

## **LOCAL CODE OF CONDUCT FOR ISSUING PENALTY NOTICES FOR SCHOOL ABSENCE Effective from 19<sup>th</sup> August 2024**

1. The purpose of this local code of conduct is to ensure that penalty notices for school absences are issued in a manner that is fair and consistent across Wakefield Council. The code sets out the arrangements for administering penalty notices in Wakefield Council and must be adhered to by anyone issuing a penalty notice for school absence in this area. The code complies with relevant legislation and the Department for Education's National Framework for Penalty Notices as set out on the 'Working Together to Improve School Attendance' guidance, effective from 19th August 2024.

### **Consultation**

2. This code has been drawn up in consultation with the Head Teachers and Governing Bodies of State-Funded Schools and the local police force.

### **Legal Basis**

3. Penalty notices (PN's) may be issued to a parent as an alternative to prosecution for irregular school attendance under s444 of the Education Act 1996. PN's can only be issued in relation to pupils of compulsory school age in maintained schools, pupil referral units, academy schools, Alternative Provision (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. This defines 'parent' as:

- All biological parents, whether they are married or not;
  - Any person who, although they are not a biological parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person;
  - Any person who, although not a biological parent, has care of a child or young person. Having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is a parent in Education Law. i.e a step-parent.
8. Under this code of conduct, a PN can be issued to each parent believed to be liable for the offence or offences.

### **Rationale**

9. 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.
10. 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.
11. 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.
12. The national framework for PN's is based on the principles that PN's 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.

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

13. The National Framework for Penalty Notices (effective from 19<sup>th</sup> August 2024), sets out the maximum number of penalty notices which may be issued by a Local Authority (LA) to each parent, for each child, in any rolling 3 year period.
14. When a school becomes aware that the national threshold has been met, they must consider whether a penalty notice should be issued. 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. If repeated PN's are being issued and they are not working to change behaviour they are unlikely to be the most appropriate tool. The National Framework for PN's sets out that a **maximum of 2 penalty notices per child, per parent can be issued within a rolling 3-year period**. The National Framework also sets out the escalation process which applies when the national threshold is met for a third time (or subsequent times) within the 3 year period. In this circumstance Wakefield Council will consider prosecuting parents under section 444 of the Education Act 1996.
16. The 3 year period and applicable escalation of fines begins from the date on which the first PN is issued. For example, if the first PN is issued on the 18<sup>th</sup> September 2024 (charged at £80 if paid within 21 days and doubling to £160 if paid between days 22 to 28) any second PN issued to that parent in respect of that child, on or before the 17<sup>th</sup> September 2027 would be charged at £160 (payable within 28 days). A third PN could not be issued to that parent in respect of that child within the three year timeframe and, in cases where the national threshold is met for a third or subsequent time, alternative action will be considered by Wakefield Council.
17. For the purposes of the escalation process, previous PN's include those paid and not paid (including where prosecution was taken forward for non-payment) but does not include the PN's that are withdrawn.

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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).

18. PN's issued under the provisions set out in paragraph's 31-34 of this Code of Conduct (Excluded Pupils seen in a public place) will NOT be included.

### **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 PN 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 PN 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 PN 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 (as appropriate on a case by case basis) include:
  - Communication(s) in writing, notifying parent(s) of the concerns held in relation to their child's attendance / absence levels (reasonable steps should be taken to ensure that each parent is in receipt of such correspondence). Where letters are hand delivered to parent(s) accurate records of date / time / person to whom the letter was delivered must be available;
  - Opportunities for parent(s) to meet with school staff to share / discuss the child's barrier(s) to regular school attendance and identify support strategies which aim to achieve an improvement in school attendance for that pupil;
  - Agreed 'Attendance Contract' making clear the role of each relevant party in improving the pupil's school attendance;
  - Referrals to wider support services (where appropriate);
  - Where safeguarding concerns are identified for a pupil / family, appropriate liaison should occur between relevant agencies including social care, police, health, other educational establishments etc.

- Is a PN 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 (under Section 444 of the Education Act 1996) 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 be issued by the either the school or the LA (whichever is appropriate).

### **Notice to Improve**

20. A notice to improve is a final opportunity for a parent to engage in support and improve attendance before a PN 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(s) 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).

