

Isle of Wight Council

Code of Conduct

**Under the provision Education (Truancy Penalty Notices)
(England) 2007 (Amendment) Regulations 2013 and Subsection
(1) Section 23 Anti-Social Behaviour Act 2003**

Updated September 2023

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Rationale

Regular school attendance is fundamental in achieving positive outcomes for children. It is important for attainment, wellbeing, and wider development. Underpinning this is the knowledge that if children attend school regularly and punctually, they will be able to take full advantage of the educational opportunities available to them and gain the skills to enable them to participate fully in further education, training or employment. In recognition of this, the law under Section 444 of the Education Act 1996 makes it an offence for a parent or carer to fail to secure the regular attendance of their child at a school (or alternative education provision) at which the child is a registered pupil, without good reason or the agreement of the school.

In accordance with DfE Guidance on working together to improve school attendance (2022) it is recognised that successfully addressing the causes of absence and removing barriers to attendance, at home, in school or more broadly requires schools and local partners to work collaboratively with, not against families. Parents and children should also be supported by their school to identify and address barriers to regular attendance, through a range of intervention strategies. Where all other avenues have been exhausted and support is not working or not being engaged with, action can be taken to enforce attendance through statutory intervention or prosecution to protect the pupil's right to an education.

Truancy Penalty Notices are an alternative to the prosecution of parents for failing to ensure that their child of compulsory school age attends the school where they are registered or at a place where alternative educational provision is provided. The purpose is to offer swift intervention for cases of unauthorised absence before the problem becomes too entrenched.

An offence occurs if a parent/carer fails to secure a child's regular attendance at school, or alternative provision, at which they are a registered pupil and that absence is not authorised by the school, or alternative provision. In addition, a Penalty Notice can be used to help ensure parents fulfil their responsibilities to ensure their child is not out in a public place without reasonable justification during the first five days of every suspension from school.

The Isle of Wight Local Authority administers the issuing of all Truancy Penalty Notices. The Code of Conduct is written to ensure consistent application in the issuing of Truancy Penalty Notices. Truancy Penalty Notices will be used as a means to challenge parents to meet their legal responsibilities and where there is a reasonable expectation that their use will secure improved school attendance.

The Education and Inclusion Service will act upon requests to issue Truancy Penalty Notices from schools, academies, or alternative education providers and Police, provided that;

- a) All relevant information is supplied in the specified manner;
- b) The circumstances of the pupil's absence meet the requirements of this Code of Conduct and;
- c) The issuing of a Truancy Penalty Notice does not conflict with other interventions strategies in place or other enforcement sanctions already in process.

Legal Framework

Section 444 of the Education Act 1996 (as inserted by section 23 of the Anti-Social Behaviour Act 2003) empowers designated Local Authority (LA) officers, head teachers (as well as deputy and assistant head teachers authorised by them) and the Police to issue Truancy Penalty Notices in cases of unauthorised absence from school.

- The Education (Truancy Penalty Notices) (England) Regulations 2007.
- The Education and Inspections Act 2006.
- The issuing of Truancy Penalty Notices must conform to all requirements of the Human Rights Act 1998 and the Equality Act 2010.
- Section 444 of the Education Act 1996 makes it an offence if a parent fails to secure their child's regular attendance at school at which they are registered if that absence is not authorised by the school. Truancy Penalty Notices supplement the existing sanctions currently available under s444 Education Act 1996 or s36 Children Act 1989 to enforce attendance at school where appropriate.

Within the Isle of Wight Local Authority, it has been agreed that all Truancy Penalty Notice applications will be issued via the Education and Inclusion Service. They may be issued for children at maintained schools, academies, free school and alternative provision providers on the Isle of Wight.

Definition of a Parent

The education-related provisions of the Anti-Social Behaviour Act 2003 apply to all parents who fall within the definition set out in Section 576 of the Education Act 1996. This defines 'parent' as:

- 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.

Circumstances where a Truancy Penalty Notice may be issued.

- A Truancy Penalty Notice can be issued only in cases of unauthorised absence, or;
- The presence of a suspended child in a public place at any time during school hours in the first five days of suspension.

a) Leave of Absence in term-time resulting in unauthorised absence (*Truancy Penalty Notice Warning not required*)

A Penalty Notice may be issued when:

- Parents have not sought permission from the Head Teacher before taking their child out of school for a holiday in term time.
- The Head Teacher has refused the request, but the absence occurs anyway, or
- A pupil has not returned to school by the agreed date with no satisfactory explanation.
- And there have been 10 sessions of unauthorised absence in a 12-school week period.

Under the Education (Truancy Penalty Notices) (England) Regulations 2007 (Amended 2012), Headteachers can only grant leave under exceptional circumstances. It is for Headteachers to determine whether or not such a request is exceptional and to state the number of days granted. Each request can only be judged on a case-by-case basis, but it is usual that Headteachers will be sparing in their use of this discretion.

Headteachers should only apply the above guidance and follow with a warning letter if they feel obliged to categorise as unauthorised any holiday absence. The Education and Inclusion Service may serve a Truancy Penalty Notice without any further recourse to assessment or casework with the pupil/family.

b) Pupil who has persistent unauthorised absences/lateness - not consecutive (*Truancy Penalty Notice Warning required*)

All unauthorised absence should be addressed by the school with the parent. Schools should request a meeting with parents where there are concerns over attendance and where the absences are not consecutive or there are 'broken weeks.'

