

## **Code of conduct for issuing penalty notices in respect of unauthorised absence from school from 19 August 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 Leicester City. The code sets out the arrangements for administering penalty notices in Leicester City. 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](#).
2. This code of conduct covers absence from 19 August 2024 onwards.
3. All references to holidays in this code of conduct mean holidays or trips away for other reasons.

### **Consultation**

4. 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**

5. 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).
6. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.
7. 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. In Leicester City, administration of the penalty notice scheme including the issuing of penalty notices, the collection of payments and issuing of receipts will be administered by the education welfare service with support from the business and administration service and the finance department.
8. 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.

9. 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**

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.
  - 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.
11. Research also shows that children who have good attendance are more likely to make progress. 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' 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. 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.

## **When may a penalty notice for absence be appropriate?**

14. 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 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)
15. The national framework states the following; 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. Leicester City Council retain the right to exercise this discretion. An example of when such discretion could be used is where a child has a pattern developing where fewer than 5 days of unauthorised absence occurs that is linked to holidays or trips away etcetera.
16. Extended periods of absence linked to holidays and/or trips away of 20 or more school days are likely to result in prosecution action rather than in a penalty notice being issued.
17. If repeated penalty notices are being issued and they are not working to change behaviour, they are unlikely to be the 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. This might include prosecution or one of the other attendance legal interventions available to the Local Authority.
18. For the purpose of the escalation process, previous penalty notices include those not paid (including those where prosecution was taken forward and the parent pleaded or was found guilty) but not those which were withdrawn or where the parent was found not guilty. Penalty notices issued in relation to absence from 19 August 2024 onwards count in the escalation process.

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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).

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

19. 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 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: a thorough assessment by the school to ascertain the reasons for the absence, and either support being provided, arranged with consent, or signposting the family to support, with the impact being considered, and arrangements for support being reviewed and changed as deemed appropriate.
  - 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 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. However, where the LA considers that another course of action is appropriate rather than a penalty notice being issued, that action will be taken, including prosecution action.

20. The local authority has a referral process which relates to the expectations regarding support set out in the ['Working together to improve school attendance' guidance](#). The purpose of schools completing this referral is to ensure that all appropriate efforts have been made to support families prior to

either a penalty notice being issued, or one of the other legal interventions being pursued if more appropriate.

### Notice to improve

21. In cases not relating to a holiday, a notice to improve, issued by the local authority, 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, or, where, based on efforts made to date, there is a reasonable belief that the notice to improve would have no impact).
22. Following a referral being received and accepted by the local authority, within 10 school days, a decision will be made on the appropriate next steps which could include:
  - An attendance contract meeting being arranged by the local authority education welfare officer at which parents will be offered the opportunity to agree to a list of actions (i.e., a contract) to bring about an improvement in their child's attendance or
  - a Notice to Improve being issued by the local authority
  - the local authority issuing the parents with a set of questions to be answered under caution in accordance with the Police and Criminal Evidence Act or
  - a combination of the above
23. From the date of the first involvement of the local authority, there will usually be a minimum of 3 school weeks for parents to improve their child's attendance to a satisfactory level.
24. The local authority will continue to monitor the attendance in all cases for six school weeks, or longer, where the pattern of absence warrants this.

Satisfactory attendance will be regarded as there having been no further unauthorised absence within the monitoring period

  - a. If **after 12** school weeks, from the date of the first local authority action, a penalty notice or other legal action is not warranted, cases will usually be closed and a new referral from the school will be required if concerns arise again
25. Where legal action is warranted, the local authority will determine the most appropriate course of action i.e., a penalty notice or other course of action relevant to the offence.

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

26. Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour.
27. An authorised officer is a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police.
  - a. Where the school request that the LA issues a penalty notice in relation to unauthorised holidays, they need to do the following: complete and submit the E form which is available on the schools' extranet. For all other cases, schools will need to submit the referral to the LA requesting action.
28. In the case of non-holiday penalty notices, the LA will consider if 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.
29. The LA will inform the school about whether penalty notices are paid, withdrawn, or prosecuted for non-payment. They will do this by sending confirmation that a penalty notice has been issued, and advising of any unpaid notices that are either withdrawn or proceed to Court. (By default, all others will be paid.)
30. Where pupils move between local authority areas, Leicester City Council can be contacted on [crossborder.penaltynotice@leicester.gov.uk](mailto:crossborder.penaltynotice@leicester.gov.uk) to find out if penalty notices have been issued previously.
31. In some cases, pupils who attend school in Leicester City live in a different LA. In cases where a penalty notice or other action is being considered, and where support appears to be appropriate, the LAs will liaise, and information will be shared in order to make appropriate decisions about action. In reverse, Leicester City will share relevant information to enable the other LAs to reach a conclusion about the action that should be taken.

**Implementation date - 19 August 2024**