

DRAFT



NON-SCHOOL ATTENDANCE AND PENALTY NOTICES CODE OF CONDUCT

(With effect from 19th August 2024)

1. LEGAL FRAMEWORK

- 1.1. Section 23 of the Anti-Social Behaviour Act 2003 introduced new powers for designated Local Education Officers, Head teachers (and Deputy or Assistant Head teachers authorised by them) and the police to issue penalty notices for unauthorised absence from school.
- 1.2. The Education (Penalty Notices) (England) Regulations 2004 came into force on 27th February 2004. This was updated with, The Education (Penalty Notices) (England) Regulations 2007 and amendment in 2012, 2013 and 2024.
- 1.3. Penalty Notices issued for offences committed prior to August 2024 (academic year 2023/24) will be issued in accordance with the legislation and WCC Code of Conduct in place at that time. Penalty notices issued for offences committed starting after 19th August 2024, will be issued in accordance with the new legislation and WCC Code of Conduct.
- 1.4. Regular and punctual attendance at school is a legal requirement under Section 7 of the Education Act 1996.
- 1.5. Under Section 444 of the Education Act 1996, an offence occurs if a parent/carer fails to secure a child's regular attendance at school at which they are a registered pupil, and the absence is not authorised by the school and none of the statutory defences apply.
- 1.6. 'Working together to improve school attendance (2024)' includes the 'National Framework for Penalty Notices'¹, for school absence, is guidance from the Department for Education (DfE). This guidance is statutory and schools, trusts, governing bodies, and local authorities must have regard to it as part of their efforts to maintain high levels of school attendance².
- 1.7. Penalty notices must be issued in a manner which conforms to all requirements of the Human Rights Act 1998 and all relevant equal opportunities legislation.
- 1.8. Section 576 Education Act 1996 defines 'parent' as:
 - Any natural parent, whether married or not;
 - Any parent who, although 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.

¹ [Working together to improve school attendance](#)

²It is issued under: section 175(4) of the Education Act 2002 (all chapters), sections 19(4A) and 444B(3) of the Education Act 1996 (chapters 2, 4, 5 and 6), section 19(9) of the Anti-Social Behaviour Act 2003 (chapters 1-6), paragraph 7(b) of the Education (Independent School Standards) Regulations 2014 (chapters 1 and 2) and paragraph 3(a) of the Non-Maintained Special Schools (England) Regulations 2015 (chapters 1 and 2).

2. RATIONALE

- 2.1. Penalties must be applied consistently and fairly, and in accordance with the 'Working together to improve school attendance' guidance which includes the 'National Framework for Penalty Notices'³.
- 2.2. The County Council is responsible for developing the protocol within which all partners named in the Act will work.
- 2.3. Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities.
- 2.4. Penalty Notices supplement the existing sanctions currently available for this offence and offer an alternative to prosecution and provides a parent with an opportunity to discharge their liability for the offence.
- 2.5. Parents and pupils will continue to be supported by their school, by the Warwickshire Attendance Service and appropriate services to overcome apparent barriers to regular attendance, through a range of intervention strategies which includes the offer of Early Help. This is not applicable in cases of Leave of Absence.
- 2.6. If the national threshold has been met and support is appropriate but offers of support have not been engaged with by the parent or have not worked, a Notice to Improve should usually be sent to give parents a final chance to engage in support.
- 2.7. Penalty Notices and other sanctions will be used only where parental cooperation in this process is either absent or deemed insufficient to resolve the presenting issue.
- 2.8. Penalty notices are intended to prevent the need for court action and should only be used where it is deemed likely to change parental behaviour and support to secure regular attendance has been provided and has not worked or been engaged with, or would not have been appropriate in the circumstances of the offence (e.g. an unauthorised holiday in term time)
- 2.9. Penalty notices should be used as a deterrent to prevent patterns of unauthorised absence developing. They are to be used for the enforcement of attendance and not for use as a punishment for absence.
- 2.10. A penalty notice may be a suitable intervention in circumstances where the parent is judged capable of securing their child's regular attendance or whereabouts but is not willing to take responsibility for doing so.
- 2.11. They can only be used for periods of unauthorised absence and the defences in law replicate those already in place for enforcement actions under the provisions of Section 444 of the Education Act 1996.
- 2.12. Penalty notices can be issued if Leave of Absence is not authorised by the school, it is referred to the Local Authority and the child is absent from school during the period requested.
- 2.13. If the Local Authority believes a penalty notice would be appropriate in an individual case, the Authority shall retain the discretion to issue one before the threshold is met. An example of this is where parents are deliberately avoiding the national threshold by taking several term time holidays below threshold, or for repeated absences for birthdays or other family events.
- 2.14. Great care will be taken to ensure that notices are properly issued and only issued for offences where the local authority is willing and able to prosecute for the offence of irregular attendance.
- 2.15. Any prosecution would be for the offence to which the notice relates rather than non-payment of the notice and will follow the usual procedures of a prosecution

