



Penalty Notices

A Guide for Education Welfare Officers & Schools

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Children, Families & Adults

What can a Penalty Notice be issued for?

Penalty Notices can be requested for unauthorised absence or unauthorised holiday during term time. The absence/holiday must be 10 sessions or more. The Penalty Notice Officer will consider requests when attendance is or would fall to below 94.5%. When requesting that a Penalty Notice be issued, the school must hold that attendance is not “regular”.

The Isle of Wight v Mr J Platt ruling 2017 by the Supreme Court held that “regular” attendance meant attendance in accordance with the school rules. This means that one single unauthorised absence would make a parent guilty of the section 444(1) offence.

(The Supreme Court felt that whilst this would mean that a parent could face a criminal sanction for taking their child out of school without permission for just one day; they also noted that a parent could avoid this by paying the penalty demanded of them.)

It is not expected that a request to issue a Penalty Notice is made for ongoing and entrenched cases of poor attendance when a prosecution or Education Supervision Order should be considered.

The school must state clearly that they use Penalty Notices –it is recommended this is on the school’s website and in the Attendance Policy at a minimum. This document also includes a letter that can be sent to all parents regarding the use of Penalty Notices. Decisions about requesting Penalty Notices should be made consistently within the school following the same criteria.

How is a Penalty Notice request made?

The designated person -Headteacher, Local Authority EWO, School EWO, School Attendance Officer or other agreed person must complete a Penalty Notice request form in full and send it to educationwelfare@cornwall.gov.uk or One Stop Shop, Room 38, 39 Penwinnick Road, St Austell PL25 5DR. It is vital that the information provided is accurate, with particular attention to the full names and home addresses of the parents/carers, in order to avoid data breaches. The form lists the evidence required, which should be sent with the referral form. (See Appendix 1).

The Penalty Notice should be requested and issued as quickly as possible after the absence has taken place so we ask for notification within 15 days of the absence. This allows for speedy progression through the legal process if needed.

What evidence is required and why?

When submitting a Penalty Notice referral form, the following must be provided:

- Attendance certificates – last academic year and current to date:

We request a copy of last year’s attendance certificate in order to build a picture of the pattern of attendance, to establish the strength of the case if the fine is not paid and the case progresses to court, ie did the parent/carer take unauthorised holiday last year? Was overall attendance a concern?

- Copy of letters and/or newsletters sent to parents/carers:

In the case of a Penalty Notice being requested for unauthorised absence; this will include all letters sent to the parent/carer regarding child's poor attendance, including Warning Letters, copy of EPM Notes (if held) and Final Warning if issued. A school does not have to hold an EPM or issue a Final Warning as the Warning Letter refers to the possibility of a Penalty Notice. (See highlighted section in Appendices 4 and 5).

In the case of unauthorised holiday; this will include information sent to all parents/carers informing them of the legislation regarding unauthorised holiday during term time. There is a template letter available for schools which can be adapted as required, however the legal information should not be amended or omitted. (See Appendix 2).

- Exceptional Circumstance Leave Request Form (completed by the parent/carer). (Please see model form in Appendix 3):

Please use the model form as a template. If you would prefer to use your own form, please ensure that it includes the information about the legislation on the form. This strengthens the evidence that the parent/carer was fully aware of the potential legal consequences of taking the unauthorised holiday/leave.

- Holiday/Exceptional Circumstance Request Refusal Letter (Completed by the school-Appendix 4):

It is vital that the holiday refusal letter informs parents/carers that the leave will be unauthorised and, as such, if they take the leave they may be liable under section 444A and section 444B of the Education Act 1996 and could be issued with a Penalty Notice of £60 per child, per parent if paid within 21 days, increasing to £120 if paid within a further 7 days (total of 28 days). Non-payment may result in prosecution.

Please check that the letters your school is using are accurate. There are template letters available (see Appendices 4 and 5). The letters can be adapted but the legal information must not be amended or omitted.

Do I need to provide a Witness Statement?

In order to simplify the process, a section has been included on the Penalty Notice referral form which will act as a Witness Statement. This section should outline the dated actions undertaken by the school prior to requesting the Penalty Notice. If this section is completed by the Headteacher, no further statement is required at this stage; if it is completed by the school Attendance Officer/School EWO or Local Authority EWO, the Headteacher will need to provide a separate Witness Statement, to be included with all other evidence submitted at the time of referral. (See Appendix 6).

How long will it take to issue a Penalty Notice?

Providing the referral form is completed in full, all evidence is submitted at the time of referral and the request meets the criteria as outlined in the Penalty Notice Code of Conduct, we aim to issue the Penalty Notice within 10 working days. The referrer will be notified of issue and will be updated of the outcome

after 28 days.

