

Code of Conduct

Penalty Notices to Address unauthorised absence from School or Alternative Provision and when present in a public place during school hours when suspended or excluded from School or Alternative Provision

Rationale

1. The purpose of this Code of Conduct is to ensure that the associated powers are applied consistently and fairly across the Local Authority area. The Code sets out the arrangements for administering Penalty Notices in West Sussex County Council and must be adhered to by anyone issuing a Penalty Notice. The Code complies with relevant regulations and the Department for Education's (DfE's) National Framework for Penalty Notices as set out in the [Working together to improve school attendance](#) guidance.
2. Research published by the Department for Education in May 2022 found pupils with higher attainment at KS2 and KS4 had lower levels of absences 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.
3. 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.
4. 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.
5. The National Framework for Penalty Notices is based on the principles that Penalty Notices should only be used in cases where:
 - a. Support is not appropriate (e.g., a term time holiday) or where support has been provided and not engaged with or not worked, and
 - b. They are considered the most appropriate tool to change parental behaviour and improve attendance for that particular family.

Legal Basis

6. An offence occurs:
 - a. if a parent/carer fails to secure a child's regular attendance at school, or alternative provision, at which they are a registered pupil and that absence is not authorised by the school, or alternative provision. The Penalty Notice is a Notice offering a person the opportunity of discharging any liability to conviction for the offence under S.444(1) Education Act 1996 to which the Notice relates by payment of a Penalty in accordance with the Notice.
 - b. If a parent/carer fails to fulfil their responsibilities to ensure their child is not out in a public place without reasonable justification during the first five days of every suspension or exclusion from school as outlined in S.103 of the Education And Inspections Act 2006.
7. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how Penalty Notices for school absence must be used.
8. Penalty Notices can only be issued in relation to pupils of compulsory school age in Maintained Schools, Pupil Referral Units (PRU's), Academy Schools, Alternative Provision (AP) Academies, and certain off-site places as set out in section 444A(1)(b) Education Act 1996.
9. The National Framework for Penalty Notices is published in statutory guidance 'Working together to improve school attendance'. This provides further national guidance on the operation of Penalty Notice schemes for school absence in England.
10. 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). A parent is defined in S.576 Education Act 1996 and includes:
 - a. All natural parents
 - b. Any person who is not a natural parent who holds parental responsibility for the child.
 - c. Any adult who is considered to have care of the child.

In accordance with the definition of parent within the Education Act 1996, and thereby parental responsibility for non-school attendance, 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.
11. Penalty Notices will be issued by First Class post to satisfy evidential requirements/standards. Any Notice sent in this way is considered legally served by the Court. Penalty Notices may also be issued by email should a parent have asserted they will accept this method of correspondence.

Authorisation

12. A Penalty Notice can only be issued by an Authorised Officer; namely a Head Teacher or Deputy or Assistant Head authorised by them, an authorised Local Authority Officer, or a Police Constable.

13. Although professionals other than those within the Local Authority are accredited persons within the legislation, able to issue Penalty Notices, there is no requirement for them to do so. Within West Sussex it has been agreed Pupil Entitlement: Investigation (PEI) will issue Penalty Notices for education offences on behalf of schools and the Authorised Officer will be a member of PEI. This ensures consistency and will prevent conflict with other enforcement sanctions.

Criteria for Issuing Penalty Notices

14. PEI will act upon requests made by schools, academies or alternative education provided and Sussex Police, provided the Government's National Framework threshold has been met. This is reached when a pupil has been recorded as absent without authority for 10 sessions (a school day is made up of 2 sessions) within a 10 school week period. Unauthorised absence is evidenced by the presence of one of, or a combination of the following codes in the child's record of attendance. These codes are stated in the School Attendance (Pupil Registration) (England) Regulations 2024:
 - a. Code **G** – the pupil is absent without permission for the purpose of a holiday.
 - b. Code **N** – the circumstances of the pupil's absence have not yet been established.
 - c. Code **O** – the pupil is absent without Authority and none of the other registration codes within the 2024 Regulations applies.
 - d. Code **U** – the pupil attended school after the taking of the register ended but before the end of the relevant sessions, and no other code within the regulations applies.
15. PEI will also act upon notifications from schools of incidents of an excluded pupil; Code **E** - being present in a public place during school hours without reasonable cause. The National Framework threshold does not apply in these cases.
16. 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 National threshold is met.
17. 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 3rd time (or subsequent times) within 3 years alternative intervention may be considered. This might include prosecution or one of the other attendance legal interventions available to the Local Authority. The decision on the type of intervention is for the Local Authority to decide.
18. Where families have moved into the Local Authority enquires will be made with past Local Authority's to ascertain if FPNs have been issued for school absence offences.
19. 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. Penalty Notices issued prior to 19/08/2024 will not count toward the escalation process.

