



Penalty Notices

Process Requirements for Schools

August 2024

Education Welfare Service



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Definition of "parent"

'Parent' as set out in Section 576 of the Education Act 1996, defines parent to include:

- Natural parents, whether they are married or not;
- Any person or body who has parental responsibility for a child (as defined by the Children Act 1989)
- Any person who, although not a natural parent, has care of a child.
 Having care of a child means a person with whom a child lives and who looks after a child, irrespective of what their relationship is with said child.

What can a Penalty Notice be issued for?

A penalty notice can be used for unauthorised leave of absence (holiday) during term time, for unauthorised absence and/or lateness or where a pupil subject to an exclusion witnessed in a public place during school hours within the first five days.

Penalty Notices are used as an early intervention tool. Cornwall Council do not support the use of Penalty Notices in cases where the absence is deemed to be **entrenched**. It is unlikely that absence of this type will be significantly impacted by the issue of a penalty notice. We therefore encourage schools to consider following full prosecution proceedings as an alternative action where the absence is deemed to be entrenched. The only scenarios in which we may consider issuing a penalty notice for entrenched absence is that of Year 11 pupils, where there is insufficient time to complete a full prosecution. If you would like to discuss a case prior to submitting a Penalty Notice Request Form, please contact your local authority Attendance Officer.

Schools must now consider the use of a penalty notice where there are 10 sessions (usually equivalent to 5 school days) of unauthorised absence within a rolling 10 school week period. (a school week is any week in which a school meets at least once).

The unauthorised absence sessions can be consecutive (e.g., 10 sessions of holiday in one week) or not (e.g., 6 sessions of unauthorised absence in 1 week and 1 per week for the next 4 weeks).

A Penalty Notice can be requested for a combination of unauthorised leave and unauthorised absence and/or lateness. In these cases, schools should complete the request form which covers the majority of the absence.

Example 1: 8 sessions of unauthorised leave plus 2 sessions unauthorised absence or lateness (within a 10-week period) = use the 'Unauthorised Leave' Request Form.

Example 2: 8 sessions of unauthorised absence or lateness plus 2 sessions of unauthorised leave (within a 10-week period) = use the 'Unauthorised Absence and Lateness' Request Form.

Key considerations and "exceptional circumstances"

Key considerations: Schools should have given due consideration to the '*Key considerations*' as set out in 6.1 of 'Penalty Notice Code of Conduct' before deciding to issue a penalty notice.

It should be made clear to parents that a leave of absence will only be granted during term time for **exceptional circumstances**.

What can be considered as "exceptional circumstances"?

It is at the Headteacher's discretion which circumstances are deemed to be "exceptional".

The fundamental principles for defining "exceptional" are that a situation is rare, significant, unavoidable, and short, with 'unavoidable' meaning an event that could not reasonably be scheduled outside of term time.

When deciding whether a leave of absence should be considered exceptional, it is important that Headteachers fully investigate the circumstances and reasons provided by parents. Consideration must always be given to the Penalty Notice not being paid and the matter progressing to prosecution. If a Headteacher has not thoroughly explored the reasons for term time absence and new information comes to light during the court hearing, it has the potential to result in an unsuccessful prosecution.

Headteachers may consider asking parent(s) to provide evidence of the circumstances which are being claimed as being exceptional.

What evidence is required and why?

In order to issue a Penalty Notice, we must be able to evidence that the parent(s) in question acted in the knowledge that they were committing an offence and are, therefore, liable for the issue of a Penalty Notice.

The following evidence is required when submitting a penalty notice for unauthorised leave of absence (holiday) during term time <u>AND</u> unauthorised absence/lateness.

- Complete personal details for the pupil/pupils in question, including;
 - Date of birth
 - Parental names and addresses (for all parents for whom the school are requesting Penalty Notices, including their parental responsibility status
 - Whether they have each signed up to any electronic communication scheme (e.g., email or other) used by the school.
- Where the pupil is known to other services, records of the communications with, and the responses of, said services, (see Section 4.3 of the 'Penalty Notice Code of Conduct');
- Whether a child has lived in another local authority in the previous 3 years (post August 19th, 2024) and the name of that local authority.
- Method and date of relevant communications e.g. (by post 1st/2nd class, email or by hand etc).

