



Doncaster  
Council

# Doncaster Council Code of Conduct for Education Penalty Notices

May 2018

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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

Parents are responsible for ensuring full time, regular and punctual attendance of their child, who is of compulsory school age, suitable to their age, ability, aptitude and any special needs they may have at school or otherwise.

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

Regular attendance has been defined by the Supreme Court (6<sup>th</sup> April 2017) to mean “in accordance with the rules prescribed by the school”.

In this context a parent is<sup>1</sup> :

- 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.

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.

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<sup>1</sup> Section 576 Education Act 1996: Definition of a Parent

Doncaster Council believes that all children have the right to thrive and succeed and recognises that regular attendance is essential to enable this. Improving attendance is a key element within the Children and Young Peoples Plan.

This code of conduct has been consulted upon by Governing Bodies, Headteachers and the chief constable of South Yorkshire Police.<sup>2</sup>

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 policy.

## **1. LEGISLATION**

**1.1.** This Code of Conduct will govern the issuing of education penalty notices across Doncaster 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 27<sup>th</sup> 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 parent(s)/carer(s) 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.

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<sup>2</sup> The Education( Penalty Notices) ( England ) Regulations 2007

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.

## 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 It is a Local Authority that 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 **unauthorised absence** or 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.

2.4 Headteachers and where pertinent, Doncaster Council will issue Penalty Notice Warning letters. Schools must ensure that before issuing a penalty notice warning letter signed by the Headteacher 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 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** A sample warning letter for schools can be found in appendix 1 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 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 4 sessions or more i.e. 2 school days
- The name and contact details of a school representative that the parents can contact to try and 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 15 school days, as stipulated in the warning letter. If attendance does not improve schools should act and request Doncaster Council to issue a penalty notice.

**2.7** Warning letters are not used 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:

- a) The child has had 4 or more sessions of absence in a period of no more than 6 weeks and meets the terms of a prosecution under Section 444(1) of the Education Act 1996 and the school/Doncaster Council has previously issued a warning letter giving the opportunity to improve attendance over a 15 day period.
- b) The child has 4 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.
- c) The child has taken leave of absence in term time without parents requesting authorisation from the school.
- d) 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 children in 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.

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 parent(s) need to be included**
- An accurate certificate of attendance for the period in question
- A copy of the warning letter sent to the parent(s) **or**
- A copy of refusal to authorise absence for leave in term time sent to the parent(s) *or*
- A copy of a letter from the Headteacher advising the parent(s) that they have taken the child on a leave of absence without requesting authorisation from the school.

**3.5** On receipt of the above the Enforcement Court Officer will check the form for accuracy and check if the student is an active case to an Education Welfare Officer or Children's Social Care.

**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 5 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.***

**3.9** 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/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 within the first five days of a fixed or permanent exclusion.
- The parent cannot prove that the student was present in a public place with reasonable justification.

Each penalty notice request should include the following documents:

- Completed Penalty Notice request form
- Copy of the exclusion letter sent to the parent(s)
- Records of any other relevant communications with the parent(s)
- Evidence that the student was present in a public place during a prohibited period

#### **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 to take no further action.

**4.2** When a Penalty Notice is withdrawn Doncaster Council will notify the parent(s) and the person who has requested the Penalty Notice.

#### **5. PAYMENT OF PENALTY NOTICES**

Arrangements for payment will be detailed on the Penalty Notice. Payment of a Penalty Notice discharges the parent/carer of liability for the period in question and s/he cannot subsequently be prosecuted for the period covered by the Penalty Notice. Payment of a Penalty Notice within 21 days is £60 and payment after this time but within 28 days is £120. Doncaster Council retains any revenue from Penalty Notices to cover enforcement costs.

## 6. NON-PAYMENT OF PENALTY NOTICES

**6.1** Non-payment of a Penalty Notice will trigger 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 otherwise the case will not be processed for prosecution.

The evidence laid before the 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.