

# Education Penalty Notice

# CODE OF CONDUCT

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## 1. Purpose and Rationale:

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 Worcestershire. The code sets out the arrangements for administering penalty notices in **Worcestershire** 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 \(applies from 19 August 2024\) \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/guidance) guidance.

Regular and punctual attendance of pupils at school is both a legal requirement and essential for pupils to maximise the opportunities available to them. The Education Engagement Service will continue to investigate cases of irregular school attendance by undertaking targeted interventions and, where appropriate, instigate legal action under the Education Act 1996 for unauthorised absence. A Penalty Notice will be a useful sanction at an early stage before attendance problems become entrenched and where the Local Authority considers that prosecution would be too heavy-handed.

### **When may a penalty notice for absence be appropriate?**

1. If in an individual case the local authority (or other authorised officer) believes a penalty notice would be appropriate, they retain the discretion to issue one before the threshold is met.
2. 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:
3. (a) code G (the pupil is absent without leave for the purpose of a holiday),
4. (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
5. (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)
6. the child is out in a public place without reasonable justification during the first five days of every exclusion from school.
7. 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. In these circumstances

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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).

the Local Authority will consider prosecution of a parent / carer under s4441 Ed. Act 1976 for irregular attendance of a pupil at school.

Worcestershire County Council has the responsibility for drawing up the Code of Conduct. The local code of conduct is a requirement of The Education (Penalty Notices) (England) Regulations 2007 and is there to ensure that the powers to issue penalty notices are applied consistently and fairly across the Local Authority area and that suitable arrangements are in place for the administration of the scheme.

Worcestershire County Council's Education Engagement Service discharges the responsibilities for taking legal action against parents/carers and is also responsible for the review and administration of the Code of Conduct.

Parents/carers and pupils are supported by schools/alternative provision and by Worcestershire County Council to overcome barriers to regular attendance through a range of assessment and intervention strategies. Sanctions of any nature are of use only where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem.

Sanctions are used as a means of enforcing attendance where there is reasonable expectation that their use will secure improvement.

## **2. Legal Framework.**

The Education (Penalty Notice) (England) Regulations 2007 (Statutory Instrument 1867) in relation to offences under section 444 of the Education Act 1996. This replaces The Education (Penalty Notice) (England) Regulations 2004 with effect from 1<sup>st</sup> September 2007.

The Anti Social Behaviour Act 2003, Section 23, introduced section 444A and 444B into section 444 of the Education Act 1996. These sections enable Penalty Notices to be issued as an alternative to prosecution in the Magistrates Court under section 444 Education Act 1996 and allows parents/carers to discharge liability for conviction of that offence by paying the penalty.

The Education and Inspections Act 2006, Section 103 places a duty on parents/carers in relation to an excluded pupil, to ensure that the child is not present in a public place during school hours without reasonable justification during the first five days of every fixed term and permanent exclusion. These days are known as the "specified days of exclusion". Section 104 of the Act requires schools to notify parents in writing that they are responsible for the

child during these days. Section 105 allows for a penalty notice to be issued to a parent guilty of an offence under section 103 (3).

The Act empowers designated Local Authority Officers, Head Teachers, Deputy Head Teachers and Police to issue Penalty Notices in case of unauthorised absence from school in line with the Local Authority's code of conduct for Penalty Notices.

The Local Authority and any persons authorised to issue Penalty Notices must have regard to the Human Rights Act 1998, Disability Discrimination Act 1995 and Sex Discrimination Act 1975 and the Equality Act 2006 and the Special Educational Needs Code of Practice.

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.

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/carer or parents/carers with day-to-day responsibility for the pupil's attendance or the parent/carer or parents/carers who have allowed the absence (regardless of which parent/carer has applied for a leave of absence).

### **3. Circumstances where a Penalty Notice may be issued.**

A Penalty Notice can be issued in cases of unauthorised absence from school and in respect of any excluded child found in a public place during school hours 'without reasonable justification' in the first five days of the exclusion.

The Education Engagement Service will generally only issue a Penalty Notice if it is an appropriate sanction for unauthorised absences from school or for a child's presence in a public place during school hours without reasonable justification, for example where the parent/carer has failed to make adequate arrangements for that child during their exclusion.

It is the parent(s)/carer(s) responsibility to prove reasonable justification to the Authority and they may be asked to produce evidence of matters upon which they intend to rely (e.g. doctor's certificate or confirmation of a hospital visit). Whether parental/carers justification is reasonable is a matter for the Authority to decide upon, taking account of individual circumstances advanced by the parent/carers. Parents/carers will be given the opportunity to provide reasonable justification prior to issuing the penalty notice.

The issuing of a Penalty Notice is considered appropriate in cases of;

- An excluded child is found in a public place during the school hours of the first five days of exclusion.
- Overt truancy is detected (including being caught on truancy sweeps)
- Parentally condoned absence is evidenced.
- Unauthorised leave of absence has been taken (unauthorised family holidays)
- Delayed return from leave of absence without prior school agreement
- Persistent late arrival at school (after the register has closed)

The threshold is 10 sessions of unauthorised absence in a rolling period of 10 school weeks. A school week means any week in which there is at least one school session. This can be met with any combination of unauthorised absence (e.g. 4 sessions of holiday taken in term time plus 6 sessions of arriving late after the register closes all within 10 school weeks). These sessions can be consecutive (e.g. 10 sessions of holiday in one week) or not (e.g. 6 sessions of unauthorised absence taken in 1 week and 1 per week for the next 4 weeks). The period of 10 school weeks can also 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).