In the case of **unauthorised leave of absence (holiday)** the following are required in addition

- Whole school leave of absence warning letter or newsletter,
 - You must be able to demonstrate that parent(s) received a legal warning prior to the start of the requested leave of absence, which was issued no earlier than the term prior to that in which the absence was taken.
 - It must include Cornwall Council's standard legal warning (see appendix 1) complete and unaltered.
 - We would advise this is sent home (via 'satchel mail') on a termly basis as part of a letter/newsletter.
 - Whilst it is good practise to include a legal warning on school websites, this alone will not be considered as evidence of prior warning.

- Olif you do use electronic communication to send the letter/newsletter (such as email, Dojo, Schoolcomms or Parentmail), this can only be used as evidence of warning when the parent(s) in question have specifically consented to being communicated with in such a manner. This parental consent must have been received within the same academic year (with the exception of the first half of the Autumn term, when consent from the previous academic year will be accepted).
- A copy of the leave of absence request completed by the parent.
- School's written refusal to the parent(s).
 - It is essential that the leave of absence refusal letter informs parents that the leave will be unauthorised and includes the standard warning paragraph (complete and unchanged).
 - Written refusal to the application must be received by any parent it would be your intention to issue a penalty notice to.
 - o If parents live at the same address, the letter must be addressed to both parents. (e.g., Dear Mr and Mrs Smith).
 - If parents live at different addresses, a refusal letter must be sent to each parent at each address.
 - Please note: we will only accept evidence of leave refusal sent by email if the leave of absence request was submitted to the school in this way. Please be mindful that in such cases, you can only evidence that you have warned the parent whose email address has been used. This risks not warning other adults within the home who could fall under the definition of 'parent'. As such, you would need to email each parent using their individual email address (even if the parents were living together).
 - Please see further information below on 'Postage timeframes'

Registration certificate(s)

- This will need to show a minimum of 10 unauthorised absences which fall within a 10-week rolling period (a school week is any week in which a school meets at least once).
- The registration certificate must show that the child has returned to school.
- Only unauthorised absences can be counted (those coded as G, O or U)
- Registration certificates must be sent as a Word or PDF file and not as a linked webpage.

What should schools do where no 'Leave of Absence' request has been made?

If parent(s) have made no leave of absence request and the leave was taken without prior discussion/knowledge of the school (and where a parent has called to report their child as too unwell to attend school and the pupil is later found to have been absent due to a holiday during term time), school should provide the communications between the school and parent/s, clearly showing that parents have been made aware of the school's intention to issue a penalty notice as a result of the unauthorised absences that have been recorded.

Where there are concerns that a child may in fact be on holiday and not absent due to illness, schools may wish to consider making a home visit. Schools could also consider liaising with the schools at which any siblings attend.

Postage timeframes

In order for a warning contained in a postal document to be considered, (particularly when sending a letter to refuse the leave request) schools must demonstrate that they have allowed for the following postage timeframes:

First Class – two working days clearance prior to the leave (holiday) start. For example, if the child is due to be absent from Monday, you must consider that the holiday may begin as soon as Friday afternoon. Given that post is not always delivered until well into the afternoon, the refusal letter must have been posted first class no later than the previous Tuesday, to allow for delivery no later than Thursday.

Second Class – three working days clearance prior to the leave (holiday) start. For example, if the child is due to be absent from Monday, the refusal letter must have been posted second class no later than the previous Monday, to allow for delivery no later than Thursday.

In the case of **unauthorised absence or unauthorised lateness** the following are required in addition to the information needed for

 A dated chronology - the school must provide a full dated chronology of all actions taken to engage and support the parent and pupil to improve attendance. Please see section 6.2 (iv) of the Penalty Notice Code of Conduct for a guidance list of expected support. If a full dated chronology

- is not provided, the Penalty Notice request will not be accepted. A template is available on the Services for Schools portal.
- Notice to Improve letter. Please see section 7 of the 'Penalty Notice Code of Conduct for further guidance'.
- Registration certificate(s)
 - This will need to show a minimum of 10 unauthorised absences which fall within a 10-week rolling period (a school week is any week in which a school meets at least once).
 - The registration certificate must show that the child has returned to school.
 - Only unauthorised absences can be counted (those coded as G, O or U)
 - Registration certificates must be sent as a Word or PDF file and not as a linked webpage.
- Any other relevant information including records of meetings in relation to the unauthorised absence;
- Confirmation of home visit and details of the outcome of the home visit
- A History of Change report generated from SIMS or other equivalent attendance monitoring system;
- Registration certificate for the previous academic year (if pupil was on roll at the same school).
- Within letters, meeting or home visit notes or minutes, it must be evident that the parent has been specifically warned that they may be issued with a Penalty Notice. Letters must include the standard legal warning paragraph.

