



Walsall Council

WALSALL COUNCIL LOCAL CODE OF CONDUCT

For issuing Penalty Notices for school absences

September 2024



Walsall Council - Penalty Notice Code of Conduct

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 the Borough of Walsall. The code sets out the arrangements for administering Penalty Notices in Walsall 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'](#) DfE guidance - February 2024.
2. This code of conduct has been drawn up to consult with the headteachers and governing bodies of state-funded schools and the local police force proposing that arrangements for issuing school attendance-related Penalty Notices remain the responsibility of the Local Authority (LA), delegated to the Attendance Support Team.

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 settings, and certain off-site provisions 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 should usually only be issued to the parent or parents who have allowed the absence (regardless of which parent has applied for a leave of absence).

Rationale

8. Penalty notices are issued to parents as an alternative to prosecution where they have failed to ensure that their child of compulsory school age regularly attends the school where they are registered or, in certain cases, at a place where alternative provision is provided. Penalty notices can be used by all schools (with the exception of independent schools) where the pupil's absence has been recorded with one or more of the unauthorised codes and that absence(s) constitutes an offence.
9. Penalty notices are intended to prevent the need for court action and should only be used where it is deemed likely to change parental behaviour and support to secure regular attendance has been provided and has not worked or been engaged with or would not have been appropriate in the circumstances of the offence (e.g. an unauthorised holiday in term time).
10. 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.
 - a. 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.
 - b. 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.
11. 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.
12. 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' statutory 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.
13. Schools, trusts, and local authorities are expected to work together and make use of the full range of legal interventions. It is for individual schools and local authorities to decide whether to use them in an individual case after considering the individual circumstances of a family. These are:
 - Attendance Contracts



- Education Supervision Orders
- Attendance Prosecution
- Parenting Order
- Penalty Notices

14. The national framework for Penalty Notices is based on the principle 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 the most appropriate tool to change parental behaviour and improve attendance for that particular family.

National threshold

15. The threshold is 10 sessions of unauthorised absence in a rolling period of 10 school weeks. A school week means any week in which there is at least one school session.
16. This can be met with any combination of unauthorised absence (e.g. 4 sessions of holiday taken in term time plus 6 sessions of arriving late after the register closes all within 10 school weeks).
17. These sessions can be consecutive (e.g. 10 sessions of holiday in one week) or not (e.g. 6 sessions of unauthorised absence taken in 1 week and 1 per week for the next 4 weeks).
18. The period of 10 school weeks can also 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).
19. 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. This might apply for example, where parents are deliberately avoiding the national threshold by taking several term time holidays below threshold, or for repeated absence for birthdays or other family events.



When may a Penalty Notice for absence be appropriate?

20. 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 O (unauthorised absence)
 - (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)
21. During or following a truancy sweep. The Local Authority will only issue a Penalty Notice if they locate a child during a truancy sweep who is within a five-day exclusion from school (see criteria for Exclusion Penalty Notice (see 49).

Key considerations prior to issuing a Penalty Notice for school absence

22. When the threshold has been met, the following considerations will be made to decide whether to issue a penalty notice in each individual case:
- Is support appropriate in this case?
 - If yes, schools are expected to continue with the existing support without a penalty notice or issue a Notice to Improve if that support is not working or is not being engaged with. A penalty notice can be issued if either has not worked.
 - If no, for example a holiday in term time, a penalty notice should be issued subject to the other conditions below.
 - Is a penalty notice the best available tool to improve attendance and change parental behaviour for this particular family or would further support or 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 such as where a pupil has a disability?
 - 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?
23. If the answer to those questions is yes, then a penalty notice should be issued. If not, another tool or legal intervention should be used to improve attendance.



24. Support is defined as any activity intended to improve the pupil's attendance, not including issuing a penalty notice or prosecution. As part of this consideration, schools and local authorities should consider what suitable forms of support are currently available in school and where necessary from other services and agencies in the area. They should then decide whether any of those things are appropriate in the individual cases and for those that are appropriate, whether they have been provided previously or could be provided now instead of taking legal action. The local authority's decision on whether sufficient support has been provided before issuing a penalty notice should be treated as final.

Notice to Improve

25. 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 that 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).