What happens if the parent/carer wants to appeal the Penalty Notice?

If the parent/carer feels that they should not have been issued with the Penalty Notice, they are advised to discuss the matter with the school. It is important that parents/carers understand that it is the Headteacher's decision as to whether a circumstance is deemed to be 'exceptional' and the Headteacher's decision to request a Penalty Notice.

The only instances in which a Penalty Notice will be withdrawn by the Local Authority is if it is found that the evidence provided was inaccurate and the Penalty Notice should not have been issued; it was issued to the wrong person or the Penalty Notice is found to contain material errors. There is no route of appeal through the Local Authority.

Can payment of the Penalty Notice be made in instalments?

No – the Penalty Notice must be paid in one full payment, however parents can pay in a number of ways: cheque; card payment by phone; BACS payment or cash at a One Stop Shop. All payment information is sent with the Penalty Notice.

What happens if the parent does not pay the Penalty Notice?

If the 28 day deadline passes without payment from the parent/carer, the Penalty Notice Officer informs the referrer and requests that they prepare the necessary paperwork for prosecution:

- An up to date Attendance Certificate
- Headteacher Witness Statement (see Appendix 6)
- School Attendance Certificate covering the period of prosecution (See Appendix 7)
- Attendance Officer/EWO Witness Statement (see Appendix 8)
- Instructions to Chief Executive (See Appendix 9)

Appendix 1: Penalty Notice Referral Form



Children, Families and Adults

Education Welfare Service

Penalty Notice Referral Form

Please ensure that the addresses provided are accurate and up to date to avoid data breaches. By making this referral you are committing to prosecuting the parent/s for failure to ensure regular attendance, if the Penalty Notice is not paid.

Pupil name	M F	Year group	
Date of birth		School	
First Parent/carer full name		Address	
Does the parent have PR?	Y N	Do you want this parent to be issued with a PN?	Y N
Home tel. no.		Work tel. no.	
Second Parent/carer full name		Address	
Does the parent have PR?	Y N	Do you want this parent to be issued with a PN?	Y N
Home tel. no.		Work tel. no.	
Other agencies involved	The school has a safeguarding responsibility to discuss issuing a PN to the above named parent/s with other involved agencies, such as Social Care, to establish their views on the impact that a PN may have. Please include their views, where appropriate.		
Is child in care?	Y N	Is child a young carer?	Y N

Appendix 2: PN Model Information letter to all parents (for general, whole school use)

NAME AND ADDRESS

To:

Date:

of:

Dear Name of parent/carer(s)

Here at {enter school name}, we recognise that there are occasions when it is appropriate to authorise an absence, such as when a pupil is genuinely too ill to attend school, has a medical appointment that cannot be taken outside of school hours or a request for leave has been agreed in exceptional circumstances.

However, the Government does not support parents taking children out of school unless the school agrees this is appropriate under 'exceptional circumstances'. Any request for leave should be made in writing to the Headteacher using the school's request form.

If you decide to still take your child out of school, without permission, you will be committing an offence under the Education Act 1996. We may refer the matter to Cornwall Council who may decide to take legal action against you. A penalty notice can be issued under Section 444A and 444B of the Education Act 1996. This carries a fine of £60 if paid within 21 days or £120 if paid after this but within 28 days. Failure to pay the penalty notice may result in Court action. Persistent absences not authorised by the school may result in a prosecution in the Magistrates Court, leading to fines up to £2,500 and/or custodial sentences. **The Council may also apply for the costs incurred in taking the matter to Court.**

You are welcome to contact the school to discuss any concerns you may have regarding this or if you feel you would like advice or support in helping your child attend more regularly. {Enter school name} is committed to maximising the education of all its pupils and aims to work with parents to ensure this can be achieved.

Yours sincerely

Head Teacher

* For an offence under the Education Act 1996 Sec 444 (1) the maximum fine is £1000. For an offence under the Education Act 1996 Sec 444 (1A) the maximum fine is £2500 or imprisonment for a term not exceeding 3 months. Alternatively a penalty notice may be issued under Section 444A and 444B of the Education Act 1996. This carries a fine of £60 if paid within 21 days or £120 if paid after this but within 28 days. Failure to pay the penalty notice may result in Court action.

Appendix 3: Exceptional Leave Request Form

EXCEPTIONAL CIRCUMSTANCE LEAVE REQUEST **NOTICE TO PARENTS /CARERS**

Dear Parent/Carer,

The law does not grant parents an automatic right to take their child out of school during term time. Any absence from school will disrupt your child's learning. You may consider that a holiday will be educational but your child will miss out on the teaching that their classmates will receive during your holiday. Attendance is vital to academic success and lost education poses a potential risk of under achievement. This is something we all have a responsibility to avoid.

