Wiltshire Council

Local Code of Conduct for issuing Penalty Notices for school absence and excluded pupils found in a public place during the school day August 2024

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 Wiltshire. The code sets out the arrangements for administering penalty notices in Wiltshire 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. Working together to improve school attendance (applies from 19 August 2024)

1 Rationale

1.1 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.

1.2 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.

1.3 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

1.4 Regular and punctual attendance of pupils at school is both a legal requirement and essential for pupils to maximise the educational opportunities available to them.

2 Legal Basis

2.1 Under Section 7 of the Education Act 1996, parents are responsible for ensuring that their child of compulsory school age receives efficient, full time education that is suitable to the child's age, aptitude and ability and to any special educational needs the child may have. This may be by regular attendance at school or otherwise.

2.2 Parents are defined in Section 576 of the Education Act 1996: all natural parents, whether they are married or not; any person who has parental responsibility for a child; and any person who, although not a natural parent has care of a child. Having care of a child means that a person with whom a child lives and who looks after a child irrespective of what their relationship is with that child, is considered to be a parent in education law.

2.3 Throughout this document, references to 'parent' mean every person coming within the definition whether acting jointly or separately, and should not be taken to mean that provisions only apply to 'parent' in the singular.

2.4 If a child of compulsory school age who is registered at a school fails to attend regularly at the school then the parent is guilty of an offence. It is the commission of this offence that can trigger the use of a penalty notice. If a penalty notice is used by the Local Authority it provides the parent with an opportunity to discharge liability for the offence and avoid court proceedings.

2.5 Penalty notices can only be issued in relation to pupils of compulsory school age in maintained schools, pupil referral units, academy schools, Alternative Provision academies, and certain off-site places as set out in section 444A(1)(b) Education Act 1996.

2.6 Working Together to Improve School Attendance statutory guidance provides further guidance on the operation of penalty notice schemes in England.

2.7 In consultation with and following agreement from schools, the administration of the penalty notice process will be undertaken by Wiltshire Council. The council will process

penalty notice notifications received from schools and the police.

3 Legislation

3.1 The Anti-Social Behaviour Act 2003 (section 23) adds two sections (444A and 444B) to the Education Act 1996. These sections introduced penalty notices as an alternative to prosecution and enable parents to discharge potential liability for conviction for that offence by paying a penalty.

3.2 The Education (Penalty Notice) (England) Regulations 2007 as amended by the Education(Penalty Notices) (England) (Amendment) Regulations 2024 provide for the operation of the Penalty Notice scheme under section 444A of the Education Act 1996.

3.3 Section 105 of The Education and Inspections Act 2006 allows a penalty notice to be issued in respect of excluded and suspended pupils present in a public place in school hours during the first 5 days of a suspension or exclusion.

3.4 Section 444(1) and section 444(1A) of the Education Act 1996 and Section 36 of the Children Act 1989 already exist to enforce attendance through the courts in appropriate circumstances. The legal responsibility for compliance with these Acts rests with the parents and courts have the powers to fine, impose orders or imprison.

3.5 This Code of Conduct gives due regard to the Human Rights Act, Legislation and Regulations and DfE Guidance.

4 Use of Penalty Notices

4.1 Penalty Notices will only be issued for cases of unauthorised absence or where pupils who have been excluded or suspended from school are found in a public place without good reason. When a Penalty Notice is issued for cases of unauthorised absence, the defences in law against the offence remain the same as for the substantive offence under Section 444 (1) and 444 (1A) of the Education Act 1996. Any defence against conviction on this charge is very limited and the matter is dealt with in a Magistrates' Court.

4.2 Defences that may be used include:

- The pupil's absence was authorised by the school
- The pupil was ill or prevented from attending by unavoidable cause
- The absence was on a day exclusively set aside for religious observance by the religious body to which the parent belongs
- The school is not within walking distance of the child's home and the LA has made no suitable arrangements where there is an obligation to do so
- The child is a mobile child and the parent can show that their trade or business requires them to travel, and the child has attended school as regularly as the

nature of the trade of business allows, and the child has attended school for at least 200 sessions during the preceding twelve months

4.3 Where pupils attend school in Wiltshire but live in another local authority area, penalty notice will be issued by Wiltshire Council. This is because Wiltshire is where the pupil goes to school and penalty notices must be issued by the school local authority.

