Penalty notice can be issued before the expiry of the improvement period.

If a penalty notice is to be issued before the end of the improvement period, the parent must be informed before it is issued.

If no Service Level Agreement is in place the school/ academy would be expected to issue the "Notice to Improve".

3.4 2.4 Procedure for issuing a Penalty Notice

3.4.1 It has been locally agreed that within Redcar and Cleveland, Penalty Notices will only be issued by the Attendance & Welfare Service following authorisation from the Senior Attendance Welfare Officer or the Lead for Inclusion. This will ensure that duplicate notices will not be issued or when proceedings for an offence under Section 444 Education Act 1996, have already been commenced. Requests to issue notices from other authorities will also only be considered and authorised by the Senior Attendance Welfare Officer or the Lead for Inclusion. In any case where the penalty is not paid within the appropriate period, the AWS reserves the right to instigate action through the courts as required by legislation.

3.4.2 Penalty Notices should be issued to the parent or parents who have allowed the absence (regardless of which parent has applied for a leave of absence).

3.4.3 The amount payable under the first Penalty Notice is £160 if paid within 28 days beginning on the date which the notice is received. This will be reduced to £80 if paid within 21 days ,beginning on the date which the notice is received.

3.4.4 Any second penalty notice issued to the same parent for the same child within a rolling 3-year period will be charged at a higher rate of £160 with no option for this second offence to be discharged at the lower rate of £80.

3.4.5 No one parent will receive more than 2 penalty notices for the same child within a rolling 3-year period, so at the 3rd (or subsequent) offence(s) other options will be considered (such as prosecution or one of the other attendance legal interventions).

3.4.6 For the purposes of the 2.4.5 those penalty notices which were issued, but were subsequently withdrawn, will not be included.

3.4.7 Where a child has moved school and/or local authority area within the previous 3 years, an additional check will be made of the schools/local authorities to establish whether any previous penalty notices have been issued.

3.5 The Attendance & Welfare Service will consider requests to issue Penalty Notices from schools/colleges in Redcar & Cleveland and neighbouring local authorities. The Attendance & Welfare Service will action these requests providing:

a. The circumstances of the case meet the criteria for the issue of a Penalty Notice which are specified in this Code of Conduct, and
b. All necessary information is provided to the Attendance & Welfare Service in order to establish that an offence, under Section 444(1) Education Act 1996, has been committed.

In cases requiring the issue of a Penalty Notice(s), each parent will receive a separate Penalty Notice for each child. Should a parent fail or refuse to pay any Penalty Notice issued for this reason, then the evidence provided by the school/college will be the only information laid before the court.

3.6 Penalty Notices will not be issued during Truancy Patrols if they are instigated as this could be a health and safety risk. Additionally, not all the information will be available to prove the offence at that time.

3.7 In cases requiring the issue of a Penalty Notice(s), each parent will receive a separate Penalty Notice for each child. Should a parent fail or refuse to pay any Penalty Notice issued for this reason, then the evidence provided by the school/college will be the only information laid before the court.

3.8 Penalty Notices will not be issued during Truancy Patrols if they are instigated as this could be a health and safety risk. Additionally, not all the information will be available to prove the offence at that time.

For further information on statutory duties see Annex 2

The local authority reserves the right to issue a Penalty Notice outside of the framework should the circumstances of a particular case warrant it, for example if several term time holidays are taken which hare below the threshold, or for repeated absences, such as birthdays.

4. General criteria for the issuing of a Penalty Notice

For issues of non-school attendance (contrary to Section 444(1) of the Education Act 1996):

4.1 Where concerns arise regarding the attendance of a child the Attendance and Welfare Service may consider issuing a parent (s) with a Notice to Improve in the following (non-exhaustive) circumstances:

- Where a child, during a rolling 10-week school period has had at least 10 unauthorised absence marks recorded on the attendance register. or;

- The parent has a previous conviction for an offence contrary to section 444 of the Education Act 1996 or;
- Where the parent of a child continually fails to provide a reasonable or acceptable explanation for a pupil's absence.

Before a decision is made regarding the issue of a penalty notice:

If the school have a service level agreement with our Attendance and Welfare Service, we will endeavour to support parents in ensuring the regular school attendance of their children. We will use a multi-agency approach, taking the views of the parents and children into consideration where possible and appropriate.

To do this the following (non-exhaustive) methods would have been considered/used prior to the issue of any Notice to Improve:

- Home visits
- Meetings
- Referrals to other agencies for support

If no Service Level Agreement is in place the school/ academy would be expected to issue the "Notice to Improve".