In the case of a pupil subject to an exclusion witnessed in a public place during school hours within the first five days:

- An up-to-date registration certificate covering the period of exclusion.
- Copy of written contact in relation to the exclusion, sent to and received by the parent/s before the pupil was witnessed in a public place. This could be in addition and prior to the formal exclusion letter, if circumstances prevented said letter being provided to the parent at the very start of the exclusion. N.B. To be admissible as evidence, the warning of not being in public place during school hours within the first five days of an exclusion, must be made in writing and received by the parent prior to any perceived offence.
- **Formal exclusion letter** sent to parent (including the warning that the pupil may not be present in a public place during school hours of the first five days of exclusion). Exclusion templates containing this warning are

- available in the Exclusion from School section of the Education Welfare Service area of the Services for Schools portal.
- Witness Statement completed by the individual who witnessed the pupil being present in a public place during school hours, within the first five days of the exclusion. It is strongly advised that this is made as quickly after the pupil is witnessed as possible and filed for later use, in the event that the Headteacher decides to exercise their right to request a Penalty Notice. A template is available in the Penalty Notice Section of the Services for Schools portal.
- **Headteacher's Witness Statement** covering all elements of this list. A template is available in the Penalty Notice section of the Services for Schools portal.

For either penalty notice, should the penalty notice not be paid, the matter will proceed to court and the parent will be prosecuted, <u>not for failing to pay</u> the fine, but for failing to ensure regular attendance.

If found guilty under Section 444(1), the parent will receive a criminal conviction and could face fines of up to £1,000. If found guilty under Section 444(1A), the parent will have a criminal conviction and could face fines of up to £2,500 and up to three months' imprisonment.

It is essential therefore that penalty notice submissions contain all details and documentation as set out above. We may not be able to process the penalty notice if details and / or documentation is missing or incorrect. Please ensure that you have correctly completed and submitted ALL the necessary details and documents.

How do I submit a Penalty Notice?

The designated member of staff must complete the penalty notice online submission form. This form is found on the *Services4Schools* website. If you do not already have an account, you will need to set one up. This can be done using the following link Cornwall Services for Schools.

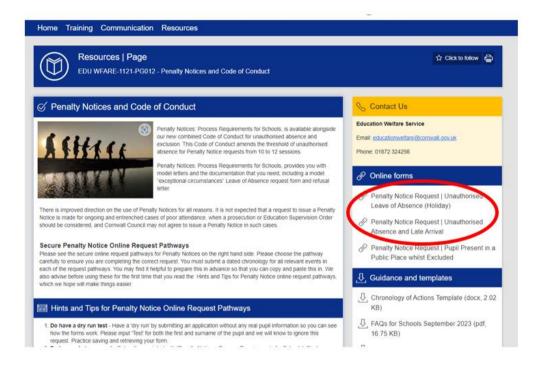
Once you have an account and you are logged in, you will need to type 'Penalty notices' into the search bar as shown here;



The choose the option as circled below:



You can then choose either the penalty notice request for 'Unauthorised leave of absence (holiday)' or the penalty notice request for 'Unauthorised absence and late arrival'. This is shown circled in red below;



The current Services4Schools penalty notice referral portal does not allow for submissions to be saved part way through completion. As such, ensure that you have available to you all the information and items of evidence required at hand before you start the submission.

If you have not previously submitted a penalty notice request, you can have a 'dummy run' using the portal, though please do not press the 'submit' button at the end of the process if you are just exploring the portal.

Headteachers are reminded that Cornwall Council is the Issuing Officer only and processes Penalty Notices on behalf of schools. As such, the Headteacher remains responsible for their decision to request a Penalty Notice and its issue, on the basis that they have not found the circumstances of the absence to be exceptional.