4.4 The Education (Penalty Notices) (England) (Amendment) Regulations 2024 sets out the maximum number of penalty notices which may be issued by a local authority to each parent in any 36-month (3 Year) period. For these purposes the local authority has set the maximum of 2 penalty notices per child, per parent that can be issued within a rolling 3-year period. A second notice issued in relation to the same child of the same parent within this 36- month period must be charged at the rate of £160 without the opportunity to pay a discounted rate of £80. If a third (or subsequent) offence(s) takes place, another tool must be used, such as a parental prosecution via the magistrates' court or one of the other attendance legal interventions available to the Local Authority.

4.5 For the purposes 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. In summary:

Scenario	**Counts towards the limit?**
Penalty notice issued by any authorised officer and paid within 21 days	Yes
Penalty notice issued by any authorised officer and paid within 28 days	Yes
Penalty notice issued by any authorised officer but later withdrawn	No
Penalty notice issued by any authorised officer. The penalty notice was not paid and the local authority prosecuted for the original offence but the Court found the parent not guilty.	No
Penalty notice issued by any authorised officer. The penalty notice was not paid and the local authority prosecuted for the original offence and the Court found the parent guilty.	Yes

4.6 The three-year period begins from the date of the first penalty notice issued. For example, if the first penalty notice is issued on 18th September 2024, a second penalty notice issued to that parent in respect of that child on or before the 17th September 2027 would be charged at £160. A third penalty notice could not be issued within that timeframe and so in cases where the national threshold is met for a third or subsequent time another action should be taken instead.

4.7 Under Section 103 Education and Inspections Act 2006 a parent of an excluded pupil must ensure that the pupil is not present in a public place at any time during school hours on a day which is one of the first five schools days to which the exclusion relates or, where that exclusion is for a fixed period of five days or less, any of the days to which the exclusion relates, and is stated in the notice under section 104 (Education and Inspections Act 2006) to be a day on which Section 103(2) applies. If the excluded pupil is present in a public place at any time during school hours on a school day falling within Section 103(2), the parent commits an offence (section 103(3)). A Penalty Notice may be issued by the Local Authority to offer the parent/s an opportunity to discharge liability for this offence. Wiltshire council may prosecute for offences under Section 103 Education and Inspections Act 2006. A possible defence is reasonable justification for a parent to fail to comply with their duty under Section 103(2) of the act.

4.8 Any penalty notice issued under section 105 of the Education and Inspections Act 2006 is **not** included in the national framework limit of 2 penalty notices per parent per child in a three year period. Wiltshire Council will continue to issue penalty notices in these circumstances where it is appropriate to do so. Penalty notices for this specific offence will be issued in the sum of £120 if paid within 28 days, reducing to £60 if paid within 21 days.

4.9 A possible defence may be that the child was required to attend an appointment such as a medical appointment or a meeting with a professional.
It is not a defence for the parent to say that s/he was unaware of the absences or the child being out unsupervised during an exclusion or suspension from school. Parents are expected to know where their children are at all times and there is no duty, in law, on the school or the LA to advise them of their child's absence.

5 Specific Conditions

5.1 **Children Looked After**: Wiltshire Council will not issue penalty notices for children in Local Authority care. Where there are concerns over attendance with a child in Local Authority care, discussion should take place with the Virtual School and a review held to determine that appropriate provision is in place and whether changes need to be made to better engage the young person with their education.

6 Circumstances in which a penalty notice may be issued

6.1 If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence (Section 444 Education Act 1996).

6.2 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 with unauthorised absence for 10 sessions (usually equivalent to 5 school days) within 10 school weeks

6.3 When absence meets the criteria for a penalty notice the expectation is that schools will make a Penalty Notice request to the local authority unless there are reasonable grounds for not doing so.

6.4 A school notifies Wiltshire Council that a pupil has had 10 sessions of unauthorised absence from school in the 10 week period prior to the notification **and** despite warnings and support there has been no improvement in attendance.

6.5 A school notifies Wiltshire Council that a pupil has taken a leave of absence amounting to five days (10 sessions) or more without the school's consent in the 10 weeks prior to the notification being made.

