Norfolk County Council Code of Conduct for issuing Penalty Notices regarding Absence from School

The Education (Penalty Notices) (England) (Amendment) Regulations 2024

Revised: May 2024

Consultation: 30 April to 17 May 2024

Effective from 19 August 2024

Provisions set out within this Code of Conduct will apply to unauthorised absences recorded by schools within Norfolk County Council's jurisdiction from the start of the 2024/25 academic year. N.B. Absences recorded prior to 19 August 2024 may be subject to the provisions set out within the previous, locally agreed, Code of Conduct.

Norfolk County Council

Purpose

The purpose of this local code of conduct is to ensure that penalty notices for school absence and the associated legal processes are applied consistently and fairly across Norfolk. The code sets out the arrangements for administering penalty notices in Norfolk 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 (DfE) national framework for penalty notices as set out in the 'Working together to improve school attendance' guidance.

Schools wishing to make referrals for penalty notices under this code of conduct must adhere to all aspects of this code of conduct and ensure that policies and related guidance provided to parents are clear and consistent with the information included in the code.

The code of conduct can be found on the Norfolk County Council's website. Further questions or guidance around the code of conduct can be dealt with by the Norfolk County Council Attendance Service on 01603 223681 or at csattendance@norfolk.gov.uk.

Consultation

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

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. 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.

It is a legal requirement under section 7 of the Education Act 1996 that parents of children of compulsory school age ensure that their children receive full-time education that is suitable to their age, ability, aptitude and to any special educational needs that they may have. A parent includes any person who is not a natural 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

Regular school attendance is a legal requirement and Section 444 (1) and 444 (1A) Education Act 1996 and Section 36 of the Children Act 1989 already exist to enforce attendance through the Courts in appropriate circumstances. The legal responsibility for compliance with these Acts rests with the parents and courts have the powers to fine, imprison or impose various orders.

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.

Penalty notices will only be used in cases where support is not appropriate (e.g. a term time holiday) or where support has been provided and has either not been engaged with or has not worked.

Issuing Penalty Notices

A penalty notice can only be issued by an authorised officer. In Norfolk, it is only the Local Authority (through the Attendance Service) that is authorised to act under this Code and issue penalty notices in relation to absence from school. The Attendance Service will implement measures to ensure consistent, fair, and transparent application of the policy regarding Penalty Notices.

Penalty Notices are intended as a tool to change parental behaviour and improve attendance. They will 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).

All schools must consider whether a penalty notice is appropriate in every case where a pupil reaches the national threshold for considering a penalty notice. Schools should not have a blanket position of referring or not referring for penalty notices to be issued; they should make judgements based on the context of each case to ensure fairness and consistency. Norfolk County Council supports all headteachers within Norfolk to exercise their discretion when considering the appropriateness of penalty notice fines, based on their knowledge of individual families' circumstances within their school community.

National Threshold

The National Framework for Penalty Notices sets out the maximum number of penalty notices which may be issued by a local authority to each parent, for any child, in any 3-year period.

To ensure consistent delivery of the code of conduct, schools must consider whether a penalty notice should be issued when the national framework criteria applies. This threshold has been met where a pupil has been recorded as absent for at least 10 sessions (usually equivalent to 5 school days) due to **unauthorised absence** within 10 school weeks[1].

A maximum of 2 penalty notices per child, per parent can be issued within a rolling 3-year period. The national framework also sets out the escalation process which applies to such penalty notices. If the national threshold is met for a third time (or subsequent times) within 3 years, another tool should be used. In Norfolk, where a child's attendance has met the national threshold for a third time within 3 years and the parent/s have already been issued with 2 penalty notices within that period, consideration will be given to prosecution under section 444 Education Act 1996.

The three-year period and applicable escalation of fines begins from the date on which the first penalty notice is issued. For example, if the first penalty notice is issued on 18th September 2024, charged at £160 if paid within 28 days and reduced to £80 if paid within 21 days, any second penalty notice issued to that parent in respect of that child, on or before the 17th September 2027, would be charged at £160, payable within 28 days. A third penalty notice could not be issued to that parent in respect of that child within the three-year timeframe and, in cases where the national threshold is met for a third or subsequent time, alternative action should be considered.

In line with national guidance, the Local Authority retains the discretion to issue a penalty notice before the threshold is met. This might apply for example, where parents have taken several term time holidays below the national threshold. We also retain the discretion to consider going straight to prosecution where appropriate.

