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**PENALTY NOTICES**

**ADVICE FOR PARENTS AND CARERS**

*Derbyshire County Council*

*Children's Services*

## ADVICE FOR PARENTS AND CARERS

### ▪ **What is the Anti-Social Behaviour Act 2003?**

The Act gives powers to local authorities, schools and the police to issue penalty notices to parents or carers for their child's unsatisfactory attendance at school.

### ▪ **Why have penalty notices been introduced?**

Reducing absence from school is very important. This is because missing school can damage children's achievements, disrupt the school's routines and affect yours and other children's learning. It can also leave children at risk of anti-social behaviour and youth crime. Above all, missing out on the opportunities provided in school can have a long-term effect on children's chances in life.

### ▪ **What are my responsibilities as a parent?**

You have a legal duty to ensure that your child receives full-time education<sup>1</sup>. Where a child is registered at a school, you must ensure that your child attends school regularly and on time. You will be committing an offence, therefore, if your child fails to attend regularly and punctually and the school has not given permission for the absence or late arrival.

***Remember - only your child's school can authorise absence or late arrival.***

### ▪ **What is a penalty notice?**

A penalty notice is an alternative to prosecution. It provides the parent the option to pay a fixed amount as a fine for their child's non-attendance and avoids court proceedings. It is intended to secure better attendance without taking legal action through the courts. The decision to offer the option of a penalty notice lies with the local authority and takes into consideration the facts of the case and the threshold guidance as outlined in the Government guidance<sup>2</sup>

### ▪ **What are the penalty costs?**

In the first instance, the fine is £160 to be paid within 28 days. The 28 days starts two days after the date of issue as shown on the notice. If the fine is paid within 21 days, payment reduces to £80.

If a second penalty notice is issued within 3 years of the first the amount to be paid is £160 to be paid within 28 days with no reduction for early payment.

**PLEASE BE AWARE when two parents/carers are issued with a penalty notice for the same child both penalty notices must be paid. The fine will apply to each parent for each child who fails to attend regularly and punctually.**

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<sup>1</sup> The law states that education must be "efficient, full-time and suitable to the child's age, ability, aptitude and to any special educational needs the child may have either by regular attendance at school or otherwise (Section 7 of the Education Act 1996)"

<sup>2</sup> <https://www.gov.uk/government/publications/working-together-to-improve-school-attendance>

- **Who is counted as the parent responsible for ensuring attendance?**

The law defines a parent as:

- Any natural parent, whether married or not
- Any parent who, even if not married, has responsibility as a parent
- 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 if the child or young person lives with you and is cared for by you then you will be regarded as the parent irrespective of what your relationship is with the child.

- **How are they issued?**

A penalty notice will normally be sent by first class post to your home address.

- **When are they used?**

Penalty notices can be used in a wide range of situations, including but not limited to circumstances:

- Where it is clear that parents fail to ensure their child attends school regularly and on time
- Where parents take their child on holiday during term-time without the written permission of the headteacher.

- **Unsatisfactory school attendance**

The threshold for when a school should consider requesting the issue of a penalty notice is 10 sessions (5 school days) of unauthorised absence in a rolling period of 10 school weeks. A school week means any week in which there is at least one school session. This can be made up of any form of unauthorised absence including late after close (attendance code U) of register and odd days of unauthorised absence (attendance code O) which add up to 5 days within a 10-week period.

At this point the school will consider if it is likely that the attendance will improve with further support or if they should refer the case to the local authority for formal monitoring with a view to legal action if the attendance does not improve.

- **Is a warning given?**

A formal written notice to improve will be issued in cases of unsatisfactory school attendance, but there will be certain circumstances where you will not be given a formal written warning. For example, if you have taken your child on holiday in term-time without the authorisation of the headteacher.

### ▪ What happens if I receive a notice to improve?

The letter will tell you how many school sessions your child has missed and give you a minimum number of school days to improve your child's attendance. If there is no significant improvement, a penalty notice may be issued.

We never take such action lightly and would prefer to work with parents or carers to improve attendance without having to enforce it. However, we will use these powers to ensure that your child attends school.

### ▪ What does the law say regarding holidays in term-time?

The Education (Pupil Registration) (England) (Amendment) Regulations 2013 makes it clear that the headteacher should not grant approval for any leave of absence during term-time, including holidays, unless there are exceptional circumstances.

Parents are not entitled to take their children on holiday in term-time. Planned absence can only be taken with the prior written approval of the headteacher. Each case will be considered on its own merits and the decision of the headteacher is final.

If a request for leave is denied and the pupil is absent for 5 days or more then the school is expected to refer the case to the local authority who will issue a penalty notice with no requirement for a formal warning to be issued. Penalty notices can also be issued where a pupil is absent for repeated incidents of unauthorised leave in term time but fall below the 5-day threshold.

If a penalty notice is issued the following apply:

- Each parent is liable to receive a penalty notice for each child for each period of absence
- A penalty notice will be issued without warning

Taking or allowing your child to take a holiday in term-time without the school's permission is a serious matter. If we find that you have done so, we will not hesitate to issue a penalty notice if requested to do so by the school.

### ▪ Can I appeal?

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

We can take back a penalty notice but **only if**:

- It should not have been issued in the first place (for example, if your child was actually at school); or
- It has been issued to the wrong person; or
- It appears to Derbyshire County Council that the notice contains material errors.

If you believe that any of the above circumstances apply, you should contact Derbyshire County Council immediately with evidence to support your view. The contact details will be included in the penalty notice.

- **How do I pay?**

Details of how to pay will be included in the penalty notice. Please remember that there will be no reminder to pay and no opportunity to pay in instalments. Failure to pay within the timescales as specified in the penalty notice will result in prosecution.

- **What happens if I do not pay?**

If you do not pay, the consequences can be very serious. You have up to 28 days from receipt to pay the penalty notice in full. After this time, if it has not been paid, Derbyshire County Council is required by law to begin proceedings in the magistrates' court for the original offence of failing to secure the satisfactory attendance of your child at school.

Cases will usually be dealt with by using a process called the single justice procedure (SJP), which allows the case to be heard without the need for you to attend the Magistrates Court however you still have the right to request that your case be heard in open court even if you wish to plead guilty. If you wish to plead not guilty to the offence the Court will schedule a trial and you will be required to attend.

If proven, this can attract a range of fines of up to £2500, and may include other remedies such as parenting orders, community sentences, or imprisonment, depending on the circumstances. A guilty verdict will also mean that you will have a criminal record.

- **Can I be prosecuted if I pay but my child still fails to attend school?**

If your child's attendance at school does not improve a second penalty notice or escalation to prosecution may occur. You cannot be prosecuted for the period included in the existing penalty notice, however, you can be prosecuted for any further periods of non-attendance, depending on the circumstances.