Schools and Academies are expected to use a multi-agency approach, taking the views of the parents and children into consideration where possible and appropriate.

In cases where support is appropriate, consider on a case-by-case basis.

Has sufficient support already been provided?

Sufficient support will include first day calling, meeting with the child, meetings with parents, attendance action plan/attendance contracts, school plans, reasonable adjustments, signposting to single agency support, consideration of child's special educational needs and a need for an EHCP, and to offer an Early Help Assessment where multi agency support is needed.

The following (non-exhaustive) methods would have been considered/used prior to the issue of a Notice to Improve:

- Home visits
- Meetings
- Referrals to other agencies for support

4.2 In the aforementioned circumstances, a Notice to Improve may be issued to parent(s), advising that in order to avoid a Penalty Notice being issued to them the student should record no unauthorised absences during a specific period. Parent(s) should receive the warning letter no later than three days before the monitoring period commences. This period will be monitored before a decision with regards to issuing a penalty notice or not to issue a penalty notice is made.

The Notice to Improve should include:

a. The pupil's attendance record and details of the offence(s)
b. The benefits of regular attendance and parents' duty under section 7 of the Education Act 1996
c. Support/opportunities for support provided so far
d. Opportunities for further support and the option to access previously provided support that was not engaged with if appropriate
e. Risk of a penalty notice being issued, or prosecution considered if improvement is not secured within the improvement period
f. A clear specified timeframe for the improvement period of between 3 and 6 weeks.
g. Details of what sufficient improvement within that timeframe will look like in the case "e.g. no unauthorised absence within the specified period."
h. The grounds on which a penalty notice may be issued before the end of the improvement period.

If sufficient improvement is not made and there are 10 sessions (usually equivalent to 5 school days) of unauthorised absence within a rolling 10 school week period, then the Local Authority may issue a Penalty Notice.

The local authority will also take into consideration any instance where it appears a parent deliberately or wilfully acted to circumvent the manner in which this policy operates.

4.3 For issues of unauthorised absence:

- A separate Leave of Absence Policy applies, and consideration is given for issuing Penalty Notices during the following:
- 10 sessions (usually equivalent to 5 school days) of unauthorised absence within a rolling 10 school week period

For further information on statutory duties see Annex 1

5 Procedure for withdrawing Penalty Notices

5.1 A Penalty Notice may be withdrawn by Redcar & Cleveland Local Authority in any case in which the authority determines that:

(a) it should not have been issued, or

(b) it should not have been issued to the person named as the recipient, or
(c) it contains material errors or
(d) Where a notice is not paid, and the authority decides not to prosecute. In such circumstances the regulations require that the penalty notice is withdrawn.

5.2 Where a Penalty Notice has been withdrawn in accordance with the above, a notice of the withdrawal shall be given to the recipient and any amount paid by way of penalty in pursuance of that notice shall be repaid to the person who paid it. No proceedings shall be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued or for an offence under Section 444(1) of the Education Act 1996 arising out of the same circumstances.

6. Payment of Penalty Notices

Methods of Payment:

- By Credit or Debit card
- Internet: Go to https://www.civicaepay.co.uk/Redcar/Webpay_Public/Webpay/Default.aspx and select "Education Fine" on the left hand side to make a card payment 24/7.
- Telephone the Contact Centre on 01642 774774 to make a card payment during office hours.

7. Appeal

There is no statutory right of appeal once a notice has been issued.

8. Administration of the Penalty Notice Scheme

All financial penalties are payable to Redcar and Cleveland Council. Regulation 23 of the aforementioned regulations prescribe that sums received through the payment of penalty notices should be used for the issuing and enforcing of the penalty notices and prosecuting recipients who fail to pay the notices.

Annex 1 Statutory Duties

1. Statutory Duties of Redcar and Cleveland Council

1.1 The Local Authority is a relevant enforcer for the purposes of the Education Act 1996. Enforcement can be affected through a number of formalised routes including Penalty Notices and prosecution of parents/carers for irregular attendance and School Attendance Orders.

1.2 Redcar and Cleveland Council employs a core group of personnel to ensure these statutory duties are met and quality assured.

1.3 The areas of legislation that Redcar and Cleveland Council has responsibility for include:

- School Attendance Order - Section 437 Education Act 1996. If it appears to Redcar and Cleveland Council that a child of compulsory school age in the area is not receiving suitable education, either by regular attendance at school or otherwise, a notice will be served in writing to the parent(s) requiring them to satisfy the Local Authority (LA) within a period specified in the notice that the child is receiving such education.