Threshold for Truancy Penalty Notice warning (Broken Absences)

- There is unauthorised persistent absence. "Persistent" means at least 10 sessions (one session = $\frac{1}{2}$ day) of unauthorised absence over a period of 12 school weeks, excluding school holidays. These absences do not need to be consecutive.
- Persistent late arrival at school, i.e., after the register has closed. "Persistent" means at least 10 sessions of unauthorised late arrival over a period of 12 school weeks, excluding school holidays. These late episodes do not need to be consecutive but consistently recorded in line with the school's policy for registering late arrival at school.

As part of this process the parent(s) will first be issued with a 15-day warning notice. The notice will clearly advise that if further unauthorised absence / lateness occurs, a Truancy Penalty Notice may be issued. This is to allow the parents a further period to address their child's irregular attendance by working with the school or other agencies. It is part of a scaled approach and affords the parents an opportunity to avoid receiving a Truancy Penalty Notice. If there are further unauthorised absences / lateness following the 15-day warning notice and after due consideration of the facts of the case, the school may refer for a Truancy Penalty Notice to be issued.

c) Suspended Pupils

The parent of the suspended pupil must ensure that the pupil is not present in a public place at any time during school hours on a day that they are suspended.

If the suspended pupil is present in a public place at any time during school hours on a school day specified above the parent commits an offence under section 103 of the Education and Inspections Act 2006 and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

In such cases the school should provide:

- A copy of the suspension letter sent to parent(s) pursuant to s.104 of the Education and Inspections Act 2006 warning them to ensure that the child is not permitted to be present in a public place in the first five days of suspension.
- Robust and reliable evidence in the form of a witness statement, stating how the child is known to the witness, where the child was seen including the date and time will be required. (Please note if the case is contested the witness may be required to give evidence in court).

d) Other Conditions

- There will be a maximum of 2 Truancy Penalty Notices issued to a parent for unauthorised absence within a rolling 12-month period.
- In cases where there is more than one pupil in a family with unauthorised absences, Truancy Penalty Notices may be issued for more than one child.
- Truancy Penalty Notices will be issued to all parents identified within the referral under the Section 576 Education Act 1996 - Definition of a Parent. In such circumstances, separate notices will be issued to each person.
- The Education and Inclusion Service on assessment of the Truancy Penalty Notice referral from a school retain the right to not process the request but determine an alternative cause of action e.g.
 - In cases of persistent unauthorised absence further case work and intervention is required to support the family to improve the attendance of the child;
 - Previous Truancy Penalty Notices issued have not resulted in sustained attendance improvement therefore an escalation in enforcement procedures is required;
 - Repeated breaches of the school policies and procedures;
 - Consecutive days absence is in excess of 20 sessions (10 days)

Administration of the Truancy Penalty Notice Scheme

To avoid duplication of Truancy Penalty Notices and to ensure consistency, cost effectiveness and equality, the Isle of Wight Local Authority will be solely responsible for issuing Truancy Penalty Notices on the Isle of Wight. The Education and Inclusion Service will process all requests from schools (including Academies and Free schools).

The Local Authority will not levy a charge to any schools or academies for this function.

No more than 2 Penalty Notices, per child, may be issued to the same parent in a 12-month period. Alternative action may need to be considered if school attendance offences re-occur, in the light of advice from Legal Services.

Referrals will be processed provided that:

- All relevant information is supplied in the specified manner to the Local Authority, in accordance with the Truancy Penalty Notice referral form;
- The requirements of this Code of Conduct are met; and
- The issue of a Truancy Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already in process.

Truancy Penalty Notices shall be issued in a prescribed manner and revenue from such notices shall be collected through the current Isle of Wight Council scheme allowing for various methods of payment.

The Inclusion Manager and administrative staff will be able to track payments made enabling a swift response in bringing a prosecution under Section 444(1) and 444 (1A) of the Education Act 1996 when necessary. There is no mechanism within the legislation or within this Code for the collection of non-payment, neither is there an opportunity to pay in instalments and there is no right of appeal to the notice. Non-payment of a Truancy Penalty Notice may result in a prosecution of that person for the offence of failing to ensure their child's regular attendance at school.

There are exceptions when a notice may be withdrawn:

- When it has been issued outside of the terms of the Code of Conduct; or where no offence has been committed;
- When it is issued to the wrong person;
- When it contains material errors*;
- When after the expiry of 28 days the Truancy Penalty Notice remains unpaid, and the Local Authority has not started legal proceedings or opts not to proceed with a prosecution under Education Act 1996 Section 444(1) or 444 (1A);
- If a parent can prove it was delivered to the wrong address*.

**Please note in the case of a material or wrong address error the Truancy Penalty Notice may be reissued with the appropriate corrections made.*

Payment of Truancy Penalty Notices

- Arrangements for payment will be detailed on the Truancy Penalty Notice;
- Payment of a Truancy Penalty Notice discharges the parent's or carer's liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Truancy Penalty Notice;
- Payment of a Truancy Penalty Notice within 21 days is £60 and payment after this time but within 28 days is £120; and
- The Local Authority retains any revenue from Truancy Penalty Notices to cover enforcement costs (collection or prosecuting in the event of non-payment).