DERBYSHIRE County Council

PENALTY NOTICES

CODE OF CONDUCT

Children's Services

AB796

DERBYSHIRE COUNTY COUNCIL

CHILDREN'S SERVICES PENALTY NOTICES

Code of Conduct under the Provisions of The Education (Penalty Notices) Regulations 2007 (as amended) and Section 23 of the Anti-Social Behaviour Act 2003 (as amended)

1. The purpose of this local code of conduct is to ensure that penalty notices for school absence are issued in a manner that is fair and consistent across Derbyshire. The code sets out the arrangements for administering penalty notices in Derbyshire and must be adhered to by anyone issuing a penalty notice for school absence in this area. The code complies with relevant regulations and the Department for Education's national framework for penalty notices as set out in the 'Working together to improve school attendance' guidance.

Consultation

2. This code has been drawn up in consultation with the headteachers and governing bodies of state-funded schools and the local police force.

Legal basis

3. Penalty notices may be issued to a parent as an alternative to prosecution for irregular school attendance under s444 of the Education Act 1996. They can only be issued in relation to pupils of compulsory school age in maintained schools, pupil referral units, academy schools, AP academies, and certain off-site places as set out in section 444A(1)(b).

4. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.

5. A penalty notice for school attendance matters can only be issued by an authorised officer: The issuing of penalty notices for Derbyshire is a central administrative function, undertaken by the Local Authority. This avoids the possibility of parents receiving penalty notices from more than one source for the same period of unauthorised absence.

6. The national framework for penalty notices is published in statutory guidance 'Working together to improve school attendance'. It provides further national guidance on the operation of penalty notice schemes for school absence in England.

7. A parent includes any person who is not a parent but who has parental responsibility for the child or who has care of the child, as set out in section 576 of the Education Act 1996. Penalty notices will usually be issued to the parent or parents with day to day responsibility for the pupil's attendance or the parent or parents who have allowed the absence (regardless of which parent has applied for a leave of absence).

Rationale

8. Research published by the Department for Education in May 2022 found pupils with higher attainment at KS2 and KS4 had lower levels of absence over the key stage compared to those with lower attainment.

9. For the most vulnerable pupils, regular attendance is also an important protective factor and often the best opportunity for needs to be identified and support provided.

10. 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 enforcement is reduced by taking a supportive approach to tackle the barriers to attendance and intervening early before absence becomes entrenched.

11. The national framework for penalty notices is based on the principles that penalty notices should only be used in cases where:
    - support is not appropriate (e.g., a term time holiday) or where support has been provided and not engaged with or not worked, and
    - they are the most appropriate tool to change parental behaviour and improve attendance for that particular family.

When may a penalty notice for absence be appropriate?

12. When the national threshold has been met: when a school becomes aware that the national threshold has been met, they must consider whether a penalty notice can and should be issued or not. The national threshold has been met when a pupil has been recorded as absent for 10 sessions (usually equivalent to 5 school days) within 10 school weeks[1], with one of, or a combination of the following codes:

[1] A school week means any week (Monday to Sunday) in which there is at least one school session. The 10 school-week period when the national threshold applies may 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).

- code G (the pupil is absent without leave for the purpose of a holiday),
- code N (the circumstances of the pupil's absence have not yet been established),
- code O (none of the other rows of Table 3 in regulation 10 of The School Attendance (Pupil Registration) (England) Regulations 2024 applies),
- code U (the pupil attended after the taking of the register ended but before the end of the session, where no other code applies)

13. If in an individual case the local authority believes a penalty notice would be appropriate, they retain the discretion to issue one before the threshold is met. E.g., where there are repeated periods of unauthorised leave of absence in term time that fall below the threshold.

14. If repeated penalty notices are being issued and they are not working to change behaviour, they are unlikely to be most appropriate tool. The national framework for penalty notices sets out that a maximum of 2 penalty notices per child, per parent can be issued within a rolling 3-year period. If the national threshold is met for a third time (or subsequent times) within 3 years, another tool should be used. This might include prosecution or the consideration of an alternate legal intervention.

15. 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.

Key considerations prior to the issue of a Penalty Notice for school absence

16. The following considerations will be made before issuing a penalty notice to ensure consistency of approach: 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
- Is it in the public interest to issue a penalty notice in this case given the local authority would be accepting responsibility for any resulting prosecution for the original offence in cases of non-payment?

In cases where support is not appropriate (for example, for holidays in term time), consider on a case-by-case basis: In cases where support is appropriate, consider on a case-by-case basis:

- Has sufficient support already been provided? Sufficient support will usually include:

  - First day calling processes.
  - Identification of and removal of barriers to attendance
  - Reasonable adjustments
  - Invitations to meetings to discuss attendance.
  - The use of attendance panel meetings or other formal monitoring processes for escalation.
  - Home visit where appropriate or in cases on non-engagement
  - Collaboration with other professionals working with the family.

- 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
- it in the public interest to issue a penalty notice in this case given the local authority would be responsible for any resulting prosecution for the original offence in cases of non-payment.

