



# Education Penalty Notice Code of Conduct

Date: September 2024

## **Local code of conduct for issuing penalty notices for school absence 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 Wigan Council. The code sets out the arrangements for administering penalty notices in Wigan 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.

### **Consultation**

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

### **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 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) 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 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:

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<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 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)

13. 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.

- Where a second penalty notice is issued to the same parent for the same child within a rolling 3-year period will be issued at the rate of £160 to be paid within 28 days with no option of a reduced rate.
- If the national threshold is met for a third time (or subsequent times) within 3 years, another tool should be used. Wigan Council will consider prosecution under Section 444 of the Education Act 1996 for any further offences. This will be considered on a case-by-case basis.

14. 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.**

15. 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 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, evidence of sufficient support being provided will be considered on a case-by-case basis and should include:

- **Telephone calls.** The school to ensure contact is made every day the child is absent to understand why and to offer appropriate support with any issues they may be having.
- **An Attendance Overview Letter.** The school to inform parent/s about the child's attendance, the impact of child's continued absence, and an invite to school to discuss the situation further.
- **An Attendance Support Meeting.** The school to hold a meeting and discuss the child's unauthorised absences, an offer of support to ensure attendance improves. Formal notification of the consequences should the child continue to have unauthorised absence and they is no engagement with the support offered.

**Consideration to proceed should include:**

- Is a penalty notice the best available tool to improve attendance and change parental behaviour for this 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.**

16. 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 the support is appropriate however 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).

**Wigan LA process.**

- Notice to improve letters should only be considered for unauthorised absences that do not relate to holidays in term time.
- All schools are expected to issue the Notice to improve letters as a result of failing to engage with the 'support first' approach.
- We would advise a 4-week monitoring period from the date the Notice to improve letter is issued. If targets are not met before the end date, then consideration to proceed to an EPN referral can be completed sooner. Please ensure that parents are notified of the outcome.

- Sufficient improvement of attendance should evidence SMART targets that are achievable during the monitoring period. These should be tailored to the individual needs of the child/family's circumstances.
- If there is evidence that sufficient improvement has not been made, please complete the Education Penalty Notice referral.
- Should you require further advice on individual cases please contact Attendance Service Advice and Guidance.

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

17. Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour.
18. An authorised officer is a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police.
19. Whoever is issuing the penalty notice should decide 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.
20. The LA will inform the school about whether penalty notices are paid, withdrawn, or prosecuted for non-payment. They will do this via their Link Lead Attendance Officer.
21. Where pupils move between local authority areas, **Wigan LA** can be contacted on [crossborder.penaltynotice@wigan.gov.uk](mailto:crossborder.penaltynotice@wigan.gov.uk) to find out if penalty notices have been issued previously.
22. Where pupils attend school in Wigan but live in a different LA, Wigan Local Authority will contact the cross-border LA to provide notification of this.