

# Code of Conduct for Penalty Notices

Penalty notices to address absences and poor attendance at school or alternative provision - August 2024

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## Purpose

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 East Sussex. The code sets out the arrangements for administering penalty notices in East Sussex. 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.
2. Penalty notices are intended to prevent the need for court action. They 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 (e.g. an unauthorised holiday in term time).

3. Penalty notices should be considered as a last resort, where all other supportive measures have been exhausted.

## Consultation

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

## Legal Basis

5. Regular and punctual attendance at school, or alternative provision, is both a legal requirement and essential for children and young people to maximise their educational opportunities.
6. An offence occurs if a parent or carer fails to secure a child's attendance at a school, or alternative provision, at which they are a registered pupil and that absence is not authorised by the school, or alternative provision.
7. Penalty notices should not be issued relating to a child in public care. Where there are concerns over attendance of a child who is looked after (LAC), a review should be held. Penalty notices should not be issued relating to a child who is on roll of an independent school that is not state funded.
8. 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).
9. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.
10. 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.
11. 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

12. 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.
13. 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.
  14. 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.
  15. 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.
  16. Successfully treating the root causes of absence and removing barriers to attendance, at home, in school or more broadly requires schools and local partners to work collaboratively in partnership with, not against families. All partners should work together to:
    - **Expect:** Aspire to high standards of attendance from all pupils and parents and build a culture where all can, and want to, be in school and ready to learn by prioritising attendance improvement across the school.
    - **Monitor:** Rigorously use attendance data to identify patterns of poor attendance (at individual and cohort level) as soon as possible so all parties can work together to resolve them before they become entrenched.
    - **Listen and understand:** When a pattern is spotted, discuss with pupils and parents to listen to and understand barriers to attendance and agree how all partners can work together to resolve them.
    - **Facilitate support:** Remove barriers in school and help pupils and parents to access the support they need to overcome the barriers outside of school. This might include an early help or whole family plan where absence is a symptom of wider issues.
    - **Formalise support:** Where absence persists and voluntary support is not working or not being engaged with, partners should work together to explain the consequences clearly and ensure support is also in place to enable families to respond. Depending on the circumstances this may include formalising support through an attendance contract or education supervision order.
    - **Enforce:** Where all other avenues have been exhausted and support is not working or not being engaged with, enforce attendance through statutory intervention: a penalty notice in line with the National Framework or prosecution to protect the pupil’s right to an education.

## Authorisation

17. To ensure consistency and prevent conflict with other enforcement sanctions, the primary responsibility for the issuing of penalty notices rests with the local authority, Attendance Support Team (Legal Interventions).
18. Although professionals other than those within the local authority (Headteachers, the police etc.) are accredited persons within the legislation, able to issue penalty notices, there is no requirement for them to do so. In East Sussex, it has been agreed that the Police and schools will not issue penalty notices.
19. If a Headteacher feels it is appropriate for a penalty notice or Notice to Improve letter to be issued, the school will complete a request, in line with the procedures laid out by the local authority within the Penalty Notices Guidance for Schools.
20. The Attendance Support Team (Legal Interventions) will closely monitor the issuing of penalty notices.
21. Penalty notices will only be issued by post; this will satisfy that all evidential requirements are in place.

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

22. 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 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)
23. All state funded schools must consider whether a penalty notice is appropriate in each individual case where one of their pupils reaches the national threshold for considering a penalty notice.
24. The school must review whether a pupil has special educational needs, whether these have been properly assessed and that the provision made is appropriate and after considering any obligations under the Equality Act 2010, such as where a pupil has a disability.

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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).

25. Schools should not have a blanket position of requesting the issue or not issuing of penalty notices and should make judgements on each individual case to ensure fairness and consistency across the country.