Where Cornwall Council Officers are contacted by a parent in regard to the issue of a Penalty Notice, we will always advise that the decision not to authorise an absence, and to then request a Penalty Notice if the absence is taken, is that of the Headteacher and will, therefore, direct the parent to discuss the matter with the school.

Suggestion: Anecdotal evidence indicates that where a Headteacher / school staff discuss the penalty notice in person with parents, either via a telephone conversation or a meeting in school, fewer challenges are made. **This results in fewer cases needing to progress to prosecution.**

When and why might a Penalty Notice request be refused?

Please be aware that when processing a Penalty Notice request, if there is evidence that there is a factor that may not have been fully explored prior to the Penalty Notice request being made, Cornwall Council reserves the right to refuse issue.

Cornwall Council may also refuse to issue a Penalty Notice for the following reasons (although these are not exhaustive):

- It would be the third penalty notice within a three-year period, indicating
 that this type of action is not bringing about a change in behaviour
 (repeated unauthorised term time leave of absence, for example). In
 such cases, Cornwall Council may recommend instigating a prosecution
 under Section 444(1) or 444(1A) of the Education Act 1996, as an
 alternative to issuing a Penalty Notice.
- The complex or long-standing nature of a particular case.
- Where the evidence relating to the issue of a Penalty Notice is not considered by Cornwall Council to be in the public interest.

Under the new penalty notice framework, schools must now consider a penalty notice where the threshold is met. The decision to request a penalty notice must be taken in a consistent fashion.

If Cornwall Council becomes aware that a school is not implementing the use of Penalty Notices in a consistent fashion, Cornwall Council has a duty to fully investigate this with the Headteacher concerned, which may include requesting specific attendance data. In addition, schools should be aware that if it is found that Penalty Notices have not been used consistently, the school may be liable to a legal challenge from parents.

Penalty Notice Request Time Limits

Unauthorised leave of absence (holiday); the penalty notice should be requested as quickly as possible from the first day of the pupil's return following the absence. The penalty notice must be submitted within 15 school days of the child's return from the absence, or the penalty notice may not be processed.

Unauthorised absence/lateness: where a parent fails to engage with the offer of support during the Notice to Improve validity period and/or further unauthorised absences are recorded for the pupil which means the pupil fails to make sufficient improvement or has further unauthorised absences above the 'success criteria' that was set out by school in the 'Notice to Improve', a penalty notice can be issued. The penalty notice must be submitted within 15 school days of these circumstances, or the penalty notice may not be processed.

Being present in a public place within the first five days of an exclusion without reasonable justification: Within 15 school days starting from the pupil's first possible school day following the fixed term exclusion, up to and including five days, and, in the case of longer fixed term exclusions or permanent exclusion, from day six.

What further information might schools require?

We would strongly recommend that this document is read in conjunction with the 'Penalty Notices Code of Conduct' document. This can be found on the Services4Schools portal.

In addition, the following resources/documents can also be found in the 'Penalty Notices' area of Services4Schools:

- Code of Conduct for Education Related Penalty Notices
- Process requirements for Schools
- Whole School Warning Letter (Unauthorised Leave of Absence)
- Leave of Absence (Holiday) and Exceptional Circumstances request form
- Leave refusal letter
- Prosecution leaflet
- Notice to Improve template
- Chronology of Actions template
- Instructions to Chief Executive (Only where prosecution is following failure to pay penalty notice)

- School Attendance Certificate (prosecution only)
- Headteacher's witness statement (Unauthorised leave of absence and absences / lateness) (Only where prosecution is following failure to pay penalty notice)
- School caseholder witness statement (Only where prosecution is following failure to pay penalty notice)
- Headteacher's witness statement Exclusion PN (only where pupil seen in public place following exclusion)
- Witness statement observer Exclusion PN (only where pupil seen in public place following exclusion)

Penalty Notices – Frequently Asked Questions

1. What are the major changes to the penalty notice framework and when do they come into effect?

There is a new national threshold of 10 unauthorised sessions for any reason (equivalent to 5 school days) within a rolling 10 school week period for which a penalty notice must be considered. A penalty notice can be issued for any combination of unauthorised absences over a 10- week rolling period. They can be consecutive or non-consecutive and can span over two terms.

