

Absence from school – penalty notices

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. The Devon Education Welfare Service will continue to investigate cases of regular non-attendance from school and, following appropriate casework, instigate legal action if applicable. Penalty notices offer a means for swift intervention which the County Council will use to combat truancy problems before they become entrenched. This code provides that the power to use penalty notices is applied consistently and fairly and that suitable administrative arrangements are in place.

Following the implementation of the Anti Social Behaviour Act 2003 it is possible that certain cases of unauthorised absence can be dealt with by way 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, currently £60.00 if paid within 21 days or £120.00 if paid within 28 days.

In order to comply with Human Rights legislation it is essential that penalty notices be issued in a consistent manner. This code of conduct will govern the issuing of penalty notices for Devon County Council.

Procedure for issuing penalty notices

In Devon, penalty notices will be issued by the legal proceedings officer employed by the Council and based within the Education Welfare Office. The legal proceedings officer will ensure that the issuing of penalty notices is closely monitored and that recipients pay the relevant fine. In any case where the penalty is not paid within the appropriate period, the Local Authority will instigate action through the courts as required by legislation. This flowchart [Consideration of legal interventions](#) illustrates the procedure that is followed once the legal process has begun.

No one parent will receive more than three separate penalty notices resulting from the unauthorised absence of an individual child in any twelve month period.

The Legal Proceedings Officer will receive requests to issue penalty notices from schools/colleges in Devon, the Devon and Cornwall Constabulary and neighbouring LEAs. The Legal Proceedings Officer will action these requests providing:

- the circumstances of the case meet the criteria for the issue of a penalty notice which are specified in this Code of Conduct
- all necessary information is provided 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 to them, then the evidence provided by the school/college will be the only information laid before the court.

Penalty notices will not be issued during truancy patrols as this could be a health and safety risk. Additionally, not all the relevant evidence will be available to prove the offence at that time.

General criteria for the issuing of a penalty notice

A penalty notice will only be issued to a parent(s) if the pupil has at least ten, half-day unauthorised absences recorded against their name within the previous six months. The ten or more unauthorised absences will be included within the timeframe quoted within the penalty notice.

Whenever practicable, the legal proceedings officer will establish that a potential recipient of a penalty notice will have been warned in writing that unauthorised absences may lead to the issue of a penalty notice. This warning may have been provided by the school/college, an Education Welfare Officer or other recognised professional.

Within the code of conduct, a parent is defined as described in Section 576 Education Act 1996

Circumstances where a penalty notice is appropriate

The issuing of penalty notices is appropriate:

- in cases of absence from school/college when the pupil has been taken on a holiday during term time and the absence has not been authorised by the school
- when pupils are identified as truants in the course of a truancy patrol; enquiries will be undertaken with the school/college of any pupil stopped
- in the early stages of casework, an education welfare officer might form an opinion that the issuing of a penalty notice is appropriate e.g. in cases where a parent continually fails to provide an explanation for a pupil's absence in accordance with the school's procedures
- following notification from a school to the LEA that a pupil has had a record of unauthorised absence from school and the circumstances appear to have been avoidable. (e.g. too tired after a late night, a birthday treat, family friends/relatives visiting)
- when a pupil on the 'Fastrack to Prosecution' scheme fails to achieve the required improvement in attendance
- following a referral from the Devon and Cornwall Constabulary, or a neighbouring LEA.

Parents should note that in normal circumstances, current practice is that only one penalty notice will be issued to a parent relating to the absence of a particular child within a two year period. Should a further period of unauthorised absence be recorded, then the parent(s) will normally be summonsed to appear at a Magistrates Court, unless an Education Supervision Order is considered more appropriate. The rationale for this operating practice is that parents should not be under a mistaken impression that they can purchase additional periods of absence by paying numerous penalty notices.

Procedure for withdrawing penalty notices

A penalty notice may be withdrawn by Devon LA in any case in which the authority determines that:

- it ought not to have been issued
- it ought not to have been issued to the person named as the recipient
- where the penalty notice contains a material defect.

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 a paid penalty notice relating to the same circumstances.

Payment of penalty notices

The arrangements for the paying of penalties will be detailed on the penalty notices.