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. In addition, penalty notices issued for suspended or excluded pupils will not be included.

Key considerations

The following considerations will be made before issuing a Penalty Notice to ensure consistency of approach:

[1] A school week means any week 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).

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

- 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 appropriate**, consider on a case-by-case basis:

- 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 responsible for any resulting prosecution for the original offence in cases of non-payment?
- Has sufficient support already been provided? Subject to parental engagement, sufficient support will usually include but is not limited to:
    - ensuring a first-day response to any absence
    - communicating with the child's parents to understand the barriers to school attendance (steps need to be taken to ensure that each "parent" is included and receives correspondence)
    - completing wishes and feelings work with the child to understand their views on why they are absent from school
    - offering a minimum of 3 meetings with child's parents
    - agreeing an effective plan with parents to support improvement in attendance - which could lead to the creation of an attendance contract with parents,
    - referrals to wider support services where appropriate
    - confirming that parents are aware of their legal responsibilities regarding ensuring their child's regular attendance at school by issuing a Notice to Improve
    - where safeguarding concerns are identified for a pupil/family, appropriate liaison between relevant agencies including social care, police, health, other educational establishments, etc.

Schools will need to be able to evidence the support they have offered; this could be in the form of letters sent to parents, minutes of meetings and a record of telephone conversations.

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.

Notice to Improve

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.

Local arrangements for the use of Notices to Improve across Norfolk are as follows:

- Schools across Norfolk may issue a Notice to Improve to any parent whose child's absence levels have triggered the national threshold for a penalty notice – i.e. 10 sessions of unauthorised absence in a rolling period of 10 school weeks.
- The Notice to Improve may be used to offer parent/s a final opportunity to engage with support and improve the attendance levels of the child concerned. 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 and/or the pupil fails to make significant improvements in their attendance patterns, a penalty notice may be issued in line with this code of conduct.
- All Notices to Improve issued by Norfolk schools will have a validity period of 6 school weeks (a maximum of 30 school days) and will clearly list the attempts which have been made and support which has already been offered to resolve the absence concerns. Parents should be provided with clear contact details for the staff member/s within the school that they should contact to access the support that remains available during the Notice to Improve validity period.
- Attendance records will be reviewed daily throughout the improvement period by school and, where further unauthorised absence is recorded, consideration will be given as to whether a penalty notice referral should be submitted. Schools are not required to wait until 30 school days have passed before considering a penalty notice referral – decisions will need to be taken on a case-by-case basis, based on the level of parental/pupil engagement and/or level of attendance improvement noted.
- Sufficient improvement during the Notice to Improve validity period may include evidence of no further unauthorised absences within the improvement period or a sufficient amount of improvement tailored to the specific family circumstances.

On receipt of the referral, the Attendance Service will review the individual circumstances of the case and the support that has been put in place by the school. Based on information, the Attendance Service will decide whether a Penalty Notice is appropriate or consider an alternative legal intervention.

Responsibilities of Schools

All schools wishing to issue penalty notices under this code of conduct must:

- evidence that literature provided to parents relating to attendance is accessible and includes clear information about when parents may be issued with a penalty notice for any unauthorised absence, including unauthorised term-time holidays;
- issue all parents with the Penalty Notice Guidance Letter informing them of the national framework; this should be issued annually at the start of each academic year and dated accordingly or, if a child joins mid-year, they need to receive the guidance letter at the time of induction. The template letter that

schools are required to issue is available via the Norfolk County Council Schools and Learning Providers website.

The responsibility for classifying an absence lies with the school; the Attendance Service will issue a penalty notice based on the school's classification and other evidence supplied with the referral.

For penalty notices being requested/considered on the sole basis of 10 sessions of G code (i.e. 5 days, consecutive or otherwise, of holiday taken during term time over a 10-rolling week period), the school should submit a referral to the Attendance Service, within 10 school days of the pupil having returned to school. The referral must include the following:

- A copy of the application made by parents relating to the period/s of absence that have been recorded using a G code;
- A copy of the written response sent by the school, advising that the absence would not be authorised and why the reason/s for absence were not deemed to be exceptional;
- A copy of the pupil's registration certificate, clearly showing that the national threshold has been met and that the appropriate coding has been used to allow for a penalty notice to be issued;
- Where no application for leave has been submitted by parent/s and the leave was taken without prior discussion/knowledge of the school (e.g. 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), the local authority should be provided with 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.

