

### **Purpose of the Code of Conduct:**

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 Nottinghamshire. The code sets out the arrangements for administering penalty notices in Nottinghamshire 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 can only be issued by an authorised officer: that is, a headteacher or a deputy or assistant head authorised by them, an authorised local authority officer or a police constable.
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.
  - 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.
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<sup>1</sup>, with one of, or a combination of the following codes:
  - (a) code G (the pupil is absent without leave for the purpose of a holiday)
  - (b) code N (the circumstances of the pupil's absence have not yet been established)
  - (c) 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

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<sup>1</sup> 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).

- (d) 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 (or other authorised officer) believes a penalty notice would be appropriate, the local authority retains the discretion to issue one before the absence threshold is met.
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, Nottinghamshire County Council will escalate to prosecution through the Magistrates Court.
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.
16. There is no legal requirement for a penalty notice to be issued before proceeding to prosecution through the Magistrates Court. There will be circumstances where it is considered that a Penalty Notice is not appropriate. This may be due to a variety of reasons, including, but not limited to:
- a) repeated offences indicating that Penalty Notices are not bringing about a change in behaviour, for example, repeated unauthorised term time leave,
  - b) the high level of unauthorised absence, including extended unauthorised term time leave cases, and
  - c) the complex or long-standing nature of the particular case. In such cases, the Local Authority may consider instigating a prosecution under Section 444(1) or 444(1A) of the Education Act 1996 as an alternative to a Penalty Notice.
17. The threshold in Nottinghamshire for prosecution under s441 of the Education Act is aligned with the national framework for issuing penalty notices to ensure a graduated approach to legal intervention is followed.

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

18. The following considerations will be made before issuing (or requesting that another authorised officer issues) a penalty notice to ensure consistency of approach:
- a) 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

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- ✓ (For local authorities only) 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?
- b) In cases where support is appropriate, consideration of a penalty notice fine will be on a case-by-case basis to determine if that fine is suitable and whether sufficient support has already been offered and/or provided. Examples of evidence that sufficient support has been offered and/or provided will usually include:
  - ✓ Home Visits
  - ✓ Referrals for support
  - ✓ Letters to parents
  - ✓ Meetings with parents
  - ✓ Offer of adjusted timetable
  - ✓ Attendance panel
  - ✓ Chronology of contact
  - ✓ Parenting contract or Action plan
  - ✓ Notes of meetings with pupils and parents.
- c) Is a penalty notice the best available tool to improve attendance and change parental behaviour for a particular family, or would one of the other legal interventions be more appropriate?
- d) Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010
- e) 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?

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.

Where a pupil is in Year 11, Education Penalty Notices will only be issued in circumstances where there would be a prospect of prosecution before the school leaving date should the penalty notice remains unpaid.

## **Notice to improve Attendance:**

19. 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 could be sent by the School/Academy/Trust to give parents a final chance to engage in support before a penalty notice is issued.

20. Nottinghamshire County Council reserves the right to issue a Notice to Improve instead of or before issuing a penalty notice where the authority believes this will result in an improvement in attendance.
21. The recommended maximum review period for a Notice to Improve is 6 weeks. However, depending on individual circumstances, the review period could vary between 3-6 weeks.
22. Where a pupil continues to be regularly absent during the review period and the threshold for issuing a penalty notice as set out in the Code of Conduct is met, a fine can be issued or requested.
23. It will be the responsibility of the organisation that issues to Notice to Improve to monitor and review attendance during the review period. This will be done through oversight of the attendance register.

#### **Parental responsibility for the whereabouts of excluded pupils**

24. Section 103 of the Education and Inspections Act 2006 places a duty on parents in relation to an excluded pupil. A parent has to ensure that their child is not present in a public place during school hours without reasonable justification during the first five days of each and every fixed period or permanent exclusion.

#### **Issuing Penalty Notices for Exclusion:**

25. For notices issued by the Local Authority, The LA Officer for each area will receive requests for penalty notices to be issued from those persons authorised to issue such notices and will oversee the process.
26. Where penalty notices are issued by the school, the designated person authorised by the Head Teacher will oversee the process of issuing the notice in line with the Code of Conduct.
27. A penalty notice may only be issued when there is no reasonable justification for the child being in public at the times set out in the next paragraph. 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 Youth Offending Service may also provide reasonable justification.
28. Where a penalty notice is requested by a school, it will be necessary for the Local Authority to receive from the school evidence that a notice under section 104 of the Education and Inspections Act 2006 has been given to a parent of the pupil.