- In Walsall the issuing of A 'Notice to Improve' related to school attendance is delegated to the School Attendance Support Service.
- Schools will refer all cases when the threshold is met for a Penalty Notice and a Notice to Improve will be issued.
- A Notice to Improve will not be issued for unauthorised holiday.
- The Notice to Improve will inform the parent that the pupil's attendance will be monitored for four weeks.
- There should be no further sessions of unauthorised absence during the monitoring period.
- The school will be asked to provide details of the pupil's attendance at the end of the four weeks monitoring.
- If attendance has not improved following the four weeks monitoring, then a Penalty Notice will be issued. To ensure consistent application of Penalty Notices, the School Attendance Support Service will issue all 'Notice to Improve' warnings.



26. The **'Notice to Improve'** will include:

- Details of the pupil's attendance record and details of the offences.
- The benefits of regular attendance and parents' duty under Section 7 of the Education Act 1996.
- Details of the support provided so far.
- Opportunities for further support and the option to access previously provided support that was not engaged with.
- A clear warning that a penalty notice may be issued, or prosecution considered if attendance improvement is not secured within the improvement period.
- A clear timeframe for the improvement period (4-weeks).
- Details of what sufficient improvement within that timeframe will look like.
- The grounds on which a penalty notice may be issued before the end of the improvement period.

27. What sufficient improvement looks like can be decided on a case-by-case basis taking the individual family's circumstances into account. For some families, no further unauthorised absences will be appropriate, for others some absence may be tolerable if considerable improvement is seen.

28. Where improvement is not being made, it may be appropriate to issue a penalty notice before the improvement period has ended. For example, a Notice to Improve stated there should be no further unauthorised absences in a 4-week period but the pupil is absent for unauthorised reasons in the first week.

29. The parent(s) will be informed before a penalty notice is issued if it is before the end of the improvement period.

Two Penalty Notice limit and escalation in cases of repeat offences

30. A penalty notice is an out of court settlement which is intended to change behaviour without the need for criminal prosecution. If repeated penalty notices are being issued and they are not working to change behaviour they are unlikely to be most appropriate tool.

31. The national framework for Penalty Notices sets out that only 2 penalty notices can be issued to the same parent in respect of the same child within a 3-year rolling period and any second notice within that period is charged at a higher rate:



- The first penalty notice issued to a parent in respect of a particular pupil will be charged at £160 if paid within 28 days. This will be reduced to £80 if paid within 21 days.
 - A second penalty notice issued to the same parent in respect of the same pupil is charged at a flat rate of £160 if paid within 28 days.
 - A third penalty notice cannot be issued to the same parent in respect of the same child within 3 years of the date of issue of the first. In a case where the national threshold is met for a third time (or subsequent times) within those 3 years, alternative action should be taken instead. This will often include considering prosecution but may include other tools such as one of the other attendance legal interventions.
32. Once 3 years has elapsed since the first penalty notice was issued a further penalty notice can be issued, but in most cases, it would not be the most effective tool for changing what may have now become an entrenched pattern of behaviour.
33. For 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.

Cases where a pupil has moved school or local authority area within the three rolling year period

34. In cases where a pupil has moved school or local authority area in the previous 3 years an additional check will be made to try and ascertain whether previous penalty notices have been issued to the parent in respect of the pupil.
35. All local authorities are expected to have an email mailbox to make these enquires as easy as possible. In Walsall this mailbox is:
crossborder.penaltynotice@walsall.gov.uk
36. In cases where the previous Local Authority is not known or the information cannot be, or is not, provided by the previous Local Authority, it will be assumed that the parent has not previously received a Penalty Notice, and the escalation process started as a new case.

How authorised officers will work together

37. Authorised officers should work together to ensure that Penalty Notices are used when likely to be effective and change behaviour.
38. An authorised officer can be a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police. Walsall Council will be responsible for the administration and the issuing Penalty Notices in this area.



39. Where the school (or police) request that the Local Authority issues the Penalty Notice, they need to follow the procedure for issues a Penalty Notice.

