

# **THE USE OF PENALTY NOTICES IN CASES OF IRREGULAR SCHOOL ATTENDANCE**

## **CODE OF CONDUCT**

## The use of Penalty Notices in cases of Irregular School Attendance Education (Penalty Notices) Regulations 2007

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 Bath and North East Somerset. The code sets out the arrangements for administering penalty notices in Bath and North East Somerset 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, Alternative Provision (AP) 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) 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'. 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, in cases where an excluded pupil is found in a public place during school hours without justifiable reason during the first 5 school days of any suspension or permanent exclusion whether from a maintained school, academy or a free school) 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:

- (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)

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.

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

14. If the national threshold is met for a third time (or subsequent times) within 3 years, Bath & North East Somerset Council will contemplate proceedings for an offence under section 444 of the Education Act 1996, or other legal interventions available to the Local Authority.

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.

Penalty notices issued for a pupil found in a public place during the first 5 days of an exclusion do not count towards the escalation process or national limit.

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

16. The following considerations will be made before issuing 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:

---

<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).

- 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 but not limited to:
      - Clear communication with the family
      - Home visits
      - Informal meetings and general information gathering to understand the barriers preventing good attendance
      - Formal meetings where plans have been agreed and shared with all parties
      - Any other support that is deemed appropriate to meet the individual needs of the child

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

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).

18. The notice to improve will be issued by the school at which the child is registered. The notice to improve should include a time period in which you are expecting to see an improvement in the child's attendance. The recommended length for the improvement period should be around 3 weeks but no longer than 6 weeks. However, schools can use a flexible improvement period so that it can be varied in individual cases. Where it is obvious within the first week that there is no improvement there would be no need to delay until week 6 to review. If at the review there have been no further unauthorised absences then no further action will be

taken. However, should there be any further accrued unauthorised absences within the review period, then a request to issue a PN must be completed and submitted via Globalscape, sending an email to [AWSS@bathnes.gov.uk](mailto:AWSS@bathnes.gov.uk) advising that you have done so.

Schools should keep a record of every Notice to Improve that has been issued, whether it resulted in the request for a PN to be issued or not.

## **How authorised officers will work together**

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

20. An authorised officer is a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police. In Bath and North East Somerset, the decisions on whether to issue a penalty notice will be made by the local authority's Authorised Officer with delegated powers in accordance with the terms of this code and Bath & North East Somerset Council's policy 'Legal Action to Enforce School Attendance'.

21. To monitor consistency and to avoid duplication, the Bath & North East Somerset Council Attendance & Welfare Support Service (A&WSS) will issue and administer penalty notices in response to requests from headteachers, principals or deputy/assistant headteachers (if authorised by the headteacher) of LA maintained schools, academies and free schools providing that such requests are made using the Penalty Notice Request form, correctly completed, with an extract from the mandatory attendance register, supporting documentary evidence, signed and dated.

22. Avon and Somerset Police Constabulary may request that a penalty notice be issued, although normally, if they are concerned about a pupil's attendance at school, the matter should be referred to a pupil's school or to the Attendance & Welfare Support Service for further consideration. In any case a penalty notice will only be issued where a pupil's absence is unauthorised, and the request would still come from the school.

23. Where the school request that the LA issues the penalty notice, they need to:

- Ensure the threshold has been met i.e. 10 sessions (usually equivalent to 5 school days) of unauthorised absence within a rolling 10 school week period.
- Request the Penalty Notice within 6 weeks following the period of unauthorised absence and shared with the LA via a secure share point.
- Accurately complete the Penalty Notice Request form which must be signed and dated, with an extract from the mandatory attendance register, supporting

documentary evidence to demonstrate support has been offered where appropriate to do so (this would not be appropriate for example for a holiday in term time).

- For leave in term time: Copy of Leave Request Form completed by parent/ email from parent/ telephone message/transcript from parent informing of leave/ holiday (if one is received).
- For leave in term time: Copy of Letter/email to parent to inform request will not be authorised and that a Penalty Notice may be requested.
- In the case of a request from school their policy must state that in certain circumstances the school may request a penalty notice be issued.

The LA will contact school if there are any inaccuracies with the request form that need to be rectified before a decision on whether a penalty notice should be issued or not.

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

25. Bath and North East Somerset Council will inform the school via email about whether penalty notices are paid, withdrawn or prosecuted for non-payment.

26. Where pupils move between local authority areas, Bath and North East Somerset can be contacted on [crossborder.penaltynotice@bathnes.gov.uk](mailto:crossborder.penaltynotice@bathnes.gov.uk) to find out if penalty notices have been issued previously.

27. Where pupils attend school in Bath and North East Somerset but live in a different LA, Bath and North East Somerset Council will make contact with the child's home LA to establish what support is being provided by the home LA and to gather any key information that may have a bearing on the decision to issue a penalty notice.

28. Once a notice has been issued, the penalty to be paid shall be:

- For a first penalty notice £80 where the amount is paid within 21 days of receipt of the notice;
- For a first penalty notice £160 where the amount is paid within 28 days of receipt of the notice.
- For any second penalty notice issued to the same parent for the same child within a rolling 3 year period being charged at a higher rate of £160 with no option for this second offence to be discharged at the lower rate of £80.

The penalty shall be payable to Bath & North East Somerset Council. There is no right of appeal by parents against a penalty notice.

If the penalty is not paid in full by the end of the 28 day period, Bath & North East Somerset Council must decide either to prosecute for the original offence to which the notice applies, or withdraw the notice.

A penalty notice may be withdrawn if the LA determines that:

- it was issued outside of the terms of this code, or
- It ought not to have been issued to the person named as the recipient.

A penalty notice cannot be withdrawn because of an inability to pay.

Where a penalty notice has been withdrawn in accordance with the above, notice of the withdrawal shall be given to the recipient and any amount paid by way of penalty in pursuance of that notice shall be repaid to the person who paid it. No proceedings shall be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued or for an offence under Section 444(1A) of the Education Act 1996 arising out of the same circumstances.

## **Payment of Penalty Notices**

The penalty notice will include details about the arrangements for payment.

This document is regularly reviewed and must have regard for any legislative changes or amendments.