

# **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 2018**

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## 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

#### Rationale

Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities. In recognition of this, the law under Section 444 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.

Truancy Penalty Notices (*also known as Fixed 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.

The Supreme Court judgement on the *Isle of Wight v Platt* case on the 6th April 2017 has brought clarity to the issue of what regular attendance means and the use of Truancy Penalty Notices. Lady Hale gave the conclusion that "regularly" means "in accordance with the rules prescribed by the school", she went on to say that there are many examples where a very minor or trivial breach of the law can lead to criminal liability. "For instance, it is an offence to steal a milk bottle, to drive at 31 miles per hour where the limit is 30. The answer in such cases is a sensible prosecution policy. In some cases, of which this is one, this can involve the use of fixed penalty notices, which recognise that a person should not have behaved in this way but spare them a criminal conviction".

Parents and children should also be supported by their school to overcome barriers to regular attendance, through a range of intervention strategies.

The Isle of Wight Local Authority administers the issuing of all Truancy Penalty Notices where if parents fail to follow school policies and procedures, advice given by the school or where cooperation is absent or insufficient to bring about the necessary improvement. They will also be used as a means to support and challenge parents to meet their legal responsibilities and where there is a reasonable expectation that their use will secure improved school attendance.

The Code of Conduct is written to ensure consistent application in the issuing service of Truancy Penalty Notices.

## 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.**

## 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 only be issued in cases of unauthorised absence.
- The presence of an excluded child in a public place at any time during school hours in the first five days of exclusion.

## Leave of Absence in term-time / consecutive day's unauthorised absence (No Truancy Penalty Notice Warning)

- Where the unauthorised absence of a minimum of 10 sessions occurs on consecutive days or is due to an unauthorised holiday.
- If a second leave of absence is taken during term-time within any rolling 12 month period without the school's authorisation and there are unauthorised absences of at least 6 sessions (3 school days) within the 12 weeks preceding the Penalty notice referral.
- Where the school has agreed to a specific number of sessions of leave during term-time due to exceptional circumstances, and any additional sessions of unauthorised leave have been taken outside of the agreed 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.

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

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 (1 session = ½ 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 schools policy for registering late arrival at school.

- Persistent Truancy (Off school site) - In cases where a parent is contacted on more than one occasion due to their child being seen or picked up for truanting off site, the Education and Inclusion Service may issue a Truancy Penalty Notice without any further recourse to assessment or casework with the pupil/family.

As part of this process the parent(s) will first be issued with a 15 day warning notice (*Appendix A*). The notice will be issued by the school where the pupil is enrolled or, where the school has a Service Level Agreement with the Education & Inclusion Service a joint decision will be made as to who sends the 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.

***NB: Use of a Truancy Penalty Notice or formal warning of a Truancy Penalty Notice for unauthorised persistent absence / lateness will be restricted to one notice/ warning per parent of a pupil per academic year.***

### Excluded Pupils

The parent of the excluded pupil must ensure that the pupil is not present in a public place at any time during school hours on a day that he / she is excluded, up to and including the first 5 days or, where that exclusion is for a fixed period of 5 days or less, any of the days to which the exclusion relates.

If the excluded 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 exclusion 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 exclusion.
- 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).

## Other Conditions

- There will be a maximum of two 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.
- 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)
- The Education and Inclusion Service may as part of their intervention employ Truancy Penalty Notices as an early use deterrent to escalating patterns of unauthorised absence and as such will supplement rather than replace current statutory interventions available under the Education Act 1996.

NB: Under no circumstances will a Truancy Penalty Notice be issued in respect of a child in cases where a parent has received a previous conviction in respect of that child in the previous 6 months; where the parent is currently subject to existing legal proceedings regarding that child; or during the life of an Education Supervision Order or Parenting Order regarding that child.

## 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).

All requests will be considered in the context of the individual family concerned to ensure that their wider circumstances and the potential impact are taken into account. The Local Authority will not levy a charge to any schools or academies for this function.

Under the Isle of Wight's Code of Conduct, although a parent/carer may receive a Truancy Penalty Notice for each child/young person for whom they are responsible, no parent will be issued with more than two Truancy Penalty Notices per child/young person per 12 month rolling period. If there are further absences, meaning that this limit is exceeded, then the parent/carer is liable for prosecution.

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 (*Appendix B*);
- 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 Education and 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 will result in a prosecution of that person.

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 re-issued with the appropriate corrections made.*



## Payment of Truancy Penalty Notices

- Arrangements for payment will be detailed on the Truancy Penalty Notice; (*Appendix C*);
- 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).

## APPENDIX A – School Attendance Warning Notice template letter

### School or Education & Inclusion Service Letterhead

ADDRESSEE ONLY  
 Parent/carer name  
 Address 1  
 Address 2  
 Address 3  
 Postcode

Pupil name:  
 DOB:  
 School:  
 Date of notice issued:

### SCHOOL ATTENDANCE WARNING NOTICE Persistent unauthorised absence / lateness

Dear [parent/carer name]

It is noted that you are the parent of, or have day to day care of [pupil name], a child who is a registered pupil at this school and it not in regular attendance as required by the Education Act 1996, Section 7.