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

26. If repeated penalty notices are being issued and they are not working to change behaviour they are unlikely to be the 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, another tool should be used. The local authority will review all evidence on a case-by-case basis and will determine whether to escalate to prosecution, an Education Supervision Order or a Parenting Order.
27. For 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.
28. When a school becomes aware that the threshold has been met, they are expected to make the following considerations to decide whether to request the issue of a penalty notice in each individual case:

### Holiday in Term Time

29. Holidays should not be taken during term time and are likely to result in the issuing of a penalty notice. However, the head teacher has discretion to authorise such absence in exceptional circumstances.
30. Specific period of unauthorised absence (for example a holiday in term time): absence from school without permission and the absences are unauthorised. If a Headteacher does not authorise a request from a parent/carer for an absence, they will respond to the request directly. This response will constitute a valid Warning to the parent. In all cases, a minimum of 10 sessions in total (5 school days) of absence must have been accrued before a penalty notice is requested. The absences will be consecutive, but weekends, Bank Holidays, inset days etc. *do not* interrupt a period of absence and therefore it will remain consecutive.
31. A '*Withdrawal from Learning*' application should be included in the school attendance management process.
32. At the third (or subsequent) offence(s), prosecution will be considered alongside other legal interventions - Education Supervision Orders or a Parenting Order. A discussion will be held by the Attendance Support Team (Legal Interventions) with the school and any other supporting agencies prior to legal interventions commencing on a case-by-case basis.
33. If the school believes a penalty notice would be appropriate in an individual case, for example, where parents are deliberately avoiding the national threshold by taking several term time holidays below threshold, or for repeated absence for birthdays or other family

events, it is recommended that the school contacts the Attendance Support Team (Legal Interventions) to discuss potential next steps on a case by case basis.

### Persistent Unauthorised Absence

34. Prioritise the support first approach in all cases. A range of support must be evidenced before escalating to requesting the issue of a Penalty Notice:-
  - Evidence of written communication (attendance alert letters, meeting invites and minutes).
  - Record/chronology of face to face/virtual meetings with a record of outcomes agreed and minimum of one review of support offered e.g. Attendance support plan or Assess, Plan, Do, Review (APDR) within the first 6 weeks of the monitoring period.
  - Evidence of student voice which has attempted to identify and address barriers to regular attendance.
  - If attendance is below 50%, has a referral to Level 2 Early Help Key Work (EHKW) been considered? If not, provide reasons.
  - Has consideration been given to a referral to support services for additional help where appropriate, i.e. Early Help Level 3, Mental Health Support Team, School Health.
  - Evidence of discussion with other professionals, including Social Workers, if open to Social Care and other services.
35. During the 10 school weeks of monitoring, schools are expected to continue to engage and attempt to address barriers to regular attendance.
36. Where the national threshold has been met and attendance is not improving, and/or there is a lack of engagement, the school will refer to the Attendance Support Team (Legal Interventions) for a Notice to Improve or Penalty Notice to be considered on a **case-by-case basis**.
37. The Local Authority will assess the Notice to Improve or Penalty Notice requests at a weekly triage meeting and determine the appropriate next step. Discussions will be held with the school if there were any queries.
38. The length of the Notice to Improve period will be decided locally and will be between 3 and 6 weeks. During this period all supportive measures by the school should continue and approaches to be adapted where necessary. Regular reviews should be documented through existing Support Plans.
39. Following the issuing of the Notice to Improve, an Attendance Support Team member from TASS will liaise with the school during the monitoring period and will be available to provide advice and guidance on any ongoing concerns and any support strategies on a case-by-case basis.
40. Should further unauthorised absences be accrued within the 3 to 6 school weeks monitoring period following the issue of the Notice to Improve, the Local Authority will issue a penalty notice if deemed appropriate and inform the school or consider other legal interventions.
41. On a termly basis the Local Authority will provide a report to each individual school outlining outcomes relating to penalty notices issued.

## Excluded Pupil

An Excluded Pupil found in a public place during the school day:

42. In all cases the Attendance Support Team (Legal Interventions) will check whether the pupil was excluded at the time. If the criteria are satisfied, then a penalty notice will be issued (a school is *not* deemed by the Education & Inspections Act 2006 to be a public place for the purposes of this legislation).
43. A penalty notice issued for a child being found in a public place during the school day whilst excluded, cannot be counted as one of the two penalty notices, that could then lead to prosecution as outlined in section 36 of this document.
44. The National Framework threshold does not apply in these cases.

## **Procedure for withdrawing a penalty notice**

45. A penalty notice can only be withdrawn in the following circumstances:
  - It ought not to have been issued; or it ought not to have been issued to the person named as the recipient.
  - The school receives further information not originally provided which means that they feel it is appropriate for the penalty notice to be withdrawn.
  - It appears to the authority that the notice contains material errors.
46. If a school wishes a penalty notice to be withdrawn, an email should be sent outlining the reason why. The Attendance Support Team (Legal Interventions) will confirm when a penalty notice has been withdrawn and it is the responsibility of the school to inform the parent of the withdrawal.

