

PENALTY NOTICES

EXCLUDED PUPILS

CAMBRIDGESHIRE COUNTY COUNCIL LOCAL AUTHORITY CODE OF CONDUCT

Introduction

1. Under Section 105(1) of the Education and Inspections Act 2006 local authority officers, headteachers and the police (as defined in Section 105 (6)) have the discretionary power to issue Penalty Notices to the parents of children who, whilst excluded from school, are present in a public place at any time during school hours on a school day, without reasonable justification.
2. The new power provides an alternative to prosecution of parents under Section 103(3) of the Education and Inspections Act 2006 and enables parents to discharge potential liability for conviction for that offence by paying a penalty of £60 if paid within 21 days or £120 if paid within 28 days.
3. Should the Penalty Notice remain unpaid or have been paid only in part at the end of the 28 day period Cambridgeshire County Council may prosecute the parents for the offence to which the notice relates, or, in specified circumstances (see section 28 below), withdraw the notice.
4. Penalty Notices may only be issued in Cambridgeshire in accordance with the terms of this Code of Conduct. The purpose of the Code of Conduct is to ensure that the power is applied fairly and consistently across the County Council and that suitable arrangements are in place for the effective and efficient administration of the scheme.
5. In implementing this Code of Conduct the County Council will liaise when appropriate with neighbouring education and police authorities.
6. This Code of Conduct has been drafted in accordance with the Education (Penalty Notices) (England) Regulations 2004: Statutory Instrument 2004 No 181, the Education (Penalty Notices) (England) (Amendment) Regulations 2004: Statutory Instrument 2004 No 920, The Education (Penalty Notices) (England) (Amendment) Regulations 2005: Statutory Instrument No 2029 and guidance issued by the Department for Education and Skills.
7. In preparing this Code of Conduct the County Council has consulted with Cambridgeshire headteachers and the Chief Officer of Cambridgeshire Constabulary.

Circumstances in which a Penalty Notice may be issued

8. A Penalty Notice may be issued in cases where an authorised officer has reason to believe that the person has committed an offence under Section 103(3) of the Act, in that they allowed their child to be present in a public place during school hours, without reasonable justification.
9. A “public place” is defined as any highway and any place to which at the material time the public or any section of the public have access, on payment or otherwise, as of right or by virtue of expressed or implied permission.
10. “School hours” means any time during a school session of the school at which the pupil is registered, or during a break between sessions of that school on the same day.
11. Where a person is issued with a Penalty Notice, he/she cannot be convicted of an offence to which the notice relates if he/she pays a penalty in accordance with the notice.
12. Where a penalty notice has been issued, proceedings for the offence to which it relates may not be instituted before the end of such period as specified in the notice.
13. Headteachers and police officers should only issue a Penalty Notice following consultation with a County Council Education Welfare Officer.
14. The Education Welfare Officer will not agree to sanction the issuing of a Penalty Notice unless he/she considers that with regard to the offence to which it relates there is sufficient evidence to secure a conviction under Section 103(3) of the Education and Inspections Act 2006. Evidence could be letters sent to parent, minutes of meetings and record of telephone conversations.
15. A maximum of three Penalty Notices may be served on any one parent over a 12-month period.
16. There is no statutory right of appeal against the issuing of a penalty notice. A parent should therefore, if possible, be given warning of the possibility of a notice being issued in order to allow him/her to make representations should he/she wish to do so.

Authority to Issue a Penalty Notice

17. An Education Welfare Officer may issue a Penalty Notice to the parent of a child who is a registered pupil at a school in Cambridgeshire or who is a registered pupil at a school in an authority, which has an agreement to that effect with Cambridgeshire County Council.
18. A headteacher or an authorised deputy or assistant headteacher may issue a Penalty Notice to the parent of a child who is registered at his/her school, in consultation with CCC EWO / Legal Panel.
19. A police officer, including a community support officer or other accredited person, may issue a Penalty Notice.

20. Headteachers and police officers should comply with the terms of this Code of Conduct when issuing a Penalty Notice and should provide a copy of any notice issued to the relevant Education Welfare Officer.

Form and content of Penalty Notices

21. A Penalty Notice should give the following particulars alleged to constitute the offence to which the notice relates and should contain:
- a) the name and address of the person to whom the notice is issued;
 - b) the name and address of the child who is failing to attend school regularly and the name of the school at which he/she is a registered pupil;
 - c) the name, title and official details of the authorised person issuing the notice;
 - d) the date of the offence and of the issue of the notice;
 - e) the amount of the penalty which is to be paid and details of the timescales and any variation involved;
 - f) the address of the County Council office at which the penalty is to be paid and to which any correspondence relating to the notice may be sent;
 - g) the method/methods by which payment may be made;
 - h) the specified period within which the penalty should be paid;
 - i) a statement that full payment within the specified period will discharge any liability for the offence;
 - j) an explanation of the consequences should the penalty not be paid in full before the expiry of the specified period;
 - k) an explanation of the grounds on which the notice may be withdrawn.
22. Should there be more than one person liable for the offence a separate notice should be issued to each person.
23. Should the offence involve more than one child a separate notice should be issued for each child.