Notice to Improve

20. Schools are required where suitable to issue parents with a Notice to Improve for absence other than those associated with an unauthorised holiday in term time and when a pupil is present in a public place. This is a final opportunity for a parent to improve attendance and engage in support 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 be sent to the parents as a final chance to engage.
21. Schools may choose not to offer a Notice to Improve if they do not expect it to have any impact on a parent's behaviour (e.g., because the parent has already received one for a similar offence) and when this occurs the expectation is for the school to address their rationale in any referral submission to the Local Authority.
22. The recommended length of the improvement period should be between 3 to 6 weeks. This period is flexible, and a referral may be made to the Local Authority prior to the conclusion of the period, should circumstances dictate e.g., the parent fails to engage and/or the absence continues.
23. It is the school's decision on what sufficient improvement amounts to. For example, it might be no further unauthorised absences within the improvement period, or a sufficient amount of improvement tailored to the family.

Considerations Prior to the Issue of a Penalty Notice

24. PEI will consider the following before issuing a Penalty Notice to ensure consistency of approach:
 - a. **Holidays in term time (G codes).**
 - Whether a Penalty Notice is the best available tool to improve attendance and change parental behaviour. Where instances of absences of 15 school days (30 sessions) or more a Penalty Notice is not offered and instead the matter is to be referred to the Courts.
 - Whether the issuing a Penalty Notice in this case is appropriate after considering any obligations under the Equality Act 2010.
 - Whether it is 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. **Unauthorised Absence (O, U & N).**
 - History of attendance of the pupil concerned including previous referrals to the Local Authority.
 - Review whether the school has offered proportional support and whether that support has worked or not, including the communication with parents by phone, letter or in person.
 - The level of engagement of the parent/pupil regarding the absences.
 - The reasons offered by the parent for the absences.

- Whether the 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?
- Whether the issuing of a Penalty Notice in this case is 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?

c. Excluded pupils in a public place.

- Evidence of the notification to parents of their responsibilities whilst the exclusion is in place.
- Evidence presented in respect of the pupil being in a public place during school hours.
- Information relating to any reason apparent/offered for the pupil being in the public place, to assist in ascertaining if there was reasonable justification.

Outcome of Penalty Notices

25. The Local Authority will notify the schools of instances where an offered FPN is not paid, withdrawn, or resulted in a prosecution in respect of the offence under S.444 Education Act 1996. This notification will be achieved by email contact to the referring school.
26. Where pupils move between Local Authority areas, West Sussex can be contacted on crossborder.PenaltyNotice@westsussex.gov.uk to find out if Penalty Notices have been issued previously.
27. Where pupils attend school in West Sussex and live in a different Local Authority, West Sussex will liaise with the home Local Authority to advise of the actions taken and outcome.

Withdrawal of Penalty Notices

28. There is no inherent right to appeal a Penalty Notice. Once issued a Penalty Notice can only be withdrawn in the following circumstance.
 - The Penalty Notice has not been issued in accordance with the Code of Conduct.
 - Evidence has been established the Penalty Notice was issued to the wrong person.
 - Material errors have been identified 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 instigate legal proceedings for which the Penalty Notice relates.

Cost and Payment of Penalty Notices

29. The amount of the Penalty Notice is set out by Government and is subject to change should the Government direct. The current cost of the Penalty Notice is £160 and, in some cases, an early payment of £80 would be offered should circumstances permit. Details of the cost of the Penalty Notice will be outlined clearly within it.
30. The National Framework has stipulated revenue generated from Penalty Notices, must be used to cover the costs of issuing, and enforcing these, including the cost of prosecuting recipients who do not take up the offer of the FPN. Any surplus income must be ring fenced for attendance support.

Non-Payment of Penalty Notices

31. If the Penalty Notice is not paid in full by the end of the 28 day period, the Local Authority must either:
 - a. Prosecute for the offence to which the Notice applies. The prosecution relates to irregular school attendance under Section 444 of the Education Act 1996, or in instances of a child being in a public place whilst excluded under S.103 of the Education And Inspections Act 2006.
 - b. Consider the use of a formal Caution as an alternative method of disposal.
 - c. Withdraw the Penalty Notice when circumstance indicate this is suitable.
32. A record will be kept of all FPNs issued, and all prosecutions relating to offence for which a Penalty Notice was issued.