



LEICESTERSHIRE COUNTY COUNCIL

# LOCAL CODE OF CONDUCT FOR ISSUING PENALTY NOTICES 2024

## 1. Rationale

Regular and punctual attendance of pupils at school is both a legal requirement and essential in order for pupils to maximise the opportunities available to them, unless parents elect formally to educate their children at home. 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 Leicestershire County Council. The code sets out the arrangements for administering penalty notices in Leicestershire County Council 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.

- 1.2 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.
- 1.3 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.
- 1.4 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.
- 1.5 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 child.

## 2. Consultation

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

## 3. Legal Basis for the issue of Penalty Notices

- 3.1 In February 2004, the Anti-Social Behaviour Act 2003, section 23, sub-section 1 added sections 444A and 444B after section 444 of the Education Act 1996. These sections enable Penalty Notices to be used as an alternative to prosecution and provide parents with the opportunity to discharge liability for conviction of an offence under section 444 by paying a financial penalty to the Local Authority.
- 3.2 Section 105 of the Education and Inspections Act 2006 enables Penalty Notices to be issued to parents in relation to an excluded pupil of compulsory school age, should they fail to ensure their child is not present in a public place during school hours in the first five days of each and every fixed period or permanent exclusion without reasonable justification.
- 3.3 Penalty notices 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).
- 3.4 The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.
- 3.5 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.
- 3.6 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.
- 3.7 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).
- 3.8 When issuing Penalty Notices the local authority must have regard to The Education (Penalty Notices) (England) Regulations 2007, the guidance issued by the Secretary of State, and the following legislation:

Human Rights Act 1998  
 Equality Act 2010  
 Data Protection Act 1998

#### **4. When may a Penalty Notice for absence be appropriate?**

- 4.1 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 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)
- 4.2 For each case, a school should ask:-
- Is support appropriate for this particular cause (or causes) of absence?
- i. If yes, staff should weigh up the specific circumstances of the case and decide which available tool is most likely to change behaviour and improve attendance. Either: continue or provide support without a Penalty Notice or Notice to Improve (e.g. where a parent is engaging well in the support, or other supportive routes could be tried); issue a Notice to Improve and continue to provide support (e.g. where a parent is not engaging well in support); issue a penalty notice (e.g. where a parent has already had a Notice to Improve and not engaged in support), subject to the further considerations
  - ii. If no, a penalty notice should be issued (e.g., a holiday in term-time) subject to the further considerations in 4 below.
- 4.3 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.
- 4.4 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. A third referral for the same parent and child will result in a prosecution unless it is agreed by the school and the local authority that further support is more appropriate for the particular cause of absence and a prosecution would not be appropriate.
- 4.5 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.
- 4.6 The new national framework only applies to offences committed from 19 August 2024. This means that any Penalty Notice issued for an offence prior to that date must follow

the rules set out in the Leicestershire County Council's (LCC) code of conduct that pre-dates the 19th August 2024.

- 4.7 The 3-year rolling period can only be counted from 19 August 2024, therefore, only penalty notices issued from that date will be counted in the escalation process. I.e., a penalty notice issued in the Summer Term 2024 would not count regardless of the fact it was issued within the last 3 years.
- 4.8 Similarly, the 10-school week period can only be counted from 19 August 2024 i.e., offences committed at the end of Summer Term 2024 will not count regardless of the fact they are in the last 10 school weeks.
- 4.9 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).

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

- 5.1 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:
  - 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?

If the answers to the above questions are 'yes', then a referral for a **“Penalty Notice (where further support is not appropriate)”** should be made to the local authority via the [online referral link](#).

- 5.1.1. An example of this would be where the 10 sessions of unauthorised absence have clearly been condoned by the parent/carer with no mitigating factors or exceptional circumstances (such as a holiday taken in term time). The local authority would expect the school to send out the usual warning letter to parents stating that a Penalty Notice will be requested if they take the unauthorised holiday and permission has been refused by the school.
- 5.2. Cases where support is appropriate, must be considered on a case-by-case basis:
  - 5.2.1. Has **“sufficient support”** already been provided? To assess whether **sufficient support** has been provided schools should reference Appendix A which contains a list of possible support to be offered to a parent and child, matters for consideration and actions to be taken before referring to the local authority for a Notice to Improve.