There is an increase in the penalty notice fine from £60 to £80 if paid in 21 days. If the fine is not paid by the first 21 days, it will rise to £160 if paid within 28 days of being issued.

If a 2nd penalty fine is issued to the same parent for the same child within a 3-year rolling period, the fine will automatically rise to £160 with no option to pay the lower rate of £80.

If a parent then commits a third offence in a 3-year rolling period, the local authority will need to consider options available to us to improve attendance. This will include a consideration to prosecute under section 444 of the Education Act 1996.

The current 'Penalty Notice Warning' letter used for unauthorised absence (not holiday) will be changed to a 'Notice to Improve' letter.

The new national threshold will begin from 19th August 2024. Therefore, parents previously issued with penalty notices will have a 'clean slate' in terms of the national limit of 2 penalty notices in a 3-year rolling period.

Parents who have booked holidays prior to 19th August 2024 for which an absence request form has not been completed or where they have already been informed the absence is unauthorised, will be subject to the new increased fine amount if they choose to take their child out of school.

2. What is the 'Notice to Improve' Letter

The 'Notice to Improve' letter replaces what was the 'Penalty Notice Warning' letter. It is an expectation that school will have issued the parent with a 'Notice to improve' letter where the threshold has been met (10 or more unauthorised sessions) for unauthorised absence / lateness. It is NOT required for the issuing of a penalty notice for unauthorised leave of absence (holiday).

We would recommend that schools read section 7 of the 'Penalty Notice Code of Conduct' for further guidance around the use of the 'Notice to Improve' letter. The Code of Conduct and Notice to Improve letter can both be found on the 'Guidance and Templates' area on the 'Penalty Notices and Code of Conduct' page on the Services4Schools website.

3. Do schools need to let Cornwall Council know if the parent has received a penalty notice for the child previously?

The new framework only considers those penalty notices issued after 19th August 2024 as counting towards the two penalty notice limit within a 3 year rolling period. Schools do not need to inform us if the parent has received a previous penalty notice for the same child as we will have this on our records and will send the penalty notice with the appropriate fine.

As there is now a national framework for the use of penalty notices, Cornwall Council will be carrying out cross-border checks with other local authorities (to check for previously issued penalty notices) if a child has moved into the county (post August 19th 2024) from another local authority.

Schools will be expected to inform Cornwall Council in those instances where a child has previously lived in another local authority and the name of the local authority to allow us to make these checks.

4. How quickly to schools need to submit penalty notices?

If requesting a penalty notice for unauthorised leave of absence (holiday); the penalty notice should be requested as quickly as possible from the first day of the pupil's return following the absence. The penalty notice must be submitted within 15 school days of the child's return from the absence or the penalty notice may not be processed.

If requesting a penalty notice for unauthorised absence / lateness; where a parent fails to engage with the offer of support during the Notice to Improve validity period and/or further unauthorised absences are recorded for the pupil which means the pupil fails to make sufficient improvement or has further unauthorised absences above the 'success criteria' that was set out by school in the 'Notice to Improve', a penalty notice can be issued. The penalty notice must

be submitted within 15 school days of these circumstances, or the penalty notice may not be processed.

If requesting a penalty notice for being present in a public place within the first five days of an exclusion without reasonable justification; Within 15 school days starting from the pupil's first possible school day following the fixed term exclusion, up to and including five days, and, in the case of longer fixed term exclusions or permanent exclusion, from day six.

5. How long will it take to issue a Penalty Notice?

Providing the request form is completed in full, all evidence is submitted at the time and it meets the criteria as outlined in the Penalty Notice Code of Conduct, we aim to issue a Penalty Notice within 15 working days. However, this may be longer should the request directly precede a school holiday, or at times of high demand. The school will be notified of issue by copy of the Penalty Notice. The school will not be notified if the Penalty Notice is paid, however, they will be informed if the Penalty Notice is not paid, by means of an email requesting that court documentation be completed by the Headteacher and returned to the Penalty Notice Officer.

6. What happens if there is a problem with a Penalty Notice request?

The Penalty Notice Officer will contact the referrer if clarification or additional evidence is required. The Penalty Notice Officer will set a timeframe for receipt of the required information. If it is not received by the designated date, Cornwall Council reserves the right to close the case without a Penalty Notice being issued.