³ National Framework for Penalty Notices for school absence – implementation guide for local authorities August 2024

for irregular attendance (including considering an education supervision order as an alternative to prosecution).

3. CIRCUMSTANCES WHERE A PENALTY NOTICE MAY BE ISSUED:

- 3.1. A Penalty Notice can only be issued in cases of unauthorised absence.
- 3.2. The national threshold set out in the statutory guidance states that a penalty notice must be considered for 10 sessions (usually equivalent to 5 days) of unauthorised absence within a rolling 10 school week period.
- 3.3. Penalty notices are intended to prevent the need for court action and should only be used where it is deemed likely to change parental behaviour and secure regular attendance.
- 3.4. Where support has been provided and has not worked or been engaged with or would not have been appropriate in the circumstances of the offence a penalty notice will be considered. An example of where support would not be appropriate is in cases where the absence is clearly condoned by the parent with no mitigating factors, such as a holiday taken in term time.
- 3.5. If repeated penalty notices are being issued and they are not working to change behaviour, they are unlikely to be the most appropriate tool. As a result, only 2 penalty notices can be issued to the same parent in respect of the same child within a 3-year rolling period and any second notice within that period will not include the option of paying at a discounted rate.
- 3.6. The first penalty notice issued to a parent in respect of a particular pupil will be £160 if paid within 28 days; this will be reduced to £80 if paid within 21 days. A second penalty notice issued to the same parent in respect of the same pupil is charged at a flat rate of £160 if paid within 28 days (no opportunity to pay a reduced rate). A third penalty notice cannot be issued to the same parent in respect of the same child within 3 years of the date of issue of the first. In a case where the national threshold is met for a third time (or subsequent times) within those 3 years, alternative action will be considered including other legal interventions.

4. SPECIFIC CIRCUMSTANCES IN WHICH A PENALTY NOTICE CAN BE ISSUED:

- 4.1. **Irregular attendance:** 10 sessions (usually equivalent to 5 days) of unauthorised absence within a rolling 10 school week period.
- 4.2. **Truancy Sweeps:** Where a pupil is stopped on a truancy sweep and there is not a valid reason for the absence from school, the Local Authority will send a 'Notice to Improve' letter to the parent(s) advising them that further unauthorised absences over the following 15 school day period may result in a penalty notice being issued. Prior to a notice being issued the Local Authority will consult with schools to agree this action.
- 4.3. **Leave of Absence during term time:** Head teachers (or authorised person) may not grant any leave of absence during term time unless there are "exceptional circumstances" that apply to that application. The head teacher should consider each application on a case-by-case basis and on its own merits. It is at the head teacher's discretion if the exceptional circumstances warrant the authorisation of the leave and should also determine the number of days the pupil should be absent for. Head teachers should make clear to parents the date on which the pupil will be expected to return to school. All requests for leave of absence must be made in advance and by the parent/carer with whom the child normally resides.
- 4.4. Leave of Absences applied for in advance but not authorised may result in a Penalty Notice.
- 4.5. A Penalty Notice may be issued when leave of absence has been taken but the school have not received and authorised a request for the same in advance.