The checklist sets out the questions that should be asked and actions that should have been taken to reach a decision as to whether sufficient support has been provided.

- 5.3. Support can be any activity intended to improve the child's attendance not including issuing a penalty notice or prosecution. Examples of support include action taken in school such as written communications to parents and meetings with parents and pupils to understand barriers and plan targeted support together. The form of support will be specific to the pupil and family and could include a range of actions including additional learning support, moving tutor group or school uniform provision. Some support could involve the Local Authority or other community services such as Family Help assessment and support, an attendance contract, transport provision or housing support.

## 6. Notice to improve

- 6.1. 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 should be sent to parents to give them a final chance to engage in support prior to a Penalty Notice being issued. A school can contact the LA for further advice if they believe a further Notice to Improve would not be required as it previously only resulted in a temporary improvement.
- 6.2. A Notice to improve will be issued by the local authority upon receipt of a referral from the school for a **Notice to Improve via the [online referral link](#)**. The referral must contain the relevant information to enable local authority to complete the Notice to Improve.

The referral must include the following details: -

- a) The pupil's attendance record and details of the offence(s)
  - b) Details of Support/opportunities for support provided so far.
  - c) Details of Opportunities for further support.
  - d) Details of timeframe for the improvement period of between 3 and 6 weeks.
  - e) Details of what sufficient improvement within that timeframe will look like in the case (e.g., no further offences within a certain timeframe or attendance improved within a certain timeframe).
  - f) The grounds on which a penalty notice may be issued before the end of the improvement period.
- 6.3. A Notice to Improve will only be used in cases where support is appropriate. They do not need to be issued in most cases of term time holidays, where a warning by the school that a penalty notice will be issued if the unauthorised holiday is taken, will suffice.
- 6.4. The length of the improvement period set out in the Notice to Improve will be between 3 and 6 weeks as agreed between the school and local authority and depending on the circumstances of the case. The school and local authority would be expected to monitor improvement throughout this time period and adapt their approach where

necessary. A school would be expected to continue offering support set out in the letter and continue to make attempts to engage with the child and parent, for example, in the form of home visits if the child is not in school.

- 6.5. The Notice to Improve will make clear on what grounds it will be considered to proceed to a Penalty Notice before the end of the improvement period. The school will receive a copy of the Notice to Improve letter issued to parents.

## 7. Issuing a Penalty Notice

- 7.1. Upon receipt of the **referral for a Notice to Improve** the local authority will consider evidence of support provided by the school to date and assess whether **it is appropriate to issue a Notice to Improve or whether further support should be offered**. The Referral Form will give schools an opportunity to highlight the support given. On occasions local authority may request further information from the school before issuing the Notice to Improve or may suggest other avenues to support the child and parent. Schools are expected to defer to the local authority's judgement about whether sufficient support has been provided before issuing a Notice to Improve or Penalty Notice.
- 7.2. What sufficient improvement looks like should be decided on a case-by-case basis. For some families, no further unauthorised absence should be tolerated, and in other cases some can be tolerated if the family is showing engagement and progress. This will be made clear to the parent in the Notice to Improve letter. If sufficient evidence is supplied by the school of support offered and evidence the parent has not engaged with that support the local authority will send the Notice to Improve on behalf of the school to the parent/carer by first class post.
- 7.3. Where a Notice to Improve letter has been sent, targets have not been met and support has not been engaged with, the local authority will determine the most appropriate a course of action i.e., issue a Penalty Notice to the parent or another course of action relevant to the offence.
- 7.4. Where, after the agreed period of monitoring, there has been sufficient improvement in the child's attendance and a Penalty Notice is not warranted the case will be closed to the local authority and the school will be notified. The school can re-refer the case to the local authority if concerns arise again.
- 7.5. In the majority of cases a Penalty Notice will only be issued when the threshold has been met. If, however 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. The dates of the absences will be included within the Penalty Notice. The unauthorised absences do not have to be contained within the monitoring period. A Penalty Notice will not be issued where there is an ongoing prosecution in place with regard to the same parent.
- 7.6. Schools can request a Penalty Notice is issued to a parent under Section 105 of the Education and Inspections Act 2006 in relation to an excluded pupil of compulsory

