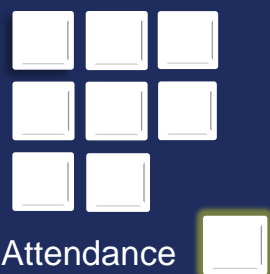




Penalty Notices for Irregular School Attendance

Local Code of Conduct

August 2024



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Local Code of Conduct

The purpose of this local code of conduct is to ensure that penalty notices for irregular attendance are issued in a manner that is fair and consistent across the County Durham area.

The code sets out the arrangements for administering penalty notices in County Durham and must be adhered to by those issuing notices in the area.

The code complies with the Department for Education's national framework for penalty notices as set out in ['Working Together to Improve School Attendance'](#) guidance.

Local consultation has taken place with local schools and police.

Attendance legal intervention

Where difficulties arise with school attendance, professionals should take a 'support first' approach in line with the DfE's 'Working together to improve school attendance' guidance, only resorting to legal enforcement when necessary. The aim is that the need for legal intervention is reduced by taking a supportive approach to tackle the barriers to attendance and intervening early before absence becomes entrenched.

Where attendance legal intervention is required, it applies only to pupils of compulsory school age and decisions on legal action are made on an individual case by case basis. Schools, trusts and Local Authorities (LA) make use of the full range of legal interventions which include:

- Attendance contracts
- Education supervision orders
- Attendance prosecution
- Parenting Orders
- Penalty Notices

Purpose and legal basis for Penalty Notices

Penalty notices are issued to parents as an alternative to prosecution for irregular school attendance under Section 444 of the Education Act 1996 where they have failed to ensure that their child of compulsory school age regularly attends the school where they are registered or, in certain cases, at a place where alternative provision is provided.

Penalty notices must be issued in line with the Education (Penalty Notices) (England) Regulations 2007 and in line with this local code of conduct.

The Education (Penalty Notices) (England) (Amendment) Regulations 2024 makes several changes to the regime for issuing penalty notices for absence under section 444A of the Education Act 1996.

The national framework for penalty notices is published in statutory guidance 'Working together to improve school attendance'. The Education (Penalty Notices) (Amendment) (England) Regulations 2024 come into force on 19th August 2024.

Parental responsibility

Section 576 of the Education Act 1996 defines "parent" as: All natural (biological) parents, whether they are married or not; Any person who, although not a natural parent, has parental responsibility for a child or young person; Any person who, although not a natural parent, has care of a child or young person.

Where this guidance refers to a parent, the school and/or LA will need to decide which adult is most appropriate to work with. Generally, parents include:

- all natural parents, whether they are married or not,
- all those who have parental responsibility for a child or young person,
- those who have day to day responsibility for the child (i.e. lives with and looks after the child).

A penalty notice can be issued to each parent liable for the offence or offences.

National (absence) threshold

All state funded schools must consider whether a penalty notice is appropriate in each individual case where a pupil reaches the national threshold for considering a penalty notice. Schools are required to make judgements on each individual case to ensure fairness and consistency across the country.

The threshold is 10 sessions of unauthorised absence (5 school days) in a rolling period of 10 school weeks.

- A school week means any week in which there is at least one school session.
- The threshold can be met with any combination of unauthorised absence (e.g. 4 sessions of holiday taken in term time plus 6 sessions of arriving late after the register closes all within 10 school weeks).
- The sessions can be consecutive (e.g. 10 sessions of holiday in one week) or not (e.g. 6 sessions of unauthorised absence taken in 1 week and 1 per week for the next 4 weeks).
- The period of 10 school weeks can also span different terms or school years (e.g. 2 sessions of unauthorised absence in the Summer Term and a further 8 within the Autumn Term).

Penalty Notices where the national threshold is not met

If, in an individual case the LA believes a Penalty Notice would be appropriate, it retains the discretion to issue one before the threshold is met. Circumstances where this may apply include (not exhaustive):

- Several term time holidays below the threshold.
- Repeated absence for birthdays or other family events.
- Where the police, anti-social behaviour teams, neighbourhood teams or similar:
 - have reason to believe that an offence has been committed under section 444(1) of the education act 1996 and this relates to a relevant school, and;
 - subsequent investigation of the circumstances by the LA concludes / confirms the absence(s) constitute an offence (there are no authorised circumstances).

The LA retains the discretion to consider going straight to prosecution.

Key considerations prior to issuing a Penalty Notice

Penalty notices can be used where a pupil's absence has been recorded with one or more of the unauthorised codes and that absence(s) constitutes an offence.

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 leave of absence in term time).

