

Early Help and Family Engagement

Local Code of Conduct for issuing penalty notices for school absence 2024

Version 1 August 2024

1. Purpose

- 1.1 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 Rotherham. The code sets out the arrangements for administering penalty notices in Rotherham 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' (2024) guidance.

2. Consultation

- 2.1 This code has been drawn up in consultation with Rotherham Schools and South Yorkshire Police.

3. Legal Basis

- 3.1 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, alternative provision academies, and certain offsite places as set out in section 444A(1)(b).
- 3.2 The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.
- 3.3 The law states that 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.
- 3.4 The national framework for penalty notices is published in statutory guidance 'Working together to improve school attendance' (2024) which provides national guidance on the operation of penalty notice schemes for school absence in England.
- 3.5 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).

4. Rationale

- 4.1 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.

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- 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.
- 4.2 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.
- 4.3 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.
- 4.4 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.

5. When may a penalty notice for absence be appropriate?

- 5.1 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 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 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
 - (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).
- 5.2 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

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).

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.

- 5.3 Where the threshold is met for a third or subsequent time, within 3 years, then a decision will be made in the Local Authority School Attendance Panel as to what alternative action will be taken. This may include prosecution, an Education Supervision Order, an Attendance Contract, and/or support via an Early Help Assessment.
- 5.4 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.

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

- 6.1 The following considerations will be made before issuing (or requesting that another authorised officer issues) a penalty notice to ensure consistency of approach:
- 6.2 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?
 - 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?
- 6.3 In cases where support is appropriate, consider on a case-by-case basis:
 - Has sufficient support already been provided?
NB. Sufficient support will usually include engaging the family with an Early Help Assessment and/or a School Attendance Support Plan to understand and address any barriers to attendance for the pupil and family.
 - 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?
 - 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?
- 6.4 If the answer to the above questions is 'yes', then a penalty notice will usually be issued.

7. Notice to improve

- 7.1 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 must be sent to give parents a final chance to engage in support.

- 7.2 An authorised officer can choose not to use one in any case, including cases where support is appropriate, but they do not expect a notice to improve would have any impact on a parent's behaviour (e.g. because the parent has already received one for a similar offence).
- 7.3 A Notice to Improve letter should be issued by the school prior to requesting an FPN from the Local Authority in line with the School Attendance Matters Pathway.
- 7.4 Once the Notice to improve letter has been sent school should monitor attendance by tracking the number of sessions attended out of the possible sessions available and percentage attendance of the child.
- 7.5 The recommended length of the improvement period should be between 3 and 6 weeks. School is responsible for determining whether sufficient improvement has been made, in line with the Notice to Improve. However, a final decision on this will be made by the local authority.
- 7.6 If attendance has improved sufficiently specific to the individual circumstances, school should continue with a support plan.
- 7.7 If attendance does not sufficiently improve after the Notice to Improve has been issued (further unauthorised absence in the monitoring period) school should progress with the SAMP Pathway.
- 7.8 The Local Authority will require supporting documentation and relevant information outlined in the School Attendance Matters Pathway Guidance including all correspondence with the parent including offers of support, to establish whether a Fixed Penalty Notice is appropriate.

8. Authorised officers

- 8.1 Fixed Penalty Notices are issued by the Local Authority to avoid duplicate notices.
- 8.2 Where the school request that the Local Authority issues the penalty notice, they need to:
 - Ensure the circumstances of the child's absence meet all the requirements of this Code.
 - Send a referral to the Local Authority within 10 working days of the final warning letter being sent to parents.
 - Ensure the issuing of a Fixed Penalty Notice does not conflict with or undermine other intervention strategies in place or other enforcement sanctions already underway.
- 8.3 The request will need to include the following documents, failure to provide these may mean the FPN will not be issued:
 - Registration certificate of attendance for current and previous academic year.
 - Completed headteachers certificate.
 - Copies of correspondence sent to parents.

- Copy of the Early Help Assessment and plan and/or School Attendance Plan and evidence of how the child and parents have been engaged.
- 8.4 The Local Authority will respond with the outcome to all requests within 10 working days of the request being heard by either the Local Authority School Attendance Panel or the FPN panel, notifying the school of any intended action.
- 8.5 Provided the request has met all the criteria the Local Authority will issue a Fixed Penalty Notice by post.
- 8.6 The Local Authority will inform the school by e-mail about whether penalty notices are paid, withdrawn, or prosecuted for non-payment.

9. Pupils moving between Local Authority areas

- 9.1 Where pupils move between Local Authority areas, Rotherham Metropolitan Borough Council can be contacted on crossborder.penaltynotice@rotherham.gov.uk to find out if penalty notices have been issued previously.
- 9.2 Where pupils attend school in Rotherham Metropolitan Borough Council but live in a different Local Authority, Rotherham Metropolitan Borough Council will work with the resident Local Authority to inform decision making, and ensure where appropriate, support is provided.