- Headteachers may not grant any leave of absence during term time unless there are exceptional circumstances. It is for headteachers to determine if a request for leave of absence is an exceptional circumstance.
- Headteachers should determine the number of school days a child can be away from school if the leave is granted.

6.6 A pupil has been referred to the Education Welfare Service for an attendance intervention and the Education Welfare Officer believes that a penalty notice is the appropriate tool to use to improve and secure attendance.

6.7 A school or the police notify Wiltshire Council that a pupil has been present in a public place during a period of suspension or exclusion

6.8 The Penalty Notice National Framework 2024 does not prevent a penalty notice from being used in other cases where an offence has been committed. If, in an individual case, Wiltshire Council believes a penalty notice would be appropriate, the council retains 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. This will be in exceptional circumstances only, and the issuing of penalty notices in these circumstances can only be authorised by the Education Welfare Service Manager or someone of higher rank within the Education and Skills Directorate.

7 Key considerations before a penalty notice is issued

7.1 The following considerations will be made before a Penalty Notice is issued to ensure consistency of approach:

In cases where support is not appropriate (for example, for holidays in term time):

- 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 been provided
- 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?

7.2 If the answer to the above questions is 'yes', then a Penalty Notice or a Notice to Improve warning letter will be usually issued.

7.3 In the case of unauthorised absence from school, a penalty notice should be considered if the parent is judged capable of securing better attendance but is not willing to accept that responsibility and it is considered likely to improve the pupil's attendance.

7.4 This judgment is based on parental response to, and engagement with, support that has been offered by a school and warnings issued by either the local authority or the school to improve their child's attendance.

7.5 Where support is appropriate and sufficient support has already been provided and has not effected a change in attendance; or where there is no engagement with a support offer a Notice to Improve may be issued.

7.6 Where a parent chooses to take their child out of school for a period of leave that has not been authorised by the school e.g. by taking a holiday in term-time, an individual warning is not a requirement.

8 To assist head teachers in applying their powers fairly and consistently the LA expect the following check list be applied:

8.1 **Poor attendance – Consider**

- Has the parent been regularly contacted by the school to establish the reasons for absence or is there established parental non-engagement in response to phone calls, letters or invitations to school-based meetings.
- If unmet needs have been identified, has the use of a My Support Plan or Early Support Assessment and/or a request for support from another service been considered?
- Has the school utilised in-school support tools such as mentoring, pastoral support, counselling, EBSA strategies
- Could there be underlying issues which need to be explored with the parents at a school attendance meeting (SAM) to identify if any support is required. A template SAM form is available to use.
- Has an attendance contract been considered?
- Where parents are separated and do not live at the same address, establish how much involvement each parent has in caring for the child/ren. If one parent has little involvement, consider whether it is in the public or family's interest to issue a fine to both parents.
- Parents who live at the same address will be equally responsible for their child/ren's attendance and will each receive a fine for each child.

8.2 **Leave of Absence - Consider:**

- The family's individual circumstances.
- The likely detrimental impact on the child's social, emotional, and intellectual development, attainment level and any SEND.
- Meeting parents to explore exceptional circumstances such as bereavement, funerals abroad, unavoidable cause (illness/flight delays) to determine the reasonableness of delay to return and allow parents the opportunity to provide appropriate evidence. This is to reduce the need for subsequent Local Authority Penalty Notice withdrawals based on retrospective evidence provided during a pre-prosecution investigation.
- Siblings in other schools. Liaise with other schools in individual cases to agree a consistent approach in considering term-time holiday requests and penalty notices.
- Consider exceptional circumstances put forward by the parent, and explain considerations taken by the school in a letter to the parent confirming when requests are unauthorised.

8.3 Penalty Notices can be issued without a Notice To Improve where schools can show that a leave of absence was taken during term time without the consent of the Head Teacher and the parent was made aware of the decision to unauthorise the period of absence, the reason why (including details of any evidence), and the possible consequences, including the issue of a penalty notice.

8.4 Penalty Notices can also be issued retrospectively should the school become aware that a child is absent due to an unauthorised leave of absence after the child's first day

of absence. In this scenario, the school must notify the parent in writing stating why they believe the child has taken an unauthorised leave of absence, and the possible consequences i.e. penalty notice being issued by the Local Authority.