7. What happens if a parent wants to appeal a Penalty Notice?

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

The only instances in which a Penalty Notice will be withdrawn by Cornwall Council are if;

 it is found that the evidence provided was inaccurate or additional information is provided by the parent after issue, which indicates the penalty notice should not have been issued;

- it was issued to the wrong person;
- it was issued outside of the Code of Conduct;
- it is found to contain material errors.

There is no route of appeal through Cornwall Council.

Following the issue of a Penalty Notice, should additional information come to the school's attention which could prove the case not to be in the public interest, the school must inform Cornwall Council, as the Issuing Officer, immediately.

Cornwall Council reserves the right to withdraw a Penalty Notice if it is found that a school has not disclosed information or evidence which undermines the credibility of the request.

8. Can payment of a Penalty Notice be made in instalments?

No. A Penalty Notice must be paid in one full payment. However, parents can pay either by card payment by phone (preferred method), or cheque or cash at Council Offices offering payment facilities. Payment information is sent with each Penalty Notice. Where multiple Penalty Notices have been issued to parents within one household, these do not need to be paid on the same day, therefore providing a 3-week window within which to stagger payments before they increase from £80 to £160 (in the case of a first offence).

9. What happens if the parent does not pay their Penalty Notice?

If the 28-day deadline passes without payment from the parent, the Penalty Notice Officer will inform the school. The Penalty Notice Officer will provide detailed instructions about which pieces of evidence are required, dependent on the specific case. This may include:

- An up-to-date Registration Certificate;
- An up-to-date History of Change Report;
- A Headteacher Witness Statement;
- A School Attendance Certificate covering the period of prosecution*;
- A School Case Holder Witness Statement (to be completed by whomever would attend court on behalf of the school, should the parent plead 'not guilty' and the matter proceed to trial);
- Instructions to Chief Executive.

Templates for the above documents are available in the Penalty Notice section in the Services for Schools portal.

*In the case of a Penalty Notice issued in relation to a child being present in a public place during school hours of an exclusion, this statement is not required at this stage, as it will already have been submitted as part of the request process.

10. Can a Penalty Notice be issued for unauthorised holiday if the parent didn't submit a Leave Request, so wasn't issued with a Leave Refusal letter?

Yes. Providing the school can evidence that the parent in question has been issued with the necessary warning (see Appendix 1) at least within the previous term.

Appendix 1: Standard Legal Warning Paragraph

If your child is absent from school without authorisation, you will be committing an offence under the Education Act 1996. We may submit a request to Cornwall Council for a Penalty Notice to be issued, in accordance with Sections 444A and 444B of the said Act. Penalty Notices are issued per liable parent, per child and each carry a fine of £80 if paid within 21 days or £160 if paid after this but within 28 days.

If your child is further absent from school without authorisation within any 3-year period, you will be committing a further offence under the Education Act 1996. We may submit a request to Cornwall Council for a Penalty Notice to be issued, in accordance with Sections 444A and 444B of the said Act. Penalty Notices for a second offence are issued per liable parent, per child and each carry a fine of £160, payable within 28 days.

Importantly, fines per parent will be capped to two fines within any three-year period. Once this limit has been reached, other action such as a parenting order or prosecution will be considered.

Failure to pay the Penalty Notice may also result in legal action. If you are prosecuted and attend court because your child has not been attending school, you could get a fine of up to £2,500. Cornwall Council may also apply for the costs incurred in taking the matter to Court, including legal costs.

Absence not authorised by the school may also result in a prosecution in the Magistrates' Court under Section 444(1) or Section 444(1A) of the Education Act 1996, leading to a fine of up to £2,500 and/or a custodial sentence. Again,

Cornwall Council may also apply for the costs incurred in taking the matter to Court, including legal costs.

Money raised from fines is only used by the local authority to cover the costs of administering the system, and to fund attendance support. Any extra money is returned to the government.

Document information

Contacts

Policy prepared by Ross Terris, Attendance Team Lead, Education Welfare Service

Alternative formats

If you would like this information in another format please contact: **Cornwall Council, County Hall, Treyew Road, Truro TR1 3AY**

Email: comments@cornwall.gov.uk Telephone: 0300 1234 100

www.cornwall.gov.uk

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