- Prosecution under Section 444(1) and 444(1A) Education Act 1996. If a child of compulsory school age who is a registered pupil at a school is failing to attend regularly at the school, parent(s) may be guilty of an offence.

*The term **'compulsory school age'** is the period of time in a child or young person's life during which a parent or guardian has a duty to provide an **education**, for example, by sending them to **school** or by providing home schooling*

• Penalty Notices (inserted into sections 444A and 444B of the Education Act 1996 by section 23 Anti-social Behaviour Act 2003; and Section 105 of the Education and Inspections Act 2006). Empowers designated LA officers, head teachers (deputy and assistant headteachers authorised by them) and the police to issue Penalty Notices in cases of unauthorised absence from school, and for parental failure to ensure that their child is not present in a public place during school hours without reasonable justification during the first five days of exclusion. Redcar and Cleveland Council has written a Code of Conduct which specifies how Penalty Notices will be issued.

• Education Supervision Orders (ESO) pursuant to section 36 (The Children Act 1989). Before instituting proceedings for an offence of irregular attendance or failure to comply with a school attendance order, the Education Act requires that the LA consider whether it would be appropriate to apply for an ESO instead of, or as well as, prosecuting the child's parents.

2. Statutory Duties of Schools and Academies

2.1 Schools' responsibilities relating to attendance are detailed in the Education (Pupil Registration) (England) Regulations 2006 as amended. These responsibilities include:

• Advising Redcar and Cleveland Council of any pupil who fails to attend regularly or has had 10 or more days of continuous unauthorised absence;

• Taking a register twice each day (at the start of the morning session and once during the afternoon);

• Marking pupils for each session indicating, with the appropriate code, whether each was present, absent, engaged in an approved educational activity off-site or unable to attend due to exceptional circumstances (unavoidable school closure, lack of school/LA transport and not within walking distance or widespread travel disruption due to local/national emergency); and

• Complying with statutory registration & deletion procedures.

2.2 Where there are concerns about pupil absence, schools should seek to intervene early and maintain a chronology and record of all contacts regarding pupil absence with the pupil, parent and other agencies. This is of great importance, as schools will be required to produce this as evidence if legal intervention is subsequently used.

2.3 For the purposes of school attendance, the term 'parent' means all natural parents, whether they are married or not and includes any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) and any person who, although not a natural parent, has care of a child or young person.

2.4 Registration is a key aspect of excellent practice. Registers are legal documents and school leaders should ensure systems for recording attendance and absence is always accurate. Schools should maintain an up-to-date knowledge of pupil registration regulations by accessing information from the Department for Education (DfE) website. The DfE provides guidance on the use of National Attendance Codes which are used when completing the school census.

2.5 Where a Headteacher/Externally employed Attendance Agency wishes to refer a matter to Redcar and Cleveland Council for legal proceedings to be considered under s444 (1) or (1A) Education Act 1996, they should complete the EW1 Single Agency Referral Form

(SARF) form which can be located here:

EW1 SARF.doc

Annex 2 Process for Requesting Penalty Notice(s) in Respect of Unauthorised Leave

• Headteacher receives request from parent to grant permission for leave during term time OR Headteacher is notified that a family has taken a family holiday without seeking prior permission.

• Headteacher considers whether the request could be considered to fall under the heading of 'exceptional circumstances'. The headteacher may request additional information to support this consideration. If the request is not being made as a result of 'exceptional circumstances' OR where no request for leave is sought, then the Headteacher must notify the parent, in writing, of their decision to refuse to grant permission for leave. The code for this absence must be unauthorised, and parents must be informed that any refusal to adhere to this decision places the parent(s) at risk of being issued with Penalty Notice(s), as per Redcar and Cleveland Council procedure/Code of Conduct.

• Headteacher to await the response of parent(s) and, if the family holiday goes ahead, during term time, then the period of absence must be clearly recorded as 'G' on the official attendance register (thus ensuring that it is recorded as an unauthorised family holiday);

• Once the student has returned to school, Headteacher to complete the EW1 Single Agency Assessment Form (SARF). Evidence to be included:

1. The letter sent to parent(s) notifying them that the absence would not be authorised and warning them that the matter would now be passed to the Local Authority;

2. A copy of the student's registration certificate which clearly shows the period of absence which has been coded as G (unauthorised family holiday) or "0" (unauthorised absence).

3. A copy of the student's registration certificate to show 10 sessions (usually equivalent to 5 school days) of unauthorised absence within a rolling 10 school week period.