#### **4. Notice to Improve**

A notice to improve is a final opportunity for a parent/carers 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/carers or have not worked, a notice to improve will be sent to give parents a final chance to engage in support. In these cases, parent (s) /carers(s) will be issued with a formal warning of the possibility of a Penalty Notice being issued and given a maximum of 20 school days within which there should be no further unauthorised absence sessions. Where the parent(s) fail to comply with the warning a Penalty Notice will be issued.

A Penalty Notice can be issued for leave of absence in term time for which no permission has been sought from the school, or permission sought was refused, or child has not returned by the agreed date and no acceptable reason for delay has been received, and where a child has been encountered on more than one truancy patrol and the absences were unauthorised.

Where more than one child in a family is involved multiple notices to improve may be issued. There will be no restriction on the number of times a parent/carer may receive a formal warning of a possible issue of a Penalty Notice. The national framework for penalty notices sets out that a maximum of 2 penalty notices per child, per parent/carer 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. In these circumstances the Local Authority will consider prosecution of a parent / carer under s4441 Ed. Act 1976 for irregular attendance of a pupil at school.

Where a Penalty Notice is used for unauthorised absence, there will be a restriction of no more than two per parent per academic year.

The use of a Penalty Notice allows a parent/carer to discharge their liability for an offence under section 444 of the Education Act 1996 and 103 of the Education and Inspections Act 2006 by the payment of a fine. If the fine remains unpaid at the end of the 28-day payment period, the matter will automatically proceed to court for prosecution of the original offence unless the notice is withdrawn where the parent/carer will be notified in writing.

## **5. Procedures for Issuing Penalty Notice**

The issue of Penalty Notices will be administered by the Education Engagement Service to ensure compliance with the Regulations and that provisions of this code do not conflict with other forms of statutory intervention pursued by the Education Engagement Service.

Penalty Notices will always be issued by first class post as there may be health and safety implications involved in the operation of direct delivery.

With certain exceptions, parents will receive a notice to improve/warning letter before a Penalty Notice is issued. Exceptions may include unauthorised leave of absence in term-time and where a child has been encountered on more than one truancy patrol. The notice to improve/warning letter will indicate the period of time over which improvement is expected (usually 20 school days) and the consequences of failing to ensure regular attendance.

The Education Engagement Service will consider requests to issue Penalty Notices from schools/colleges in the local authority and the local Constabulary.

The Education Engagement Service will action these requests providing a signed attendance certificate from the head teacher is received with a declaration confirming that:

- The circumstances of the case meet the criteria for the issue of a Penalty Notice, as specified in the Code of Conduct, and
- All necessary information is provided to the Education Investigation Service in order to establish that an offence under Section 444 (1 /1A) Education Act 1996 has been committed, and
- In the case of an unauthorised period of leave of absence, supporting evidence is provided that clearly details the reasons permission has not been granted by the Head teacher.

Worcestershire County Council advises that schools/alternative education providers maintain a clear, consistent, and robust approach towards granting leave of absence for exceptional circumstances (family holidays in term time), in line with their Attendance and Equal Opportunities policies and the Human Rights Act.

Primary responsibility for issuing Penalty Notices rests with the Local Authority. Penalty Notices will only be issued subject to approval by the Education Engagement Service authorised officers.

The collection of payments and issuing of receipts will be administered by the Education Engagement Service on behalf of the Local Authority with support from the Finance department.

## **6. Procedure for the Withdrawal of a Penalty Notice**

Once issued a Penalty Notice can only be withdrawn in the following circumstances;

- The notice has not been issued in accordance with the code of conduct.
- Evidence has been established that the notice was issued to the wrong person.
- The parent has provided evidence that they did not receive the notice (e.g. the notice was sent to the wrong address).
- There are material errors in the information leading to the issue of the Penalty Notice.

- The period for payment has expired and the Local Authority does not intend to institute legal proceedings for offence to which the Penalty Notice relates.

## 7. Payment of Penalty Fines

Arrangements for payment will be detailed on the Penalty Notice.

The fine payable within 21 days of service of the Penalty Notice is £80 and within 21 to 28 days is £160. The payment period expires after 28 days.

Revenue generated from the Penalty Notices will be used to cover the costs of issuing and enforcing notices, or the cost of prosecuting recipients who do not pay. Any surplus will be surrendered to the Secretary of State.

If not paid in full by the end of the 28-day period the Local Authority will commence legal proceedings for the offence under Section 444(1) of the Education Act 1996, or under the provisions of Section 103(3) of the Education and Inspections Act 2006.

If following non-payment during the designated period of payment, the matter is not going to proceed to court for the original offence, parent/carer will be notified the matter has been withdrawn.

Where pupils move between local authority areas, **Worcestershire County Council** can be contacted on [edinvservice@worcschildrenfirst.org.uk](mailto:edinvservice@worcschildrenfirst.org.uk) to find out if penalty notices have been issued previously.



## **8. Policy and Publicity**

Deployment of Penalty Notices as a sanction is included in Worcestershire County Council's Inclusion and Attendance Strategies.

All school/alternative provision Attendance Policies should include information on the deployment of Penalty Notices and this should be brought to the attention of parent(s) on a regular basis.

## **9. Reporting and Review**

Review of this code of conduct will take place every three years or more often if required by legislative changes. Review may involve consultation where it is considered appropriate.