- 4.6. Warwickshire County Council will consider each referral on a case-by-case basis and on its own circumstances, once the absence has occurred. A Leave of Absence 'Notice to Improve' may be considered where there is a risk of repeated Leave of Absences are taken in the same academic year.
- 4.7. **Persistent Late Arrival at School:** When a pupil persistently arrives late, schools should investigate the reason for this and offer support where appropriate to rectify the situation. Where the arrival time is after the close of registration period, the late mark, code U, an unauthorised absence should be recorded. The same process applies when requesting and issuing a penalty notice as that of the irregular attendance process.
- 4.8. **In a public place when excluded:** A penalty notice may be issued where parents allow their child to be present in a public place during school hours without reasonable justification during the first 5 days of a fixed period or permanent exclusion. The school must have notified the parents of the days the pupil must not be present in a public place. This type of penalty is not subject to the same considerations about support being provided or count towards the limit as part of the escalation process in the case of repeat offences for non-attendance.

5. PROCEDURE FOR ISSUING PENALTY NOTICES

5.1. PROCEDURE FOR ISSUING PENALTY NOTICES FOR PERSISTENT ABSENCE

The Local Authority shall consider the issue of a penalty notice where the following can be evidenced:

- A request for targeted attendance support is completed and submitted to the Warwickshire Attendance Service with all the necessary information/chronology and supporting relevant documentation.
- The period of absence is not being considered for proceedings according to Section 444 (1) or (1A) of the Education Act 1996.
- The issue of a Penalty Notice does not conflict with other intervention strategies in place by the Local Authority or by other agencies where the circumstances are known to the Local Authority.
- Parents have been notified of a rolling 10-week formal attendance support plan by the local authority.
- Where issued, a copy of the 'Notice to Improve' advisory letter sent as a final opportunity to engage in support.
- A copy of the pupil's attendance record demonstrates the following threshold. The threshold is 10 sessions of unauthorised absence. This can be made up of a combination of any type of unauthorised absence, such as 4 sessions of holiday taken in term time plus 6 sessions of arriving late after the register closes, all taken within any 10-school week period. 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).

5.2. PROCEDURE FOR ISSUING PENALTY NOTICES FOR LEAVE OF ABSENCE DURING TERM TIME

The Local Authority will only issue penalty notices requested by a school in instances of unauthorised leave of absence where each of the following can be demonstrated:

- The school have published their attendance policy or a newsletter in the current academic year which includes a warning to parents that penalty notices can be issued in instances where a child takes an unauthorised leave of absence.

- Written notification to the parent(s) of the head teacher's/authorised person's decision to refuse the period of absence including the reasons for the decision.
 - A copy of a letter from Warwickshire Attendance Service advising the parent that the matter has been referred to them and a penalty notice will be issued.
 - Evidence of attendance for the relevant period signed by the head teacher.
- 5.2.1. Where a written request for a Leave of Absence has been received, a copy of the application form or written request should be submitted. If a verbal request was received the head teacher should include notes detailing the discussion/meeting with the parent.
- 5.2.2. The taking of leave of absence during term time without making an advance request for the same to gain the school's permission and where this has resulted in a period of unauthorised absence may result in action.
- 5.2.3. In respect to unauthorised leave of absence only, the local authority will not need to consider any additional support which may or may not have been offered to any parent, prior to consideration of legal intervention.
- 5.2.4. Where a Penalty Notice is not issued for a leave of absence the local authority may consider issuing a Leave of Absence Notice to Improve. This notice will outline any further unauthorised absences taken that academic year regardless of number of days could result in a Penalty Notice being issued for this second absence.

