



PENALTY NOTICE CODE OF CONDUCT

(This applies to all maintained schools, academies and free schools)

August 2024

Introduction

The purpose of this code of conduct is to ensure that penalty notices for school absence are issued in a manner that is fair and consistent across Stockton Borough Council. The code sets out the arrangements for administering penalty notices in Stockton and must be adhered to. The code complies with relevant regulations and the Department for Education's national framework for penalty notices as set out in 'Working Together to Improve School Attendance' statutory guidance.

Legal Basis

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).

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

A penalty notice can only be issued by an authorised officer, which for Stockton-on-Tees Borough Council will be the local authority officer.

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.

The definition of "parent" is:

- 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.

Rationale

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.

- Pupils who did not achieve the expected standard in reading, writing and maths in 2019 had an overall absence rate of 4.7% over the key stage, compared with 3.5% among pupils who achieved the expected standard and 2.7% among those who achieved the higher standard.
- Pupils who did not achieve grade 9 to 4 in English and Maths GCSEs in 2019 had an overall absence rate of 8.8% over the key stage, compared with 5.2% among pupils who achieved a grade 4, and 3.7% among pupils who achieved grade 9 to 5 in both English and Maths.

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.

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.

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 family.

When may a penalty notice for absence be appropriate?

The national threshold which takes effect from 19th August 2024, sets out the maximum number of penalty notices which may be issued by a local authority to each parent, for each child, in any 3-year period. 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 weeks¹, with one of, or a combination of the following codes:

- 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(3) of the School Attendance (Pupil Registration) (England) Regulations 2024 applies), and
- code U (the pupil attended after the taking of the register ended but before the end of the session, where no other code applies).

Stockton-on-Tees Council will consider issuing penalty notices within the national framework in the following circumstances:

Ongoing unauthorised absence - When:

- a pupil has had a minimum of 10 sessions (5 school days) of unauthorised absence within a period of 10 school weeks.
- a school or place of alternative educational provision has completed the relevant attendance procedure, and
- despite that procedure being followed by the school/alternative provision, there has been little improvement in the pupil's attendance; or a notice to improve has been issued but there has been no improvement over a six-week period.

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).

Unauthorised Leave in Term Time - When:

- a pupil has been taken on an unauthorised “leave of absence” from school or a place of alternative educational provision (code G) for minimum of 10 continuous sessions (five days), and
- the school or place of alternative educational provision have followed the relevant local authority legal intervention process, a penalty notice may be issued.

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. This can include attempts to circumvent the threshold criteria for sessions absent as stated in the policy. In these circumstances the issuing of a notice can only be authorised by the team manager or senior caseworker within the Locality Team.

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, the local authority will consider direct prosecution under section 444 of the Education Act 1996.

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.

Scenario	Counts towards the limit?
Penalty notice issued by any authorised officer and paid within 21 days	Yes
Penalty notice issued by any authorised officer and paid within 28 days	Yes
Penalty notice issued by any authorised officer but later withdrawn	No
Penalty notice issued by any authorised officer. The penalty notice was not paid, and the local authority prosecuted for the original offence, but the Court found the parent not guilty	No
Penalty notice issued by any authorised officer. The penalty notice was not paid, and the local authority prosecuted for the original offence and the Court found the parent guilty	Yes

Key considerations prior to the issue of a penalty notice for unauthorised school absence:

Leave of absence in term time:

- Has the criteria for the issue of a penalty notice been met?
- 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 non-payment?

All other unauthorised absence where support is appropriate:

- Has sufficient support been provided?
- Is a penalty notice the best tool to improve attendance and change parental behaviour?
- 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 responsible for any resulting prosecution for the original offence of unauthorised absence in cases of non-payment?

Warning letter/Notice to improve

This is the final opportunity for the parent to reconsider the leave of absence in term time or engage in support to improve attendance before a penalty notice is issued.

The Warning Letter (appendix (i)) will be issued by the headteacher of the school in cases where a leave of absence is not deemed exceptional.

The Notice to Improve (appendix (ii)) will be issued by the local authority in cases of unauthorised absence not solely related to a leave of absence term time.

If the notice to improve is issued by the local authority the school should monitor the child's attendance for six school weeks and alert the local authority if any further unauthorised absence occurs within the six-week monitoring period and the local authority will issue a penalty notice.

Withdrawal of a Penalty Notice

The local authority may withdraw a penalty notice in any case which the authority determines:

- (i) An offence has not been committed.
- (ii) It was issued outside the terms of the Code of Conduct.
- (iii) It ought not to have been issued to the person named as the recipient.
- (iv) If the parent can prove it was issued to the wrong address; or
- (v) It contains material errors.

Stockton-on-Tees Council issue all education related penalty notices in Stockton-on-Tees.

Appendix (i)

Warning Letter – Unauthorised leave of absence in term time

Dear

Education Act 1996 – School Attendance

I note your request to take your child (insert name of child), (d.o.b.....) out of school for a leave of absence during term time during the dates.....to

After carefully considering your application, I have decided **not to authorise** your request for leave as I am not satisfied that the exceptional circumstances criteria have been met.

