

PENALTY NOTICE (Education)

LOCAL CODE OF CONDUCT

19 August 2024

Legal Framework:

The Education (Penalty Notices) (England) Regulations 2007 (SI 2007/1867) as amended by the Education (Penalty Notices) (England) (Amendment) Regulations 2024 (SI 2024/210)

The School Attendance (Pupil Registration) (England) Regulations 2024 (SI 2024/208)

National Framework for Penalty Notices: February 2024

Working Together to Improve School Attendance: Department for Education February 2024.

Local Code of Conduct for issuing Penalty Notices for school absence 2024

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 Herefordshire. The code sets out the arrangements for administering penalty notices in Herefordshire 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.

Legal basis

- The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.
- Penalty notices may be issued to a parent as an alternative to prosecution for irregular school attendance under section 444 of the Education Act 1996 where those parents 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 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 (eg. unauthorised holiday in term time).
- A penalty notice 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) Education Act 1996.
- In accordance with the definition of parent within the Education Act 1996, more than one person may be liable for the offence. In such circumstances, separate Notices will be issued to each person. Penalty Notices are therefore issued per parent, per child.
- 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.
- Regulatory Services Enforcement Officers will administer penalty notices on behalf of Herefordshire Council. This will enable consistent and equitable delivery, avoiding duplication and ensuring consistency with other enforcement sanctions.
- 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.

Parental Responsibility

A parent includes any person 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, irrespective as to whether those persons are biological parents. 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

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?

- When a school becomes aware that the national threshold has been met, they must consider whether or not to refer to Herefordshire Council to request the issue of a penalty notice pursuant to section 444A Education Act 1996. Schools are required to make judgements on each individual case to ensure fairness and consistency across the County.
- The national threshold has been met when a pupil has been recorded as absent for 10 sessions within 10 school weeks¹, 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 O (none of the other rows of Table 3 in regulation 10(3) of the School Attendance (Pupil Registration) (England) Regulations 2024 applies), and
 - (c) Code U (the pupil attended after the taking of the register ended but before the end of the session, where no other code applies)
- If in an individual case Herefordshire Council believes a penalty notice would be appropriate, they retain 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 family events
- When a parent purposefully tries to avoid a penalty notice by taking their child out of school when the school is open for four days for pupils and closed on the fifth day due to a bank holiday or training day.

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).

- For a child of compulsory school age who is a registered pupil at a school and is excluded from that school, either for a fixed period, or permanently, his/her parent/carer is guilty of an offence under Section 103 of the Education and Inspections Act 2006 if:
 - a) the child in question is present in a public place during school hours without reasonable justification during the first five days of each and every period of exclusion;
 - b) the parent must have been notified by the school at the time of the exclusion of their duty and the dates the exclusion relates to;
 - c) If all criteria are met, a penalty notice will be issued pursuant to section 105 Education and Inspections Act 2006. A 'Notice to Improve' will not be issued.

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

- Consideration whether or not to issue a penalty notice shall be made on an individual case by case basis.
- Has sufficient support been provided in line with statutory guidance and school's own policies (where support is appropriate):
 - *Consideration of the support currently available from the school and other services and agencies in the area, and whether this support is appropriate in the circumstances. Further consideration will be given to whether this support has been provided previously or could be reapplied instead of taking legal action.*
- Is the penalty notice the best available tool to improve attendance and change parental behaviour or would one of the other legal interventions be more appropriate.
- All cases shall be considered under the obligations of the Equality Act 2010.
- When making a referral for a penalty notice, schools must consider sending a Notice to Improve if the national threshold has been met and it is deemed appropriate.
 - 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.
 - Where it is clear that improvement is not being made, it may be appropriate to issue a penalty notice before the improvement period has ended.
 - The length of improvement will usually be between 3 - 6 school weeks.
 - 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).
- If a Notice to Improve is not used a written warning must be sent to the parent before referring for a penalty notice. In all cases where parents are being referred for legal intervention they must be informed in writing.
- When the authorised officer is not from the Local Authority, before issuing a penalty notice they must consult with the Local Authority to confirm agreement on the relevant

considerations. These considerations include but are not limited to whether sufficient support has been provided and whether a prosecution is ongoing/is being considered. Additionally, the authorised officer must provide the Local Authority with copies of any penalty notices issued.

- Prior to issuing a Penalty Notice an assessment will be made to ensure the sufficiency of evidence and public interest tests are satisfied and the matter is capable of being subject to prosecution in accordance with Herefordshire Council's Enforcement Policy and The Code for Crown Prosecutors

Payment

Penalty Notice in respect an excluded pupil in a public place under section 105 Education and Inspections Act 2006:

- If the penalty notice is paid within 21 days, the penalty is £60. If paid after 21 days, but within 28 days, the penalty is £120.
- When considering whether to issue more than one penalty notice, Herefordshire Council will assess each case on the facts taking into account that a penalty notice should only be issued when it is deemed likely that it will change parental behaviour.

Penalty Notice in respect of failure to secure regular attendance at school of registered pupil under section 444A Education Act 1996:

- 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. Parents will not be issued with a third penalty notice.
- If the first penalty notice is paid within 21 days, the penalty is £80. If paid after 21 days, but within 28 days, the penalty is £160.
- If a second penalty notice is issued within a rolling 3 year period parents will not be given the opportunity to pay the lower amount and will be required to pay £160 within 28 days. Herefordshire Council will not accept part payment or payment after 28 days.
- If the national threshold is met for a third time (or subsequent times) to the same parent in respect of the same child within 3 years of the date of issue of the first or the penalty notice is not paid in full before the expiry date, Herefordshire Council may prosecute under S444(1) or (1A) of Education Act 1996.
- For the purpose of the escalation process, previous penalty notices include those not paid (where guilt was established in a court) but not those proceedings which were withdrawn.
- Once 3 years have elapsed since the first penalty notice was issued a further penalty notice can be issued, but in most cases it would not be the most effective tool for changing what may have now become an entrenched pattern of behaviour.

- There is no statutory right of appeal against the issuing of a penalty notice. Penalty notices may only be withdrawn for the following reasons: where it is determined that the notice should not have been issued; where the notice should not have been issued to the person named as the recipient; or where it appears to the Council that the notice contains material errors.
- The Local Authority will inform the school about whether penalty notices are paid, withdrawn or prosecuted for non-payment upon request.

Cross Border Arrangements

- In cases where a pupil has moved school or Local Authority Area in the previous 3 years checks will be made to ascertain whether previous penalty notices have been issued to the parent in respect of the pupil.
- Herefordshire Council can be contacted on crossborder.penaltynotice@herefordshire.gov.uk to find out if penalty notices have been previously issued in relation to parents of statutory school age within Herefordshire.

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