The Department of Education no longer allows Headteachers to grant any leave of absence during term time unless there are exceptional circumstances. If you consider that your request for absence is exceptional you will need to complete the form attached to this notification. A response will be sent to you as soon as possible. If leave is not authorised and you nevertheless withdraw your child from school, the absence will be recorded as unauthorised absence.

In the case of an unauthorised absence the Education Welfare Services may be notified and a Penalty Notice may be issued. Please note that a Penalty is issued to each parent for each child taken out of school. A Penalty Notice carries a fine of £60 if paid within 21 days, increasing to £120 if paid within 28 days. If the fine is not paid after 28 days, it may result in legal action being taken against you. Parents have a duty to ensure their child's regular attendance at school and failure to do so is an offence under Section 444(1) of the Education Act 1996.

All requests must be completed on the attached form, letters will not be accepted. This form should be returned to the Attendance Office at least 14 days before the start of the absence.

I hope you will support our efforts in raising attendance and attainment at (SCHOOL NAME).
Yours sincerely

Headteacher

* For an offence under the Education Act 1996 Sec 444 (1) the maximum fine is £1000. For an offence under the Education Act 1996 Sec 444 (1A) the maximum fine is £2500 or imprisonment for a term not exceeding 3 months. Alternatively a penalty notice may be issued under Section 444A and 444B of the Education Act 1996. This carries a fine of £60 if paid within 21 days or £120 if paid after this but within 28 days. Failure to pay the penalty notice may result in Court action.

APPLICATION BY PARENT/CARER

If you consider an absence during term time to be an exceptional circumstance, please complete this form and return it to the Attendance Office at least 14 days before the date you wish to remove your child from school.

Student Name: _____ Tutor Group: _____

Home Address: _____

Post Code: _____

Parent/Carer Name(s): _____

First day of absence: _____ Date of return to school: _____

Total number of days missed: _____ days

Reason for absences: _____

*I understand that if the absence request is unauthorised the Education Welfare Service may be notified of the absence and a Penalty Notice may be issued. I understand that a Penalty Notice is issued to each parent/carer of each child taken out of school and that this carries a fine of £60 if paid within 21 days, increasing to £120 if paid within 28 days. I understand that if I do not pay the fine, it may result in legal action being taken against me. **Parents have a duty to ensure their child's regular attendance at school and failure to do so is an offence under Section 444(1) of the Education Act 1996.***

Signed Dated

(Please ensure you give at least 14 days' notice of the proposed absence)

Below to be completed by the school:

FAO – Headteacher

% Current	% Last Year	Comments

Student Name: Tutor:..... Year:.....

AUTHORISED:

Request has been authorised for the following dates **only**:

___ / ___ / ___ to ___ / ___ / ___

UNAUTHORISED:

Signed Headteacher

Date ___ / ___ / ___

Letter sent / Phone Call / other	Signed:	Date:
Action: PN referral	Signed:	Date:

Appendix 4: PN Model Leave refusal letter (for school use)

NAME AND ADDRESS

Date

Dear Name of parent/carer(s)

I am writing regarding your request to take (Student Name) out of school on Date until Date.

The law states that a planned absence from school should only be authorised for students in 'exceptional circumstances'. Here at [enter school name], we recognise that there are occasions when it is appropriate to authorise an absence; we look at each request on its own merit, taking into account purpose, attendance history and study commitment and seldom authorise a request for students in {Years 6, 10 and 11 delete/add as appropriate}.

Under the circumstances, we regret that on this occasion we are unable to authorise your request for absence. If (Student Name) does not attend school on the dates concerned, the absence will be recorded as unauthorised.

If you decide to still take your child out of school, without permission, you will be committing an offence under the Education Act 1996. We may refer the matter to Cornwall Council who may decide to take legal action against you. A Penalty Notice can be issued under Section 444A and 444B of the Education Act 1996. This carries a fine of £60 if paid within 21 days or £120 if paid after this but within 28 days. Failure to pay the Penalty Notice may result in Court action. Persistent absences not authorised by the school may result in a prosecution in the Magistrates Court, leading to fines up to £2,500 and/or custodial sentences. **The Council may also apply for the costs incurred in taking the matter to Court.**

I would like to offer you the opportunity to contact {enter staff contact or team} at {enter school name} if you would like advice or support in helping your child attend more regularly. {Enter school name} is committed to maximising the education of all its pupils and aims to work with parents to ensure this can be achieved. If you would like to discuss this matter further, please contact the school.