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Where the school is issuing the Penalty Notice, the designated person in school is responsible for checking that a 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 person issuing the notice 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.

Before requesting or issuing a Penalty Notice the school will need to evidence that they have checked that there was no reasonable justification for the child or young person being in a public place and that the parent had been told verbally or by letter that an excluded child cannot be seen in a public place.

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 case 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).

The Local Authority Officer will consult with the person providing the Section 9 Statement and offer guidance as required and arrange for the Section 9 Statement to be completed in the appropriate format.

If the defendant requests the author of a Section 9 Statement to be present at the court hearing the LA will notify the person concerned as soon as such requests are made.

29. A fine for a pupil being in a public place during school hours without reasonable justification during the first five days of each and every fixed period or permanent exclusion is £120. Reducing to £60 is paid within 21 days of the date the fine was issued.

## **How authorised officers will work together**

30. The following may issue penalty notices, although there is no requirement for them to do so:

- authorised local authority staff;
- head teachers and school staff authorised by them (limited by regulations to deputy and assistant heads); and
- the police, community support officers and accredited persons.

31. Head teachers wishing to issue, or authorise their staff to issue, penalty notices should first discuss this with their school's governing body.

32. Schools/Academies/Trusts deciding to issue penalty Notices themselves should ensure that this is made clear to parents/carers and is formally reflected in their Attendance and Behaviour Policy.



33. All Penalty Notices issued or requests to the Local Authority for a Penalty Notice to be issued, must comply with the Local code of conduct.
34. As outlined in the regulations the payment of all monies for Penalty Notices must be made to the Local Authority.
35. The issuing of a penalty notice must not conflict with other intervention strategies or legal proceedings that are already in process.
36. Where a school or the police are considering whether to issue a penalty notice themselves, they must first check with Nottinghamshire County Council whether:
- A fine has already been issued which covers any or all of the same 10-week period of evidence,
  - Whether issuing a fine would interfere with any other legal interventions that are already underway,
  - Nottinghamshire County Council, as the independent prosecutor, agrees with the reasoning and evidence base on which a penalty notice would be issued or not, including whether sufficient support has been provided.
  - Whether the Local Authority could provide additional support through Early Help.
37. Whichever organisation issues the penalty notice must determine based on the available evidence 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 Nottinghamshire County Council who will make a judgement about whether sufficient support has been provided before issuing a penalty notice.
38. Nottinghamshire County Council will inform the School/Academy/Trust by email where a penalty notice could not be issued and/or where a penalty notice has not been paid and is being escalated to prosecution at the Magistrates Court.
39. Nottinghamshire County Council will not notify schools when fines have been paid.
40. Where pupils move between local authority areas, Nottinghamshire County Council can be contacted on [crossborder.penaltynotice@nottscc.gov.uk](mailto:crossborder.penaltynotice@nottscc.gov.uk) to find out if penalty notices have been issued previously.
41. Where a pupil attends school in Nottinghamshire but lives in a different local authority area, Nottinghamshire County Council will issue a penalty notice where an offence has occurred at a Nottinghamshire school. Fines will always be issued in line with the Nottinghamshire Code of Conduct.
42. Where support is more appropriate and has the consent of the family, the School/Academy/Trust should make a referral to the relevant Early Help support services in the authority where the pupil resides. Nottinghamshire County Council can work alongside the local authority providing support to deliver any necessary legal interventions to improve attendance.

43. The Attendance Register is a Legal Document and must be treated as such at all times. The register must be maintained as a wholly accurate and current record of an individual student's education provision and their attendance at that provision.

#### **WITHDRAWING A PENALTY NOTICE**

44. The Education (Penalty Notices)(England) Regulations 2007 limit the circumstances in which local authorities can withdraw penalty notices and the normal response to non-payment of a penalty notice will be prosecution for the offence to which the notice relates.

45. A penalty notice may only be withdrawn by the local authority named in the notice as the authority to which payment is to be made. The only circumstances in which a Penalty Notice will be withdrawn include cases in which:

- it ought not to have been issued; or
- it ought not to have been issued to the person named as the recipient; or
- it appears to the authority that the notice contains material errors,
- it interferes with existing intervention strategies or legal proceedings.

46. Where a penalty notice has been withdrawn:

- notice of the withdrawal must be given to the recipient; and
- any amount paid by way of penalty in pursuance of that notice must be repaid to the person who paid it