«**Students_Name**» is expected in school during these dates and any absence will be considered unauthorised absence unless evidence is provided to detail otherwise.

I must warn you that failure to ensure your child's attendance is an offence under Section 444 of the Education Act 1996.

If the reasons given for your child's absence from school are not satisfactory, then the Local Authority may take legal proceedings against you for your failure to comply with the law. This may result in:

- For a first offence within a rolling three-year period a Penalty Notice requiring the payment of up to **£160**, failure to pay the penalty due will result in prosecution before Cleveland Magistrates Court. No more than 2 penalty notices will be issued to the same parent for the same child in a rolling three-year period, should a third offence occur this will result in direct prosecution in the magistrate court.
- Prosecution under Section 444 (1) Education Act 1996, where if convicted you may be fined up to **£1,000**.
- Prosecution under Section 444 (1a) Education Act 1996 where if convicted you may be fined up to **£2,500 and/or 3 months imprisonment**.

I ask that you work with the school to ensure that your child attends school every day.

Yours sincerely

Headteacher / Principal

Appendix (ii)

[Address Starts Here]

School Attendance Notice to Improve

(Please read this letter carefully)

School attendance is hugely important for your child to gain the full benefit from their education, for their learning, wellbeing, and wider development, they need to attend on time, every day possible.

If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school or fails to attend regularly the child's parent may be guilty of an offence under s.444 Education Act 1996. If your child is a registered pupil at an alternative provision in the circumstances set out in section 444ZA of the Education Act 1996, the child's parent may be guilty of an offence.

You, «**SURNAME**» «**FORENAME**» are a parent/carer of «**Students_Name**», (called in this notice "the pupil") who is a registered pupil at «**School_Name**».

The school have offered support to you and your family to try and help improve «**Students_Name**»'s attendance, including:

1. **Telephone calls.** The school contacted you every day your child was absent to understand why your child was absent and to offer their support with any issues your child may be having.
2. **An Attendance Overview Letter.** The school wrote to you, letting you know about «**Students_Name**» attendance, the impact of their continued absence, and inviting you to contact the school to discuss the situation further with the offer of support from the school and other support agencies if appropriate to identify and remove any barriers preventing your child attending.
3. **An Attendance Support Meeting Invite.** The school invited you to a meeting to discuss your child's unauthorised absences and to offer support from school and other support agencies if appropriate to identify and remove any barriers to ensure that their attendance improved. You were notified of the consequences should your child continue to have unauthorised absence and you did not effectively engage with the support offered.

Unfortunately, despite the support that was offered to your family, attendance remains a cause for concern. Between «**WARNING_START_DATE**» and «**WARNING_END_DATE**» «**Students_Name**» failed to

attend regularly at «**School_Name**», which resulted in 10 sessions or more of unauthorised absence being recorded. Please see the attached registration certificate for details.

You now have thirty school days (6 weeks) in which to improve your child’s attendance. During this time your child must show significant improvements in attendance and avoid having any unauthorised absences from school during this period. Should we not see sufficient improvement and further unauthorised absences take place during this period, a Penalty Notice may be issued.

A penalty notice is charged at £160 if paid within 28 days. There is usually the opportunity to pay a reduced amount of £80 if paid within 21 days.

A second penalty notice issued within 3 years of the first issue will be charged at £160 with no reduction.

No more than 2 penalty notices will be issued to the same parent for the same child in a rolling three-year period, should a third offence occur this will result in direct prosecution in the magistrate court.

Yours sincerely

Locality Team

Flowchart for Penalty Notices for Leave of Absence in Term Time

Parent(s) applies to school for leave of absence in term time.



The head teacher will consider if the exceptional circumstances criteria is met. If the head teacher decides the exceptional circumstance criteria is not met, then the head teacher will send a warning letter to each parent of the child to inform parent(s) the leave will not be authorised.



Following the Warning Letter if the parent(s) take child out of school for the leave of absence during term time and the leave is 10 sessions or more (5 days) of unauthorised absence then a referral to the Local Authority can be made.



The head teacher completes a referral form for a Penalty Notice to be issued to each parent of the child and forwards this referral along with the application for leave and an attendance printout as evidence of the unauthorised absence to the Local Authority. The Local Authority will issue a penalty notice if the criteria is met.



The first penalty notice will be issued at a charge of £160 per notice, reduced to £80 if paid within 21 days.
A second penalty notice within 3 years of issue of the first penalty notice will result in a penalty notice charge of £160 per notice with no reduction.
Should a third notice be requested within 3 years of the issue of the first penalty notice then the Local Authority will deal with the absence directly in the magistrate court.

In cases where the Penalty Notice is not paid by the 28th day from the date of issue prosecution proceedings will be instigated under Section 444 (1/1A) Education Act 1996.

Flowchart for Non-Leave of Absence Penalty Notices