Yours sincerely

Headteacher

Appendix 5 Model Letter warning of Penalty Notice (not holiday); for school use

Dear **Name of parent/carer(s)**

I am writing regarding the attendance of **(Student Name)**. We note that s/he has now accrued (5) sessions (half days) of unauthorised absence.

Here at **[enter school name]**, we are committed to maximising the education of all our pupils and aim to work with parents to ensure this can be achieved.

However, if your child accrues a further 5 unauthorised absences (half days), we may refer the matter to Cornwall Council who may decide to take legal action against you. A Penalty Notice can be issued under Section 444A and 444B of the Education Act 1996. This carries a fine of £60 if paid within 21 days or £120 if paid after this but within 28 days. Failure to pay the Penalty Notice may result in Court action. Persistent absences not authorised by the school may result in a prosecution in the Magistrates Court, leading to fines up to £2,500 and/or custodial sentences. **The Council may also apply for the costs incurred in taking the matter to Court.**

I would like to offer you the opportunity to contact **{enter staff contact or team}** at **{enter school name}** if you would like advice or support in helping your child attend more regularly.

Yours sincerely

Headteacher

Appendix 6: Headteacher Witness Statement

WITNESS STATEMENT

(CJA 1967 – S9; MCA 1980 – SS5A(3)(a) and 5B; MC RULES 1981 r70)

Statement of:

Age (if under 18)

Occupation:

This statement (consisting of page(s) signed by me) is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Date:

Signed:

I am the above named person.

I am the Headteacher of

The pupil named _____ (date of birth) _____ is registered as a pupil on the roll of the said school.

School records show that the parent/carer of the said child is

I have checked the school attendance register which shows that between dd/mm/yy and dd/mm/yy the said child had _____ unauthorised absences.

I exhibit hereto a Certificate of Attendance which I have signed.

Signed:

Date:

Appendix 8: Witness Statement

WITNESS STATEMENT

(CJ Act 1967, s.9; MC Act 1980, ss.5A(3) (a) and 5B; Criminal Procedures Rules 2005 Rule 27.1)

STATEMENT OF:

Age: *Over 18*

OCCUPATION: Education Welfare Officer

ADDRESS:

This statement (consisting of page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated *the* day of

Signed:

-
- A. My name is, I am the(job title) for(Area of the Education Welfare Service/School) and have been employed by(Cornwall Council Education Welfare Service/Named School) since.....(date)
- B. On.....(date),, parent(s) of(Child) submitted a holiday request form dated
- C. On, I/Headteacher (delete as appropriate) sent a holiday refusal letter to(parent(s)).
- D. Between the dates of and,(child) was absent for school, due to unauthorised holiday.

Signature:

Appendix 9: Instructions to Chief Executive

**INSTRUCTIONS TO CHIEF EXECUTIVE
PROSECUTIONS UNDER EDUCATION ACT 1996 SEC. 444(1) &
444(1A)**

Particulars of the Court at which case will be heard: Place: Date: Time:

(1) Parent's name in full:

Parent's date of birth:

Address in full:

Occupation (if known):

(2) Name (in full) of any other parent:

Parents date of birth:

Is (s)he being prosecuted? If "no", why not?

.....

(3) Child's name in full:

Address (in full) if different from above:

.....

Age: Date of Birth School Leaving Date (if
14+):

Name of School/PRU:

.....

Distance between home and a) school: b) LA transport
.....(miles)

(4) Number of Unauthorised Absences: Out of Possible
Attendances:

Between: and (period of
prosecution)

(5) Details of any previous convictions of parent under the Education
Act 1995 Sections 443, 444(1) and 444(1A):

Date of Conviction	Name of Court	Offence	Name(s) of Children	Result

(6) Parental attitude towards child's non-attendance:

.....

.....

(7) Family Circumstances:

.....

.....

(8) Names of any other children living at home (including their ages
and comments about attendance):

.....

.....

.....

(9) Date on which an Education Supervision Order was considered:
.....

Reasons why an ESO is not being applied for:

.....
.....
.....

(10) Is a Parenting Order likely to be of benefit in this case?

.....

(11) Name of EWS caseholder:Signed:

.....

Office Base: One Stop Shop,39 Penwinnick Road, St Austell.....
Tel No:

Papers seen by EWS Team Manager and passed to Senior Education Welfare Officer for processing:

..... (Team Manager) (Date)

Endorsement for court action:

..... (SEWO) (Date)

- Details of costs incurred by School / Education Welfare Officer attached to file – Yes / No

Appendix 10: Penalty Notice Flowchart

Penalty Notice Flow Chart