4. A copy of School/Academy Leave of Absence Policy .

Upon receipt of the relevant documentation, the Attendance and Welfare Team will check to determine whether the criteria to issue a Penalty Notice to each parent in respect of the unauthorised leave has been met. Penalty Notices will be sent by way of first-class post. Each Parent will be given 21 days to pay £80 for each child, should the fine(s) fail to be paid it will double to £160 and the parents will be given a further 7 days to make payment in full. Parents failing to pay within 28 days will face prosecution under section 444 Education Act 1996.

Any second penalty notice issued to the same parent for the same child within a rolling 3-year period will be charged at a higher rate of £160 with no option for this second offence to be discharged at the lower rate of £80.

Where court proceedings are instigated as a result of non-payment, the Attendance and Welfare Service will be responsible for providing a section 9 witness statement. The Headteacher of the relevant school will be required to provide a signed statement of attendance, a proforma of which will be provided to the Headteacher by our court file administrator. If you have any queries/questions in relation to this process, please do not hesitate to contact the Attendance and Welfare Team on AWS@redcar-cleveland.gov.uk.

The Attendance & Welfare Service will update schools and Academies regarding the outcome of a SARF and subsequent action taken.

Annex 3 Evidential and Public Interest Tests

1. Evidential Test

1.1 In each case the Council will consider whether there is a realistic prospect of conviction. This will involve considerations of whether evidence (e.g. copies of the registers, statements, letters reports) is admissible, reliable, and credible. If a case does not pass the evidential stage, it must not proceed, no matter what level of non-attendance is involved.

1.2 The Council officers will consider any information presented by the parent in order to ascertain whether any of the statutory evidence are likely to be available.

2. **Public Interest Test**

2.1 Prior to undertaking any enforcement action, each individual case will be assessed to ensure that it is in the public interest to proceed. A prosecution will not usually take place if the prosecutor is satisfied that the public interest factors tending against prosecution outweigh those tending in favour of a prosecution.

2.2 Subject to receiving relevant information, the Council will consider whether there are any factors which tend to lower the culpability of the parents concerned or otherwise suggest that it may be disproportionate or unreasonable to proceed with a criminal case.

2.3 It should be understood that the presence of any public interest mentioned below (or a combination of them) is not determinative of whether a criminal prosecution should proceed be permitted to proceed. However, the following is a nonexclusive list of factors which if present and known to the LA Officer may be considered by the relevant officer considering the public interest test.

Sample factors which tend to suggest that a prosecution might not be in the public interest		
1.	Very high levels of attendance	It is settled law that attendance, otherwise than in accordance with the schools' rules, is not "regular attendance". However, it is acknowledged that if the overall percentage of attendance is particularly high (e.g. over 96% over a given school term) then it may not be in the public interest to pursue a prosecution.
2.	Temporary health issues with the concerned Parent	If a parent is temporarily ill and this was the cause of the child's absence it may suggest that repetition of the non-attendance is less likely. A low likelihood of a repetition is likely to suggest that the public interest is not served by a prosecution.
3.	Relevant health or psychological issues with the child	It is recognised that psychological factors the child may inhibit the child from attending school regularly:- • Stress and anxiety; • Socialisation problems; • Bullying whilst at school. If these factors are present it may suggest that other interventions rather than a criminal prosecution of the parent have a better prospect of assisting in achieving regular attendance.
4.	Temporary family difficulties:-	Relationship breakdown; Domestic abuse, Substance / alcohol abuse; Financial pressures; It is recognised that in temporary situations of exceptional hardship may suggest the Council may wish to consider a broader range of options rather than criminal prosecutions.
5.	The age of the child	If a child is almost 18 years of age, there may be limited benefit in prosecuting.
6.	Issues related to destabilisation of the family unit	It is recognised that certain parents in certain professions may face substantial prejudice as a

		result of receiving a criminal offence (particularly a recordable criminal offence).
Sample factors which tend to suggest that a prosecution may be the public interest		
1.	Very poor levels of attendance	If the level of attendance is particularly poor then a criminal prosecution may be entirely necessary and proportionate.
2.	Parental knowledge of a child's none-attendance.	Although the question of a parent's knowledge is strictly only a component of the aggravated offence under Section 444(1)(a), it would aggravate any offending if the parent knew of the non-attendance and failed to take any steps to curtail the none-attendance.
3.	A lack of engagement by the parent with relevant educational authorities	The Local Authority aims to work in partnership with those they seek to regulate. A lack of engagement by the parent may suggest that a more formal means of enforcement is necessary.
4.	Previous convictions for the same offence	Previous convictions may suggest that the parent has a clear understanding of their legal duties but has continued to permit none-attendance.

If Redcar and Cleveland determines it is not appropriate or in the public interest to proceed with a prosecution, it will inform the school setting out the reasons why.