school age, should they fail to ensure their child is not present in a public place during school hours in the first five days of each and every fixed period or permanent exclusion without reasonable justification. A referral can be made for Penalty Notice via the [online referral link](#) for a **“Penalty Notice where support is not appropriate”**.

- 7.7. The issuing of Penalty Notices will be undertaken by staff authorised by Leicestershire County Council (LCC). The local authority will always issue Penalty Notices by first class post (with proof of posting) as there may be health and safety implications involved in the operation of direct delivery. Schools will be provided with a copy of the Penalty Notice once issued to parent. Schools will be notified if Penalty Notices are paid or remain unpaid.
- 7.8. Where children have moved between local authority areas, schools will be expected to carry out their own checks as to whether the parent has been issued with a Penalty Notice previously and provide the local authority with this information if known. The local authority can be contacted via the email address **[crossborder.penaltynotice@leics.gov.uk](mailto:crossborder.penaltynotice@leics.gov.uk)** to establish whether Penalty Notices has been issued previously in relation to the same pupil and parent. In cases where the pupil has moved between local authority areas in the previous 3 years, either because the family has moved house or the pupil has moved school, an additional check should be carried out by the LCC. Where the previous local authority area is known, the authority for that area will be contacted by local authority to check whether a penalty notice has been issued to that parent for that pupil in the previous 3 years upon receipt of **referral for a “Penalty Notice where support is not appropriate” or for a “Notice to Improve”** and prior to issuing a Penalty Notice.
- 7.9. Where pupils attend school in local authority but live in a different local authority, the local authority will liaise with the home local authority in cases where a penalty notice is being considered and support is appropriate and make enquiries as to whether support is being provided by the home local authority.
- 7.10. If a parent is issued with a second Penalty Notice resulting from 10 unauthorised absences in relation to the same child within a 3-year rolling period, the amount of the fine will be £160.
- 7.11. To ensure the powers associated with Penalty Notices are applied consistently and fairly, Headteachers and local authority must be confident the circumstances of each case:
  - meet the criteria for the issue of a Penalty Notice specified in this Code of Conduct; and
  - that all necessary information can be provided to local authority should a Penalty Notice be unpaid in order to pursue legal proceedings under Section 444(1) Education Act 1996.

## **8. Payment and non-payment of a Penalty Notice**

- 8.1. As from 19 August 2024, if Payment of a Penalty Notice is made within 21 calendar days of receipt of the notice the charge is £80 and payment after this time but within 28 calendar days of receipt of the notice the charge is £160.
- 8.2. Payment in full discharges parent/carer liability for the period in question and they cannot be prosecuted under other enforcement powers for the period covered by the Penalty Notice. A second offence will be charged at the higher rate of £160 with no option for the second offence to be discharged at the lower rate of £80.
- 8.3. Non-payment will trigger a prosecution for non-attendance under Section 444(1) of the Education Act 1996. The school/externally employed attendance agency will need to prepare a Section 9 statement of witness. The Headteacher (or representative) may also be called to give evidence.

## **9. Withdrawing a Penalty Notice**

- 9.1. When considering legal proceedings for non-payment of a Penalty Notice, local authority may request it be withdrawn if it determines that the Penalty Notice:
  - ought not to have been issued i.e., it was outside the terms of this Code of Conduct;
  - or has been issued to the wrong person; or contains material errors.



