

**Access and Inclusion Service**  
**Penalty Notice Code of Conduct**

In relation to School Absence

**applies from 19<sup>th</sup> of August 2024**

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 Newcastle upon Tyne. The code sets out the arrangements for administering penalty notices in Newcastle upon Tyne 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.

## **Consultation**

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

## **Legal basis**

3. 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 (Alternative Provision) academies, and certain off-site places as set out in section 444A(1)(b).
4. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) ("the Regulations") set out how penalty notices for school absence must be used.
5. 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.
6. The national framework for penalty notices is published in statutory guidance 'Working together to improve school attendance' (published 29 February 2024). It provides further national guidance on the operation of penalty notice schemes for school absence in England.
7. 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

8. 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.
9. 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.
10. 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.
11. 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?**

12. 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:

---

<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).

- (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)

13. If in an individual case the local authority officer believes a penalty notice would be appropriate, they retain the discretion to issue one before the threshold is met.

14. 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 and the Regulations 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 will be used such as prosecution. The 3-year period begins from 19 August 2024 for any Penalty Notices issued on or after that date.

15. 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.

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

16. The following considerations will be made before issuing (or requesting that another authorised officer issues) a penalty notice to ensure consistency of approach:

- In cases where support is not appropriate (for example, for holidays in term time), the LA will 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?
  - (For local authorities only) 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?

- In cases where support is appropriate, consider on a case-by-case basis:
  - Has sufficient support already been provided?
  - Sufficient support may include:

An attendance contract

Regular contact with parents/carers where there are attendance concerns

Schools to contact parents every day of absence to understand why pupil was absent and to offer support with any issues pupil may be having

An Attendance overview letter

Support for SEND (Special Educational Needs and Disabilities), either diagnosed or undiagnosed

Partner agency support and referral

(this is not an exhaustive list, and other avenues of support should be explored where appropriate)

If the answer to the above questions is 'yes', then a penalty notice (or a notice to improve in cases where support is appropriate) will usually be issued.

- If a pupil makes a significant improvement to their attendance during the monitoring period but has not reached the required threshold to pass, the LA will consider if a Fixed Penalty Notice is appropriate
- Parent/carers will be offered an opportunity to give an explanation where their child does not reach the required threshold to pass
- The final decision to issue a penalty notice rests with Access and Inclusion team and is part of a collaborative process

### **Notice to improve**

17. 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 should usually be sent to give parents a final chance to engage in support. 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).

- The parent will be issued with Notice to improve letter by the LA. The warning letter will indicate the period of time during which attendance is monitored and improvement is expected. This will be for 4 school weeks. Parents will also be warned about the consequences of failing to ensure regular attendance.
- Usually, a parent will receive a maximum of one Penalty Notice per child; subsequent offences will proceed to prosecution. However, the appropriateness of the issuing of a Penalty Notice will be considered in each case. Consideration will also be given as to prosecution under Section 444(1) or (1A).
- The parent will be given the opportunity to answer questions under caution by written correspondence within a specified time frame to raise any mitigating circumstances or legal defences.
- The parent will be given the opportunity to attend a PACE interview (interview under caution) to raise any mitigating circumstances or legal defences.
- Sufficient improvement is defined as no more than 3 unauthorised absences within the improvement period. Improvement may also be considered on an individual case by case basis.

### **How Authorised Officers Will Work Together**

18. The Local Authority are the Authorised officers who will issue penalty notices within the Newcastle upon Tyne area.

19. Where pupils move between local authority areas, Newcastle City Council can be contacted on: [crossborder.penaltynotice@newcastle.gov.uk](mailto:crossborder.penaltynotice@newcastle.gov.uk) to find out if penalty notices have been issued previously.

20. Where pupils attend school in Newcastle City Council but live in a different LA, Newcastle City Council will liaise with the home LA in cases where a penalty notice is being considered and support is appropriate, and that support is being provided by the home LA.

21. Whoever is issuing the penalty notice should decide as to whether proportionate support has been provided, and whether that support has worked or not.

22. The LA will inform the schools about whether penalty notices are paid, withdrawn, or prosecuted for non-payment. They will do this in writing within 2 working days.

## Contact details – Access and Attendance Officers

<b>Locality</b>	<b>Officer/Contact details</b>
East	Rachel Wells <a href="mailto:Rachel.Wells@newcastle.gov.uk">Rachel.Wells@newcastle.gov.uk</a>
	Toni Bensley <a href="mailto:Antonia.Bensley@newcastle.gov.uk">Antonia.Bensley@newcastle.gov.uk</a>
Inner West	Reshmin Alam <a href="mailto:Reshmin.Alam@newcastle.gov.uk">Reshmin.Alam@newcastle.gov.uk</a>
Outer West	Gary Munday <a href="mailto:Gary.Munday@newcastle.gov.uk">Gary.Munday@newcastle.gov.uk</a>
North	Yvonne Devine <a href="mailto:Yvonne.Devine@newcastle.gov.uk">Yvonne.Devine@newcastle.gov.uk</a>
All	Louise Swan – Attendance Assistant <a href="mailto:Louise.Swan@newcastle.gov.uk">Louise.Swan@newcastle.gov.uk</a>
Phone	0191 2774500