Offering support (where support is appropriate)

On a case-by-case basis, the following should be considered before deciding on a course of action:

- Has sufficient support already been provided (**where support is appropriate**)? Sufficient support will usually include, but is not limited to:
 - a robust first-day response to absence, including appropriate and proportionate follow up actions,
 - communication with parents / carers and the child aiming to identify and understand strengths and barriers to school attendance,
 - working with parents / carers and the child to develop a SMART* action plan to improve attendance which aims to:
 - draw on the strengths identified,
 - address the barriers with targeted support / relevant interventions, and,
 - considers the child's holistic needs (as part of the wider family).

This may be drawn up via a meeting, home visit or other mechanism (not exhaustive).

- Is a penalty notice the best available tool to improve attendance and change parental behaviour for this particular family or would one of the other legal interventions be more appropriate?
- Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010?
- Public interest - It is for the LA to determine whether it is in the public interest to issue a penalty notice as the LA is responsible for any resulting prosecution if the notice is not paid (given a penalty notice is an alternative to prosecution for irregular attendance at school).

If the answer to the above questions is 'yes', then a penalty notice (or a notice to improve in cases where support is appropriate) will usually be issued.

*Specific, Measurable, Achievable, Realistic, Time bound

Notice to Improve

A Notice to Improve is a final opportunity for a parent to engage in support and improve attendance in some circumstances before a penalty notice is issued.

In most cases, notices to improve will not be issued where support is not appropriate (for example in circumstances relating to a holiday in term time). The LA will consider whether a notice would have any behavioural impact (and therefore may not be issued, if for example a parent has already received one for a similar offence).

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.

The length of the period of improvement will be **6 school weeks**. What sufficient improvement will look like will be decided on a case-by-case basis considering a child and family's circumstances.

The LA will usually issue the Notice to Improve via referral from schools using the attendance improvement area of the school's portal. Schools will update the LA on progress during the improvement period to allow the LA to consider whether proportionate support has been offered, the impact of the support offered and therefore whether to issue the penalty notice.

The LA will inform the school referrer of the outcome and issue the penalty notice if this is the action decided.

Payment amount

- Only the first penalty notice issued to a parent in respect of a particular pupil will be charged at £160 if paid within 28 days. This will be reduced to £80 if paid within 21 days (in respect of an individual child in any 3-year period). (in respect of an individual child in any 3-year period).
- 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.
- 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 include considering prosecution or other legal intervention.

Penalty Notices are out of court settlements intended to change behaviour without the need for criminal prosecution. Repeated penalty notices being issued indicates that they are not working to change behaviour.

For the purpose of the escalation process, previous penalty notices include those not paid (including where prosecution was taken forward if the parent pleaded or was found guilty) but not those which were withdrawn.

Making payments

The payment must be paid directly to the LA.

If the penalty is not paid by the end of the 28-day period, the LA must decide either to prosecute for the original offence to which the notice applies or withdraw the notice.

Parent(s) can only be prosecuted if 28 days have expired, and full payment has not been made.

There is no right of appeal by parents against a penalty notice. If the penalty is not paid in full by the end of the stated time period, the LA must decide either to prosecute for the original offence to which the notice applies or withdraw the notice.

The LA will inform the school about whether penalty notices are paid, withdrawn or prosecuted for non-payment by uploading the information to the pupil folder held on the school's folder on the school's portal.

Cross Border Arrangements

In cases where a pupil has moved school or LA area in the previous 3 years an additional check will be made to ascertain whether previous penalty notices have been issued to the parent in respect of the pupil.

If a pupil has moved between LAs in the previous 3 years, the LA is known they will be contacted to check whether a penalty notice has been issued to a parent for a pupil in the previous 3 years. Checks can be made by the school or LA.

County Durham's email for such purposes is:

crossborder.penaltynotice@durham.gov.uk

Where pupils attend school in County Durham but live in a different LA area, County Durham LA will liaise with the home LA in cases where a penalty notice is being considered and support is appropriate.

Withdrawing Penalty Notices

LAs may only withdraw a penalty notice where:

- it ought not to have been issued i.e., where it has been issued outside the terms of the local code of conduct or where no offence has been committed; or
- it has been issued to the wrong person; or
- it contains material errors.

Appendix 1: Leave of Absence

All schools are able to grant a leave of absence at their discretion. A leave of absence should not, and from school maintained by a LA or a special school not maintained by a LA, must not be granted unless there are exceptional circumstances.

Schools must judge each application individually considering the specific facts and circumstances and relevant background context behind each request. Where a leave of absence is granted, the school will determine the number of days a pupil can be absent from school.

A leave of absence is granted entirely at the school's discretion.

Schools can only grant such a leave of absence where an application is made in advance by a parent the pupil normally lives with. A school cannot grant a leave of absence retrospectively.

Generally, a need or desire for a holiday or other absence for the purpose of leisure and recreation would not constitute an exceptional circumstance.