If the answer to the above questions is ‘yes’, then a penalty notice will usually be issued as long as the following criteria have been met:

- The threshold criteria were met at the point the notice to improve was issued
- There is evidence to show that a school or academy has made reasonable attempts to contact the parent to offer support to improve the situation prior to issuing the notice to improve.
- The parent has been made aware of their legal responsibilities in relation to school attendance.
- There is evidence to show that the parent has failed to engage meaningfully with the school or academy.
- There has been no significant improvement in the child’s attendance, during the period of time stipulated in the notice to improve, calculated on the basis of unauthorised absence only.
- The school or academy has consulted with other agencies supporting the family about the possibility of legal proceedings.
- There is an up-to-date attendance record available which shows that the absences have been marked as unauthorised and indicates the reason why.

- There are no current legal proceedings which would preclude the issue of a penalty notice.

Notice to improve

17. A notice to improve is a final opportunity for a parent to engage in support and improve attendance before a penalty notice is issued. 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. An authorised officer can choose not to use one in any case, including cases where support is appropriate, but they do not expect a notice to improve would have any impact on a parent's behaviour (e.g. because the parent has already received one for a similar offence).

    - A notice to improve will be sent, by the Local Authority, to each relevant parent.
    - The recommended length of the improvement should be between 3 and 6 weeks.
    - Sufficient improvement can include no further unauthorised absences within the improvement period, or a sufficient amount of improvement tailored to the family, the expectation should be made clear in the notice to improve.
    - The school will monitor the attendance over the specified period and a penalty notice will be issued (or consideration of other legal intervention) if sufficient improvement is not made.

How authorised officers will work together

18. Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour. Derbyshire County Council will provide to advice, guidance and support schools to assist with attendance management issues.

19. Where the school or police request that the LA issues the penalty notice, they need to:

    - Complete a request form and submit to the Local Authority Attendance Process Team within 10 days of the last date of absence/monitoring period.
    - Provide all documentation as outlined in the guidance provided by Derbyshire County Council.
    - Provide updated attendance information following the notice to improve monitoring period

20. The LA should decide as to whether proportionate support has been provided, and whether that support has worked or not. Where there is dispute, authorised officers are expected to defer to the local authority's judgement about whether sufficient support has been provided before issuing a penalty notice.

21. The LA will inform the school about whether penalty notices are paid, withdrawn, or prosecuted for non-payment. They will do this via the established school communication system.

22. Where pupils move between local authority areas, Derbyshire can be contacted on crossborder.penaltynotice@derbyshire.gov.uk to find out if penalty notices have been issued previously.

23. Where pupils attend school in Derbyshire but live in a different LA, Derbyshire will liaise with the home LA in cases where a penalty notice is being considered and support is appropriate, and that support is being provided by the home LA.

REVENUE

24. Penalty notices are issued in a prescribed format. Parents will be able to make payment through a variety of methods specified in the notice. The revenue will be collected and managed by the LA's Finance division.

25. There is:

    - No reminder of non-payment
    - No opportunity to pay in instalments and
    - No right of appeal.

    Failure to pay may result in prosecution.

26. The local authority will produce an annual audited statement of revenue collected from penalty notices. The revenue will be used to cover the costs of administering the scheme or bringing a prosecution arising from non-payment. Regulation 23 of the Education (Penalty Notices) (England) Regulations 2007 states that revenue not so used must be paid to the Secretary of State.

WITHDRAWAL

27. The LA will only withdraw a penalty notice in the following circumstances:
    - Where it ought not to have been issued (i.e. where it has been issued outside the terms of this Code or where no offence has been committed); or
    - Where it has been issued to the wrong person; or
    - It appears to the LA that the notice contains material errors.

    If a parent believes that one or more of these circumstances apply, then the parent should contact the LA immediately with evidence to that effect. If the evidence clearly demonstrates that the penalty notice was issued in error, then the LA will issue a Notice of Withdrawal.

    The LA will issue a Notice of Withdrawal to the recipient and any amount paid by way of penalty in pursuance of that notice shall be repaid to the payee. No proceedings shall be instituted or continued against the recipient for the offence in connection with which the withdrawn notice was issued or for an offence under section 444(1) of the Education Act 1996 arising out of the same circumstances.

EQUALITIES

28. The LA will monitor the procedures for issuing penalty notices to ensure that they are applied fairly and consistently in accordance with the Human Rights Act 1998 and the Equality Act 2010 as well as other relevant legislation, regulations, and statutory guidance.

APPENDIX 1

Legislation and Guidance

Children Act 1989

Education Act 1996

Crime and Disorder Act 1998

Human Rights Act 1998

Anti-Social Behaviour Act 2003

Criminal Justice Act 2003

The Education (Penalty Notices) (England) Regulations 2007

Equality Act 2010

The Education (Penalty Notices) (England) (Amendment) Regulations 2013

Data Protection Act 2018

The School Attendance (Pupil Registration) (England) Regulations 2024

Working Together To Improve School Attendance August 2024