

**Local code of conduct for issuing penalty
notices for school absence**

August 2024

Introduction

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 Warrington. The code sets out the arrangements for administering penalty notices in Warrington 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

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

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).

The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.

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.

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 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

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.

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.

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.

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?

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, 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).

Warrington will consider a penalty notice in the following circumstances

- Code U – if there are 10 or more sessions missed over a 10-week period and a notice to improve has not brought about a change.
- Code G – if there are two or more holidays in term time over a 12-month rolling period.
- Code G or O – if there has been one extended period of absence which is greater than 10 sessions.

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.

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 a third time (or subsequent times) within 3 years, another tool should be used. In Warrington, the fast track to prosecution will be used. This is a nine-week process where parents and the local authority will work together to identify barriers to non-attendance and set targets to improve.

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

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), 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 will usually include:
 - Telephone calls/meetings with parents to identify any issue that may be preventing regular attendance.
 - Home visits by the school/LA attendance officer to offer support, advice and guidance.
- 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 responsible for any resulting prosecution for the original offence in cases of non-payment?

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.

Notice to improve

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 LA attendance officer may serve a notice to improve as a final intervention before a penalty notice is considered. Parents will be given 3-6 weeks to improve attendance following receipt of the formal notice to improve letter. A clear target will be set according to the nature of the unauthorised absence. For example, if no further unauthorised absences are taken over a rolling 12 month period or if there are no unauthorised late marks it may then be appropriate to withdraw from any further action.

How authorised officers will work together

Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour.

An authorised officer is a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police. In Warrington the authorised officer will be a member of Warrington Borough Council attendance team.

Whoever is issuing the penalty notice should make a decision as to whether proportionate support has been provided, and whether that support has worked or not. Where there is dispute, authorised officers are expected to defer to the local authority's judgement about whether sufficient support has been provided before issuing a penalty notice.

The LA will inform the school about whether penalty notices are paid, withdrawn or prosecuted for non-payment. The school's allocated attendance officer will do this by secure email.

Where pupils move between local authority areas, Warrington Borough Council can be contacted on crossborder.penaltynotice@warrington.gov.uk to find out if penalty notices have been issued previously.

Where pupils attend school in Warrington but live in a different LA, Warrington Borough Council will continue to work with the family/pupil as appropriate. If additional support is identified that may require support from other agencies such as early help, SEN or alternative provision the school or the LA attendance officer will seek advice or refer to the most appropriate agency.