[pupil name] has been recorded as having [number] school sessions (equivalent to [number] school days) lost due to unauthorised absences between the dates of [insert date] and [insert date].

If a child of compulsory age who is a registered pupil at a school fails to attend regularly at the school his/her parent is guilty of an offence under section 444 (1) of the Education Act 1996.

Your child, who is a registered pupil of compulsory school age, has had 10 or more absences within 12 weeks which are unauthorised by the school. You have therefore rendered yourself liable to a Truancy Penalty warning under the provisions of the Education (Penalty Notices) (England) Regulations 2004.

**This warning is issued in the hope that it will not be necessary to take further steps to enforce the law.**

Should there be no further improvement in your child's attendance, you may be issued with a Truancy Penalty Notice.

Note: The payment of the Truancy Penalty Notice is £60 if paid within 21 days, increasing to £120 to be paid within 28 days. Failure to pay this fine may result in prosecution for the offence stated and subject to a fine of up to £1000.

**Your child's attendance will be closely monitored for a period of not less than 15 school days and any further unauthorised absences will be reported to the Education and Inclusion Service.**

If you require details about this notice, please contact the Headteacher/Education & Inclusion Service [delete as appropriate]

## School Attendance – Legal information for Parents and Carers

### The Education Act 1996

**By law** all children of compulsory school age must receive an appropriate full time education suitable to their age, ability, aptitude or any special educational needs they may have. The school starting date is the beginning of the term after which the child reaches their 5<sup>th</sup> birthday. The school leaving date is the last Friday in June of the academic year in which the child reaches their 16<sup>th</sup> birthday.

**Parents / Carers** are responsible for

- Registering their child at school or making other arrangements which provide an efficient education
- Ensuring their child attends regularly at the school at which they are registered
- Applying for a planned absence of leave from school
- Notifying the school when their child is absent unexpectedly

**School** must either

- Give permission for your child to be absent from school and mark the absence as authorised, or;
- Mark the absence as unauthorised

**The Law** says that parents/carers whose children are absent from school without good reason are committing an offence.

### Definition of a Parent

Section 576 of the Education Act 1996 states that a 'parent', in relation to a child or young person, includes any person who is not a parent (from which can be inferred 'biological parent') but who has parental responsibility, or who has care of the child.

For the purposes of education law, the department considers a 'parent' to include:

- all biological parents, whether they are married or not
- any person who, although not a biological parent, has parental responsibility for a child or young person - this could be an adoptive parent, a step-parent, guardian or other relative
- any person who, although not a biological parent and does not have parental responsibility, has care of a child or young person

A person typically has care of a child or young person if they are the person with whom the child lives, either full or part time and who looks after the child, irrespective of what their biological or legal relationship is with the child.

## APPENDIX B – Truancy Penalty Notice Referral Form

## Truancy Penalty Notice (TPN) Referral Form



REFERRAL DETAILS			
School/Agency Name:			
Name of Referrer:		Position:	
Signature:		Date:	
PUPIL DETAILS			
Surname:		First Name:	
Date of Birth:		Year Group:	
Pupil Address:			
Postcode:			
PARENT/CARER DETAILS: Please list all parents/carers you wish a Truancy Penalty Notice to be issued to (See definition of a parent overleaf in accordance with Section 576 of Education Act 1996)			
Parent/Carer 1		Parent/Carer 2	
Title:		Title:	
First Name:		First Name:	
Surname:		Surname:	
Address (if different to pupil's):			Address (if different to pupil's):
Postcode:		Postcode:	
REASON FOR PENALTY NOTICE REFERRAL – please tick, as appropriate below:			
<input type="checkbox"/>	Unauthorised holiday	Specific reasons for believe a TPN is appropriate:	
<input type="checkbox"/>	Truancy		
<input type="checkbox"/>	Both of the above		
<input type="checkbox"/>	In a public place whilst on an exclusion		
Period of absence for which a penalty notice is requested:		From:	To:
Have you requested a previous Truancy Penalty Notice to be issued for this pupil in the last 12 months?			Yes / No
I certify that during the period indicated above, the school was open for ..... sessions during which time the named pupil above attended for ..... sessions.  ..... of the ..... sessions were <b>unauthorised</b> by the school. (School and E&I Referrals only).			

This referral should be completed in full and will not be accepted without the additional supporting paperwork required and listed below:

- School registration certificate
- Copies of school letters to parents
- Any other relevant documents, including an application for leave of absence (if appropriate)

Please ensure the details provided are correct as inaccuracies can result in the issued TPN being withdrawn.

Please upload the completed form and supporting paperwork to Sharepoint using the Education & Inclusion 'Truancy and Penalty Notice referrals' folder. Please email [ewsreferrals@iow.gov.uk](mailto:ewsreferrals@iow.gov.uk) to inform us you have uploaded a document.

### Definition of Parent

Section 576 of the Education Act 1996 states that a 'parent', in relation to a child or young person, includes any person who is not a parent (from which can be inferred 'biological parent') but who has parental responsibility, or who has care of the child.