## **Payment of penalty notices**

47. A limit of no more than 2 penalty notices being issued to the same parent for the same pupil within a 3-year rolling period will apply from 19 August 2024.
48. The first penalty notice issued to the parent for that pupil will be charged at £160 if paid within 28 days reducing to £80 if paid within 21 days.
49. Where it is deemed appropriate to issue a second penalty notice to the same parent for the same pupil within 3 years of the first notice, the second notice is charged at a flat rate of £160 if paid within 28 days.
50. A third penalty notice will not be issued within a 3-year period. Therefore, in cases where the threshold is met for a third (or subsequent) times within those 3 years, a penalty notice cannot be issued, and alternative action will be taken instead. This will often include considering prosecution but may include other tools, such as one of the other attendance legal interventions. This will be considered and agreed in consultation with the school.

51. Once 3 years has elapsed since the first penalty notice was issued to the parent, a further penalty notice can be issued if appropriate, but in most cases, it will not be the most effective tool for changing what may have now become an entrenched pattern of behaviour.
52. The arrangements for the paying of penalty notices will be detailed on the penalty notice.
53. Revenue generated from the penalty notices will first be used for administration of the penalty notice system and prosecution. If a surplus remains, this will be spent on attendance support. In practice, 'support' means any other activity to improve attendance, not including a penalty notice or prosecution, in line with the, 'Working together to improve school attendance guidance'.

## **Non-payment of penalty notices**

54. If the penalty notice is not paid in full by the end of the 28-day period, unless withdrawn, the local authority will consider what action to take next in consultation with the school. It can decide to take no action taking into consideration any new information and exceptional circumstances pertaining to the individual case, or deal with the matter through an Education Supervision Order, if this is an appropriate course of action. It can also decide to launch a criminal prosecution for failing to ensure the regular attendance of a child at school, under section 444(1) of the Education Act 1996, if the case meets the evidential and public interest tests for a prosecution.
55. In all cases where a local authority decides to prosecute, an Education Supervision Order will have been considered first and not considered suitable. Where a prosecution is an appropriate course of action, a caution may be offered by the local authority as an alternative method of disposal.
56. Failure by a parent to pay the penalty notice may result in a prosecution. If a parent is found guilty by the Court of the offence, possible outcomes could be an absolute or conditional discharge, up to a maximum fine of £2,500 if the prosecution is for s4441 of the Education Act 1996. For the more serious offence under s4441A of the Education Act, a custodial sentence can be imposed. Ancillary orders, such as Parenting Orders, are also possible. An absolute or conditional discharge is not a criminal conviction but is a finding of guilt by a court of law. A fine is a conviction, but only a conviction or guilty plea under s4441A of the Education Act 1996 is a recordable offence, i.e. it appears on DBS checks and Police databases.
57. There is no statutory right of appeal against the issue of a penalty notice.

## **Legislation**

Relevant legislation:

[The Education Acts 1996](#) and [2002](#)

[The Children Act 1989](#)

[The Crime and Disorder Act 1998](#)

[The Anti-Social Behaviour Act 2003](#)



[The Education and Inspections Act 2006](#)

[The Sentencing Act 2020](#)

[The School Attendance \(Pupil Registration\) \(England\) Regulations 2024](#)

[The Education \(Parenting Contracts and Parenting Orders\) \(England\) Regulations 2007](#)

[The Education \(Penalty Notices\) \(England\) Regulations 2007, as amended](#)

[The Education \(Information about Individual Pupils\) \(England\) Regulations 2013](#)

[The Children and Young Persons Acts 1933 and 1963](#)

[The Equality Act 2010](#)

Relevant government guidance:

[Children missing education](#)

[Keeping children safe in education](#) and [Working together to safeguard children](#)

[Special educational needs and disability code of practice: 0 to 25 years](#)

[Elective home education](#)

[Alternative provision: statutory guidance for local authorities](#)

[Exclusion from maintained schools, academies and pupil referral units in England](#)

[Supporting pupils at school with medical conditions](#)

[Arranging education for children who cannot attend school because of health needs](#)

[Promoting and supporting mental health and wellbeing in schools and colleges](#)

[Preventing and tackling bullying](#)

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**This Code of Conduct will be reviewed by 19 August 2025**