## **APPENDIX A: KEY QUESTIONS TO BE CONSIDERED TO ASCERTAIN WHETHER SUFFICIENT SUPPORT HAS BEEN PROVIDED**

### **Identifying the Causes of Absence**

**Have you completed first day telephone calls/home visits?**

**Have letters and/or emails been sent to share your attendance concerns and has the parent responded with reasons for concerns?**

- Have you followed a graduated process with regard to sending out warning letters to parents?

**Have you met recently with the parents/carers and asked why the child isn't attending school?**

- With parental agreement, has an action plan been drawn up with the parent and pupil with a review date and target for improved attendance?
- Have you ensured all partners agree with the actions on the plan and allowed for the parent and child to have their voice heard?
- If an action plan has been produced but is unsuccessful, it may be time to consider trying alternative options.

**Have you carried out safe and well checks at the child's address?**

- If the child has been absent from school for over 10 days and no reason has been given for the absence, contact the Inclusion service to make them aware.
- When you attend the address, does it look as though the family are still residing there?
- If the property looks unoccupied, have you put a note through the door to advise the parent to contact you?
- Do you have any further information as to the child's whereabouts? If you have any concerns about the child's safety and wellbeing, have you followed the appropriate safeguarding procedures?

**Have you captured the child's voice to establish a reason and put support in place?**

- Have you sought advice from the SENCO to help facilitate conversations with children who have SEN?
- It is a really good idea to speak to the child on a regular basis where you can. There may be a member of staff that the child trusts who would be the best person to maintain that contact.
- Putting time aside to keep those conversations going is important.

### **Identifying Patterns in Absence**

**Is the child missing certain days, is there a pattern?**

- Are they missing certain lessons? This could be due to academic struggles, homework, or a difficult relationship with the teacher
- Consider that returning to education after weekends or school holidays may be a barrier. There may be some simple ways to support with this, such as working with parents to ensure that friendships are supporting the journey to school.

**If regularly late, has the school start time been discussed with parents?**

- Are they getting U codes on a daily basis? What are the reasons?
- What support or strategies could be put in place to address lateness?
- What incentives does the school offer e.g., Breakfast Club?
- Consider any parental issues that may affect lateness, for example, poor mental health or a child in the home who may have significant SEN affecting the morning routine. Is it time to consider linking the family with some support in the home?

- Have you discussed a bedtime routine and good sleep hygiene with the parent and child? For example, ensuring the child is not accessing devices late at night

### **If you have numerous pupils with regular L codes – have you considered amending your times for imposing L and U codes?**

- At what time do you impose a U code and are parents aware their child will be given a U code if they arrive after that time?
- Making parents aware that they could receive a Penalty Notice for 10 U codes in a 10-week period by warning them in writing will support your work in this area.

### **Have you checked if siblings are having the same absences?**

- If they attend other schools, it may be useful to share strategies with each other.

## **Addressing the Causes of Absence**

### **Have you considered making reasonable adjustments for a child who is struggling to attend such as:**

- Staff members supporting the child to integrate into the canteen to build their confidence with eating in the assigned area.
- Withdrawing the child from lessons certain lessons on a short-term basis to build their resilience and alleviate anxiety about attending school.
- Providing the child with “Early Leave” cards, to allow them to avoid main transition times in corridors between classes.
- Offering a phased timetable to allow a transition back into school and to attend full-time. Where the child is in school but does not attend all lessons, spend time working with the pupil to support with any anxiety they are experiencing during time not spent in class.
- Permitting some pupils to sit exams in smaller examination venues e.g., smaller rooms of 10 or 12 pupils.
- If a child has sensory issues, consider allowing flexibility of the school uniform policy, such as allowing them to wear shorts instead of trousers, which may help to alleviate anxiety about attending.
- Consider the completion of a stress survey with the student to identify potential triggers. Following this, you may wish to proceed to a sensory survey.