Service of Penalty Notices

24. A Penalty Notice may be served by:
- a) giving it to the recipient; or
 - b) leaving it at the recipient's usual or last-known address; or
 - c) sending it to the recipient at that address by first-class post.
25. Service by post is deemed to have been effected, unless the contrary is proved, on the second working day after posting the notice by first-class post.

Failure to Pay a Penalty Notice

26. Should the recipient of a Penalty Notice fail to pay the full amount before the expiry of the period for paying it the County Council will either begin proceedings against the parent under Section 103(3) of the Education and Inspections Act 2006 or withdraw the notice in accordance with specified conditions (see section 28 below).
27. A certificate signed by the Attendance & Behaviour Manager to the effect that the recipient of a Penalty Notice has or has not paid the amount due on or before the date specified should be retained and presented as evidence in any subsequent Section 103(3) Education and Inspections Act 2006 proceedings.

Withdrawal of a Penalty Notice

28. A Penalty Notice may be withdrawn by the County Council, regardless of whom within the authority issued it, if it is deemed that:
 - a) the notice ought not to have been issued (i.e. where it has issued outside of the terms of this Code of Conduct or where no offence has been committed); or
 - b) the notice ought not to have been issued to the person named as the recipient.
29. Should a penalty notice be withdrawn:
 - a) notice of the withdrawal should be given to the recipient;
 - b) any amount already paid by the recipient should be reimbursed;
 - c) any proceedings under Section 103(3) of the Education and Inspections Act 2006 instituted against the recipient should be discontinued.

Retention of Receipts and Revenue Collection

30. The County Council will retain all revenue from the issuing of Penalty Notices in order to cover the costs of issuing and enforcing notices and the cost of prosecuting those recipients of the notices who fail to pay.
31. The County Council will produce an annual audit statement as part of its usual audit procedures in order to show that income received from Penalty Notices does not exceed enforcement costs as defined above. Any surplus acquired will be surrendered to a consolidated fund.

If you are having difficulty making payment online please contact us.

Late or part payments will not be accepted and no reminders will be sent. If payment is not received by (insert date 28 days from date of issue), you may be prosecuted for the offence and could be subject to a fine of up to £1000.

This notice is issued by: (name)

(title)

Organisation:

Date:

PART 2

Please complete the following and return this notice to one of the addresses overleaf.

Name:

Address:

.....

I attach payment in the sum of:

Signed:

Date:

.....

Received the sum of £..... in relation to a Penalty Notice issued
on in respect of (name of child)

Dated.....

Signed.....

Name..... (Please print)

Title.....

(A copy of this receipt should be sent to all parties subject to the Notice and a copy retained on file)

Notes

1. Contact Details

If you have any queries about this notice please contact the relevant Education Welfare Officer at the address shown in Part 1 of the Notice.

2. Amount of penalty

The amount of the penalty is as follows:

When paid within 21 days	£60
When paid within 28 days	£120

3. Code of Conduct

This notice is issued in accordance with a Code of Conduct drawn up by the Local Authority. Any enquiries regarding this Code of Conduct should be addressed to the relevant Education Welfare Officer at the address overleaf.

4. Withdrawal

This notice may be withdrawn should it be shown that it should not have been issued to you or has not been issued to you in accordance with the Code of Conduct. Should you believe that the notice was wrongly issued you should contact the relevant Education Welfare Officer as soon as possible (no later than within 10 days of the notice having been issued), stating why you believe the notice to have been incorrectly issued. Your query will be considered and you will be contacted to notify you whether the notice is to be withdrawn. Should it be decided not to withdraw the notice and you fail to pay the sum specified you will be liable to prosecution for the offence that your child was present in a public place whilst excluded from school.

5. Payment

You should complete the notice above (**Part 2**) and send or deliver it to the address given. Please telephone the appropriate office to make an appointment should you wish to make payment in person. Or you can make payment on line.

6. Prosecution

Should you not pay the penalty notice and should the notice not be withdrawn you may be prosecuted for the offence of allowing your child to be present in a public place, whilst excluded from school. In such circumstances you will receive a separate summons for this which will give you notice of the time and date of the court hearing. You will be given the opportunity to defend yourself and you are advised to seek legal representation; in some circumstances you may be entitled to legal aid.

Appendix 1

Suggested letter, which schools may wish to consider using to notify parents of the new discretionary power given to headteachers to serve Penalty Notices in relation to excluded pupils.

Dear Parent

Penalty Notices in Relation to Excluded pupils

You may be aware that recent legislation has given headteachers (as well as police officers and Education Welfare Officers) the power to serve Penalty Notices on parents who permit their children to be present in a public place whilst excluded from school, without justifiable cause.

A Penalty Notice involves a fine of £60 if paid within 21 days, rising to £120 if paid within 28 days. Should a parent on whom a notice is served fail to pay the full amount of the fine within the specified time he /she will be liable to prosecution in a Magistrates court where on conviction a sentence of a fine of up to £1000 may be imposed. Penalty Notices may only be served in accordance with the terms of the County Council's local Code of Conduct, a copy of which is retained by the school.

Yours sincerely

Headteacher

Schools may wish to amend the language and tone of this letter in order to meet their own particular circumstances.