5.3. PROCEDURE FOR ISSUING PENALTY NOTICES REQUESTED FROM OTHER LOCAL AUTHORITIES/POLICE

The Local Authority may receive requests to issue penalty notices from neighbouring LAs and/or the Police. Warwickshire Attendance Service will investigate and action if:

- The circumstances of the case meet the criteria as specified in this Code of Conduct, and
- All necessary information is provided to Warwickshire Attendance Service in order to establish that an offence under Section 444(1) Education Act 1996 has been committed.
- The issue of a Penalty Notice would not conflict with other intervention strategies already in place, or other enforcement sanctions already being processed.
- There is a reasonable expectation that the use of a Penalty Notice would improve attendance.

6. PAYMENT OF PENALTY NOTICES

- 6.1. Penalty notices for absences commencing in the academic year 2023/24 will continue to be issued within the 28 days at the rate of £120, reduced to £60 if paid within 21 days (in line with legislation pre-19th August 2024).
- 6.2. A national limit of 2 penalty notices that can be issued to a parent for the same child within a rolling 3-year period, so at the 3rd (or subsequent) offence(s) another tool will be considered (such as prosecution or another appropriate legal intervention).
- 6.3. Penalty notices for absence commencing in the academic year 2024/25 will be issued in line with the National Framework for Penalty Notices for school absence post 19th August 2024.
- First penalty notice – Issued at £160 if paid within 28 days, and £80 if paid within 21 days.

- Second penalty notice - Issued to the same parent for the same child within a rolling 3-year period being charged at a higher rate of £160, with no option for this second offence to be discharged at the lower rate of £80.
- 6.4. Payments within the required timescales will discharge the parent/carer's liability for the period in question. The legislation does not allow for part payments or payment plans.
 - 6.5. The Local Authority will communicate in writing to schools the outcomes of penalty notices. The local authority retains this revenue to cover the costs of issuing or enforcing notices.
 - 6.6. All penalty notices will be issued and monitored by the Local Authority. This will ensure consistent and equitable delivery and ensure cohesion with other enforcement action.

7. NON-PAYMENT OF PENALTY NOTICES

- 7.1. If payment is not received within 28 days, the local authority will consider prosecution for the unauthorised absence.
- 7.2. A letter is sent to the parent informing of the Local Authority's intention to pursue legal proceedings for the period of absence in question.
- 7.3. The instigation of legal proceedings for unauthorised absence from school under S444(1) or S444(1A) of the Education Act 1996 may also be considered where it is deemed to be appropriate.
- 7.4. The prosecution is not for the non-payment of the penalty notice but is for failure to ensure regular attendance at school.

8. PROCEDURE FOR WITHDRAWAL

- 8.1. Once a penalty notice has been issued, it can only be withdrawn in the following circumstances:
 - It ought not to have been issued i.e. where it has been issued outside the terms of the Code of Conduct or where no offence has been committed; or
 - It has been issued to the wrong person; or
 - contains material errors.

9. MONITORING AND REVIEW

- 9.1. The Local Authority will monitor and evaluate the outcomes of penalty notices in terms of improvement in school attendance, payment and any subsequent legal action.
- 9.2. The use of the notices will be reviewed at regular intervals and the enforcement strategy of the Local Authority may be amended accordingly.
- 9.3. As part of the administration of Penalty Notices and on behalf of the Local Authority, data will be provided at the beginning of each academic year to the Parental Responsibility Measures Attendance Census.
- 9.4. In cases where a pupil has moved between local authority areas in the previous 3 years, either because the family has moved house or the pupil has moved school, additional checks will be carried out. Where the previous local authority area is known, the authority for that area will be contacted to check whether a penalty notice has been issued to that parent for that pupil in the previous 3 years. Other local authority areas may contact Warwickshire County Council at the following: crossborder.penaltynotice@warwickshire.gov.uk.