9 Notice to Improve

9.1 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 usually be sent to give parents a final chance to engage in support. Occasionally a decision may be made not to issue a Notice to Improve, including in cases where support is appropriate, but it is not expected 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).

9.2 The Notice to Improve will be issued by the pupil's registered school. Where a case is referred to the Education Welfare Service for a casework intervention it will usually be the Education Welfare Officer who will issue the Notice to Improve.

9.3 The Notice to Improve period will be determined by the school or the Education Welfare Officer but shall be for a period of no less than 4 school weeks (20 school days) and no more than 6 school weeks (30 school days). This allows for schools and the local authority to exercise flexibility for individual cases.

9.4 The Notice to Improve will clearly list the attempts that have been made and support offered to resolve absence concerns. It will also provide contact details for a staff member that parents can contact to access support that is available.

9.5 The Notice to Improve will state that the pupil will have no unauthorised absence during the improvement period. Should a pupil accrue unauthorised absence during the improvement period it is not necessary to wait until the end of the period to notify the local authority of this.

10. Issuing Penalty Notices in Wiltshire

10.1 In Wiltshire Penalty Notices will be issued by the Education Welfare Service by first class post. In any case where the Penalty Notice is not paid within the prescribed period and where it is not appropriate to withdraw the Penalty Notice the Education Welfare Service will instigate action through the Magistrate's Court as required by legislation. Prosecution in such cases will be for the offence to which the Penalty Notice relates.

10.2 Penalty Notices will be issued individually to each parent for each child according to each parent's liability for the offence or offences. An authorised officer has discretion when deciding to issue a penalty notice to one or more parents of a child. The specific circumstances in each individual case will be the determining factor.

10.3 The Education Welfare Service will take forward requests to issue Penalty Notices providing that:

- The circumstances of the case meet the criteria for the issue of a penalty notice as specified in this code
- All necessary information is provided to the Education Welfare Service in order to establish that an offence, under section 444 (1) of the Education Act 1996 for failure to secure regular attendance or section 103(3) of the Education and Inspections Act 2006 for failure to comply with a duty towards an excluded pupil, has been committed.

10.4 The Education Welfare Service will ensure that the issuing of Penalty Notices is closely monitored to make certain that they are not duplicated, not issued where prosecution proceedings for the same offence are being considered and that recipients pay the relevant fine within the time frames specified.

11 Procedure for withdrawing Penalty Notices

11.1 A Penalty Notice may be withdrawn by Wiltshire Local Authority if the Authority determines that:

- It ought not to have been issued
- It ought not to have been issued to the person named as the recipient
- It is materially defective

11.2 Where a penalty notice has been withdrawn in accordance with the above a notice of the withdrawal will be issued 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.

11.3 A Penalty Notice cannot be withdrawn because of an inability to pay

11.4 If a Penalty Notice is not paid in full before the expiry of the period of paying it and Wiltshire Council has neither instigated proceedings for the offence to which the notice relates nor is contemplating such proceedings, then the notice will be withdrawn.

12 Appeals

12.1 There is no statutory right of appeal against the decision to issue a penalty notice and the sole authority to authorise absence rests with the Headteacher of the school / academy / college

13 Payment of Penalty Notices

13.1 The arrangements for the paying of penalty notices will be detailed on the Penalty Notice.

13.2 Payment by way of instalment is not permitted. Payment should be made in full according to the dates as stipulated on the Penalty Notice

13.3 The penalty for the first Penalty Notice issued to a parent in respect of a particular pupil is charged at £160 if paid within 28 days. This will be reduced to £80 if paid within 21 day

13.4 A second Penalty Notice issued to the same parent in respect of the same pupil within a 3-year rolling period is charged at a flat rate of £160 if paid within 28 days.

Further information

DfE Statutory School Attendance Guidance: "Working Together to Improve School Attendance" https://www.gov.uk/government/publications/working-together-to-improve-school-attendance

The Education (Penalty Notices) (England) (Amendment) Regulations 2024: The Education (Penalty Notices) (England) (Amendment) Regulations 2024
- These Regulations amend the Education (Penalty Notices) (England) Regulations 2007 (S.I. 2007/1867).

Section 23 Anti-Social Behaviour Act 2003:
https://www.legislation.gov.uk/ukpga/2003/38/section/23