For penalty notices being requested/considered based on 10 sessions of unauthorised absence (G, O and/or U coded - consecutive or otherwise) in a rolling period of 10 school weeks, the local authority must be in receipt of the following:

- Clear details of the "support first" approach which has been taken by the school to identify the reasons for the pupil's absence, any barriers impacting the pupil's attendance and all support strategies which have been offered (whether engaged with by parent/s or not) to remove any such barriers;
- Copies of all letters/emails sent to the parent/s to advise of the concerns held in relation to their child's absence levels;
- Copies of all letters/emails sent and/or details of all telephone calls which have been made to arrange meetings with the parent/s to establish the reasons for absence and identify what support may be needed to improve attendance patterns and prevent further unauthorised absence;
- A copy of any attendance contract/s which have been agreed with parent/s and whether these have been adhered to;
- A link to the school's Attendance Policy which makes clear the escalation process which may be applied in cases of unresolved irregular school

attendance, including the risk of legal action under this code of conduct/section 444 Education 1996;
- A copy of the Notice to Improve which has been issued, if applicable, to the parent/s;
- Where a Notice to Improve has not been issued, schools will be required to share their reasons why;
- Where a Notice to Improve has been issued, a copy of the letter to parent/s advising them that they are at risk of receiving a penalty notice or prosecution in the magistrate's court, should further unauthorised absence be recorded for their child.

Head teachers should be aware that by submitting requests for a penalty notice, they are assuring the Local Authority that they accept and support that, should the parent fail to make payment within 28 days of the Notice being issued, the Attendance Service on behalf of the Local Authority will progress the matter in line with s444 Education Act 1996, resulting in the parents being prosecuted for their failure to ensure the regular attendance of their child.

Schools can submit referrals for consideration of a Penalty Notice via the online referral form hosted on the Norfolk County Council Schools and Learning Providers website.

The role of the local authority

Upon receipt of a referral the Attendance Service will carry out all necessary checks. These will include:

- Whether any previous penalty notices have been issued to the parent in respect of the child/ren concerned (in Norfolk or a previous local authority) to apply the correct level of fine in line with the national framework escalation.
- Whether there are any prosecution cases pending in respect of the family to ensure that duplication is avoided, and appropriate escalation of legal response is considered.
- Whether there is clear evidence of a "support first" approach, in line with the "Working together to improve school attendance" statutory guidance. Where sufficient evidence has not been provided the Attendance Service, as the independent prosecutor, will not support the issuing of a penalty notice and will advise the school accordingly.

If the child has moved between Local Authorities in the previous 3 years and the previous Local Authority/Authorities are known, they will make contact and check whether a penalty notice has been issued to that parent for that child in the previous 3 years.

Where pupils move between local authority areas, Norfolk County Council can be contacted by other Local Authorities via: crossborder.penaltynotice@norfolk.gov.uk to find out if penalty notices have been issued previously.

Payment of Penalty Notices

Arrangements for payment will be detailed within the Penalty Notice.

The first penalty notice issued to a parent for a child will be charged at £160 if paid within 28 days. This will be reduced to £80 if paid within 21 days. Where it is deemed appropriate to issue a second penalty notice, the second penalty notice to the same parent for the same pupil within 3 years of the first offence, the second notice is charged at a flat rate of £160 and is payable within 28 days. **There is no reduced sum available in this instance**.

Part payments or payment plans are not acceptable, and fines must be paid in full within 21 or 28 days, at the rate specified within the penalty notice. Payment in full against the penalty notice discharges the parent's legal responsibility for the period of unauthorised absence outlined in the Notice and the parent cannot be subsequently prosecuted for that period.

Norfolk County Council will retain all revenue from the issuing of Penalty Notices. However, the Penalty Notice system is not a money-making scheme and Norfolk County Council do not have income targets with regards to this income. Monies collected will first be used for administration of the Penalty Notice system and any subsequent prosecution. Any surplus left after this will be spent on attendance support. This revenue will not be considered part of wider Local Authority funding or relied upon to fund the core attendance expectations of the Local Authority or be pooled in wider legal services budgets or allocated outside the Local Authority's attendance functions. Any remaining surplus at the end of the year must be paid to the Secretary of State.