Procedure for issuing Penalty Notices:

40. Schools will refer all cases to the School Attendance Support Service where there are unauthorised absences, and they believe it is appropriate for a Penalty Notice to be issued in the circumstances.
41. Where schools, West Midlands Police and/or neighbouring Local Authorities consider the issuing of a Penalty Notice appropriate, this request will be investigated and actioned by the School Attendance Support Service provided that:
- a) All relevant information is supplied in the specified manner.
 - b) The circumstances of the pupil's absence meet all the criteria of this Code of Conduct.
 - c) Reasonable expectation that their use would improve attendance.
 - d) The issuing of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.
42. The School Attendance Support Service will respond to all requests within 5 school days of receipt of referral.
43. Where all criteria are met The School Attendance Support Service will:
- Issue a formal written 'Notice to Improve' warning to the parent/carer.
 - At the end of the monitoring period a review of attendance will take place and a Penalty Notice may be issued and sent via first class post.
 - Issue a Penalty Notice where all criteria are met as laid down in this Code of Conduct
44. Only the School Attendance Support Service will issue Penalty Notices relating to unauthorised absence from school on behalf of Walsall Council.
45. Penalty Notices will only be issued by post and never as an on-the-spot action i.e. during a Truancy Sweep.
46. The School Attendance Support Service will report the outcome of the referral back to the referring school. Reports will be sent each half term.



47. The School Attendance Support Service will retain all information relating to any issued Penalty Notice to allow for the monitoring during the three-year escalation period.
48. Once a Penalty Notice has been issued the pupil's attendance will continue to be monitored by the school.

Circumstances where an Exclusion Penalty Notice (EPN) may be issued:

49. For a child of compulsory school age who is a registered pupil at a school and is excluded from that school, either for a fixed period, or permanently, his/her parent/carer is guilty of an offence under *Section 103 of the Education and Inspections Act 2006* if:
 - the child in question is present in a public place during school hours without reasonable justification during the first five days of each period of exclusion.
 - The parent must have been notified by the school at the time of the exclusion of their duty and the dates it relates to.
 - If all criteria are met, a Penalty Notice will be issued, and payment options are in line with the first offence. A 'Notice to Improve' will not be issued.

Payment of Penalty Notices:

50. Arrangements for payment will be detailed within the Penalty Notice.
51. All payments for Penalty Notices are paid to the issuing Local Authority.
52. Payment of a Penalty Notice discharges the parent/carer liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Penalty Notice.
53. If the penalty is not paid by the end of the 28-day period, the Local Authority must decide either to prosecute for the original offence to which the notice applies or withdraw the notice. Parent(s) can only be prosecuted if 28 days have expired, and full payment has not been made.
54. There is no right of appeal by parents against a penalty notice.
55. Monies collected should first be used for administration of the penalty notice system and prosecution. Any surplus left after this should be spent on attendance support. In practice, support means any other activity to improve attendance short of a penalty notice or prosecution in line with 'Working Together to Improve School Attendance' guidance.



56. The revenue will not be considered part of wider local authority funding and relied upon to fund the core attendance expectations of the local authority or be pooled in wider legal services budgets or allocated outside the local authority's attendance functions.

57. Any remaining surplus at the end of the year must be paid to the Secretary of State.

Procedure for withdrawing Penalty Notices:

58. Once issued, a Penalty Notice will only be withdrawn in the following circumstances:

- a) Proof has been established that the Penalty Notice was issued to the wrong person.
- b) The use of the Penalty Notice did not conform to the terms of this Code of Conduct.
- c) The parent can show that they did not receive the Notice e.g. it was delivered to the wrong address.

Policy and Publicity

59. The Local Authority will include information on the use of Penalty Notices and other attendance enforcement sanctions on the Councils website and in promotional/public information material.

Reporting & Review:

60. The School Attendance Support Service will report annually to the DfE in the form of the PRMA data collection.

61. The School Attendance Support Service will review Penalty Notice use at regular intervals and make any necessary legislative changes and will review the general enforcement strategy as appropriate.



Relevant legislation

[The Education Acts 1996 and 2002](#)

[The Children Act 1989](#)

[The Crime and Disorder Act 1998](#)

[The Anti-Social Behaviour Act 2003](#)

[The Education and Inspections Act 2006](#)

[The Sentencing Act 2020](#)

[The School Attendance \(Pupil Registration\) \(England\) Regulations 2024](#)

[The Education \(Parenting Contracts and Parenting Orders\) \(England\) Regulations 2007](#)

[The Education \(Penalty Notices\) \(England\) Regulations 2007, as amended](#)

[The Education \(Information about Individual Pupils\) \(England\) Regulations 2013](#)

[The Children and Young Persons Acts 1933 and 1963](#)

[The Equality Act 2010](#)