For the purposes of education law, the department considers a 'parent' to include:

- all biological parents, whether they are married or not
- any person who, although not a biological parent, has parental responsibility for a child or young person - this could be an adoptive parent, a step-parent, guardian or other relative
- any person who, although not a biological parent and does not have parental responsibility, has care of a child or young person

A person typically has care of a child or young person if they are the person with whom the child lives, either full or part time and who looks after the child, irrespective of what their biological or legal relationship is with the child.

## APPENDIX C – Truancy Penalty Notice example



## ADDRESSEE ONLY

«Title» «Parent\_Forname»  
 «Parent\_Surname»  
 «Address\_Line\_1»  
 «Address\_Line\_2»  
 «Address\_Line\_3»  
 «Postcode»

Invoice number: «Invoice\_Number»

Customer number: «Customer\_Number»

## TRUANCY PENALTY NOTICE

Notice issued under Section 444 of the Education Act 1996.

*Please read the notes overleaf carefully*

If a child who is of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his/her parent is guilty of an offence under Section 444 of the Education Act 1996.

You are a parent of «Child\_First\_Name» «Child\_Surname» («Child\_DOB») of «Child\_Address» (called in the notice “the pupil”) who is a registered pupil at «Child\_School».

**BETWEEN** «Date\_of\_offence\_start» and «Date\_of\_Offence\_End» the pupil failed to attend regularly at the school.

This Notice gives you the opportunity to pay a penalty fine instead of being prosecuted for the offence given above. The amount of the penalty is **£60 or £120 in accordance with the table below**. If you pay this penalty within the time limits set out below, no further action will be taken against you in connection with the offence set out in this Notice.

The amount of penalty is as follows:-

When Paid	Date payment must be received by	Amount Due
If paid within 21 days	Thursday, «Payment_Date_60»	£60
If paid between 21 and 28 days	Thursday, «Payment_Date_120»	£120

**LATE OR PART-PAYMENT WILL NOT BE ACCEPTED AND NO REMINDERS WILL BE SENT.**

If payment is not received by the due date you may be prosecuted for the offence and subject to a fine of up to £1,000.

This Notice is issued by Karen Potheary, Inclusion Manager - Education & Inclusion Service, Directorate of Children’s Services, Isle of Wight Council, Thompson House, Sandy Lane, Newport, Isle of Wight, PO30 3NA.

Date of issue: «Date\_of\_TPN\_Issue»

.....  
 Inclusion Manager, Education & Inclusion Service

## NOTES

**PLEASE DO NOT SEND ANY PAYMENTS DIRECTLY TO  
THE EDUCATION & INCLUSION SERVICE OR TO COUNTY HALL**

### PAYMENT METHODS

**N.B. To make payment, you will need to refer to your invoice number,  
which is quoted on the front of this Notice.**

#### **Payment online:**

[www.iwight.com/online](http://www.iwight.com/online)

You can make payments online 24 hours a day 7 days a week. You will need the invoice number quoted on the notice and debit/credit card details to hand

#### **BY CALLING OUR OFFICE:** ☎

Please call (01983) 823931 and have your invoice number and debit/credit card details to hand

#### **BACS/Telephone/Internet banking:**

Contact your bank quoting bank sort code

30-80-12 and bank number 14867260. You will need to tell your bank the amount you wish to pay and your invoice number.

#### ☎ **Automated Telephone Payments**

You can make payment 24 hours a day 7 days a week.

Please call 0845 045 0076 and select invoice payments.

You will need the invoice number quoted above and debit/credit card details to hand.

### **1. Contact Details**

If you have any queries about this Notice, please contact the Education & Inclusion Service, Directorate of Children's Services, Isle of Wight Council, Thompson House, Sandy Lane, Newport, Isle of Wight PO30 3NA. ☎ (01983) 823151

### **2. Code of Conduct**

This Notice is issued with a local Code of Conduct drawn up by the Isle of Wight Local Authority (LA) and this can be viewed on our website <http://www.iwight.com/council/OtherServices/Attendance-at-School/Education-Fixed-Penalty-Notices>. Any questions or correspondence about the Code should be addressed to the Education & Inclusion Service, Directorate of Children's Services, Isle of Wight Council, Thompson House, Sandy Lane, Newport, Isle of Wight PO30 3NA. ☎ (01983) 823151

### **3. Withdrawal**

This Notice may be withdrawn by the Education & Inclusion Service if it is shown that it should not have been issued to you or has not been issued to you in accordance with the local Code of Conduct. If you believe that the Notice was wrongly issued you must contact the LA to ask for it to be withdrawn as soon as possible, stating why you believe the Notice to have been incorrectly issued. The LA will consider your request and contact you to let you know whether the Notice is withdrawn. If the Notice is not withdrawn and you do not pay, you will be liable to prosecution for the offence that your child has failed to attend school regularly.

### **4. Prosecution**

If you do not pay the Penalty Notice and the Notice is not withdrawn, you will be prosecuted for the offence of failing to ensure your child's regular attendance at school. You will receive a separate Summons for this which will give you the time and date of the Court hearing. You will be able to defend yourself and would be advised to seek legal representation.