### **Have family circumstances been considered and have you considered with the family what support may help them at this time?**

- Have any referrals to other agencies been offered?
- Is obtaining uniform a barrier?
- Are there any financial barriers to address with family?
- Are there any housing or transport issues to address?
- Have there been any family breakups such as divorced parents or siblings moving out of the home?
- Are there any addiction issues within the home? If yes, have you considered making a referral to Turning Point with parental consent?
- Has the child or family experienced a loss or bereavement? If yes, have you considered a referral to the Laura Centre?

### **Have you made a referral to Family Help to provide support for the family?**

- If so, there will be an allocated key worker that you can liaise with.
- Have you had a meeting with the parent and key worker to ensure a joint approach?

- If a family help referral has been made but rejected, Family Lives may be worth exploring as they are not directly linked with Children's Social Care and families may be less nervous about engaging with them.

### **Have you considered where the family live in relation to school and considered whether the journey to school is a barrier?**

- Have you discussed what the options can be offered if the journey is the barrier? For example, a walking buddy.
- Have you discussed the use of mobile phone apps, such as life 360, to alleviate parental or child concerns about the journey?
- It is worth suggesting that the parents go through the journey with their child, for example, walking the journey with them during a quiet time?

### **Is the child a Young Carer, and is this having an impact on their attendance?**

- If so, have you sought support from young carer support agencies?

### **Have you considered whether the child or parent has experienced a previous trauma that could be affecting the child's attendance?**

- Are all staff trained in trauma informed practice?

### **Have you considered whether the child have unmet learning needs that have yet to be assessed resulting in them being reluctant to attend school? *If so, ensure you are mindful of long wait times for a diagnosis, and that a diagnosis is not needed for support to be put in place***

- Have you received transition information from the child's primary school? Consider contacting them to see if there have been prior attendance concerns
- Consider using online tools to gain an insight on a child's academically ability and if further assessments are needed, such as a Dyslexia screening test.
- If the parent consents, you can make a referral to the child's GP for testing, if required.

### **If an EHCP is in place :-**

- Are the outcomes being supported?
- When was this last reviewed by School?
- Are termly and annual reviews of the EHCP in place?
- Have you captured the parent and child's voice regarding the EHCP?
- Have you contacted SENA to make them aware that the child is not attending?

### **Has the child's health been considered?**

- Have you received any medical evidence from the parent?
- It may be useful to ask the parent to seek further medical evidence so the school have a better understanding of the child's needs
- Could the school contact the GP/consultant with parents' consent to request further information? Please ensure you are in line with guidance around requesting medical evidence, contained within the "Working together to improve school attendance" guidance (Paragraph 363)
- The Care Navigator can be contacted, with the parents' consent, to establish whether the child is awaiting further medical support
- Is the child suffering from anxiety – have parents been advised to seek a referral to CAMHs via their GP?
- The medical needs team in the Inclusion Service can provide support and advice around medical needs.

**Have you sought the advice of the Inclusion Forum/ Inclusion Partnership in your area?**

- If yes, have you put into place the actions recommended and allowed time for this to take effect?

**Have you considered whether the child is displaying signs of Emotionally Based School Absence?**

- If so, the Partnership Engagement Officers under the Secondary Education Inclusion Partnerships can offer support and advice to schools
- Have you read the “profile risk factors” for EBSA?

**Has the child received a diagnosis for ADHD/Autism or displayed traits?**

- If so, have you approached ADHD solutions Autism Outreach for further guidance or referred the parent to ADHD solutions for further support?

**Have you considered entering into an Attendance Contract with the parent with the assistance of the LA?**

- The Local Authority Attendance Team can provide advice around this.

**Is issuing a Penalty Notice in this case appropriate after considering any obligations and protected characteristics under the Equality Act 2010? Please seek further advice from the Attendance Team at [attendanceteam@leics.gov.uk](mailto:attendanceteam@leics.gov.uk) if you are unsure.**

## APPENDIX B: FLOWCHART FOR PENALTY NOTICES PROCESS