Withdrawal of Penalty Notice

There is no statutory right of appeal against a Penalty Notice. If the Penalty Notice is not paid, the Local Authority can proceed to prosecution. A head teacher's decision on authorisation of absence is final. Therefore, applications for leave must be made in advance so that the head teacher has time to consider the application and be satisfied that there are exceptional circumstances which warrant the leave. There will be no obligation on the head teacher to reconsider authorising the leave if an application has not been made in advance.

If a head teacher refuses to authorise an absence or request for leave during term time and parents are not happy with the decision, they should make representations to the governing board of the school. They should not wait and make a representation to the County Council once a Penalty Notice has been issued.

Although there is no right of appeal against the issuing of a Penalty Notice, if it is identified that the Penalty Notice has been issued wrongly (i.e., it has been issued outside of the terms of this Code of Conduct or where no offence has been committed); or issued to the wrong person or wrong address, a parent may contact the Attendance Service to make a representation. This should be submitted in writing to csattendance@norfolk.gov.uk.

Where schools wish to provide evidence to the Local Authority to consider withdrawing a Penalty Notice once issued, they must email csattendance@norfolk.gov.uk with the pupil's attendance record showing the

absences in question as authorised and with clear rationale why authorisation is being given.

Prosecution for non-payment of a Penalty Notice
Should a Penalty Notice remain unpaid or have been paid only in part at the end of the 28-day period, the Attendance Service on behalf of the LA will either prosecute the parent(s) for the offence to which the notice relates, or, in specified circumstances, withdraw the notice.

The prosecution would not be for non-payment of the Penalty Notice, but for the original offence of failing to ensure the child's regular attendance at school. The Attendance Service may use the fact that a Penalty Notice has been issued and remains unpaid as evidence. The Attendance Service will look at all the circumstances of the case when assessing the likelihood of securing a conviction for the original attendance offence. If the decision is made to proceed with prosecution the parent will be issued with a Notice of Intended Prosecution in the first instance.

Suspended/Excluded Pupils
Section 103 of the Education and Inspections Act 2006 places a duty on parents in relation to a suspended/excluded pupil. A parent must ensure that his or her child is not present in a public place during school hours without reasonable justification during the first five days of each fixed period or permanent exclusion.

A Penalty Notice may only be issued when there is no reasonable justification for the child being in public during school hours. Reasonable justification may include pre-arranged medical and dental appointments or emergency appointments. It might also be necessary for a child to accompany a parent with similar appointments if the parent considers it inappropriate to leave the child unsupervised. Attendance at a court hearing or an interview at a police station or with the Norfolk Youth Justice Service may also provide reasonable justification.

The days of exclusion when this duty applies are known as 'specified days of exclusion' and will be detailed in a notice given to the parent under section 104 of the 2006 Act. The parent is responsible for the child during the specified days upon receipt of the notice.

Where a Penalty Notice is requested by a school, it will be necessary for them to evidence that notice under section 104 of the Education and Inspections Act 2006 has been given to a parent of the pupil.

In addition to the above, the school must have evidence that the excluded pupil was present in a public place during school opening hours without reasonable justification. The time and date must be provided to ensure that this falls within the time the school at which the pupil is on roll is open and that the incident occurred within the period set out in the notice issued under section 104 of the Education and Inspections Act 2006.

The Notice allows the parent to pay a penalty as a way of discharging any liability for the offence. The parent must be notified by the school at the time of the exclusion of their duty and the days to which it relates.

Where a penalty has not been paid, it will be necessary for the person who requested the issue of a Penalty Notice to provide evidence for the court by way of a Section 9 statement (a witness statement admissible in court under the Criminal Justice Act and the Magistrates' Courts Act and Rules). If the defendant requests the author of a Section 9 statement to be present at the court hearing the Local Authority Attendance Service will notify the person concerned as soon as such requests are made.

This type of Penalty Notice is not included in the National Framework and therefore 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.

Monitoring and Review

The Attendance Service must maintain records of Penalty Notices including:

- A copy of each notice issued
- A record of all payments made and when they were paid
- Whether the notice was withdrawn and on what grounds
- Whether the Penalty Notice led to a prosecution and the outcome.

Schools will receive email confirmation on receipt of their referral and unless they hear directly from the Attendance Service will be able to assume that the Penalty Notice has been issued and paid by the parent(s).

This code of conduct will be reviewed on a regular basis, and as a minimum when changes to relevant legislation and regulations are made.