21. A Notice to Improve will be issued to parent(s):

- Schools across the Wakefield District may issue a Notice to Improve to a parent whose child's absence levels have triggered the national threshold for a PN to be issued (i.e. 10 sessions of unauthorised absence in a rolling 10 school week period).
- The Notice to Improve may be used to offer parent(s) a final opportunity to engage with support in line with improving their child's attendance. Where a parent fails to engage with the support offered and / or further unauthorised absences are recorded / sufficient improvements have not been made, then a PN may be issued.
- All Notices to Improve issued by Wakefield Schools / LA will outline an improvement period of between 3 and 6 weeks (case dependent).
- The Notice to Improve will outline what support has been offered to help break down the pupil's attendance barrier(s).
- The Notice to Improve will share the contact details of the appropriate member of staff at the school / local authority to enable parent(s) to make contact if necessary.

- Attendance records will be reviewed on a regular basis throughout the improvement period, and, where further unauthorised absence is recorded, consideration will be given to a penalty notice being issued.
- Wakefield schools can refer the case to the LA for a PN to be issued before the end of the improvement period if this is appropriate i.e. if further unauthorised absence has occurred and parent(s) have failed to engage with the support offered.
- ‘Sufficient improvement’ should be considered on a case-by-case basis i.e. the requirement could be that there should be no unauthorised absence within the improvement period or there should be a sufficient amount of improvement, this should be tailored to the family.

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

22. Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour.
23. Wakefield Council’s Education Welfare Service are authorised to issue PN’s after receipt of a referral from the pupil(s) school.
24. Where the school request that the LA issue a penalty notice for Term Time Holiday absence, the school need to provide the following:
  - A completed referral form;
  - A copy of the application made by the parent(s) relating to the period(s) of absence that have been recorded using a G code on the attendance register;
  - A copy of the written response sent to the parent(s) by the school, advising that the absence would not be authorised and why the reason given is not deemed to be exceptional;
  - A copy of the pupil’s registration certificate clearing showing that the national threshold has been met and that the appropriate coding has been used to allow for the penalty notice to be issued;
  - Where no application for leave has been submitted by the parent(s) and the leave was taken without prior discussion / knowledge of the school (e.g where a parent has called to report their child as too unwell to attend school and the pupil is later found to have been absent due to a holiday during term time) the LA should be provided with the communications between the school and the parent(s), clearly showing that parents have been made aware of the schools intention to issue a PN as a result of the unauthorised absences that have been recorded.
25. For PN’s being requested / considered on the basis of 10 sessions of unauthorised absence (G, O and or U coded (consecutive or otherwise)) in a rolling period of 10

school weeks, the local authority must be in receipt of a detailed referral form which outlines the following:

- Clear details of the 'Support First' approach which has been taken by school / partners to identify and breakdown the pupil's barriers to attendance. All support strategies which have been offered (whether engaged with by parent(s) or not) should be detailed;
- Copies of all letters / emails sent to the parent(s) to advise of the attendance concerns held in relation to their child's absence levels;
- Copies of all letters / emails sent and / or details of all telephone calls which have been made to arrange meetings with the parent(s) to establish the reason(s) for absence and to identify what support may be needed to improve attendance patterns and to prevent further unauthorised absence;
- A copy of an 'Attendance Contract' which has been agreed with parent(s) and whether or not these have been adhered to;
- A copy of the Notice to Improve which has been issued, if applicable, to the parent (s) (See paragraphs 20 & 21);
- Where a Notice to Improve has not been issued, schools will be required to share their reasons why; and
- Where a Notice to Improve has not been issued, a copy of the letter to parent(s) advising them that they are at risk of receiving a PN should further unauthorised absence be recorded for their child.

26. On receipt of the PN referral the Education Welfare Service will make a decision as to whether proportionate support has been provided by the school. Where there is dispute, the authorised officers are expected to defer to the local authorities judgement about whether sufficient support has been provided before issuing a PN.

27. Upon receipt of the PN referral the Education Welfare Service will conduct checks, which will include:

- Whether any previous penalty notices have been issued to the parent in respect of the pupil concerned and whether or not a penalty notice is the appropriate tool (this may include checks with partner agencies);
- Whether there are any prosecution cases pending in respect of the family to ensure that duplication is avoided and appropriate escalation of legal response is considered;
- Whether there is clear evidence of a 'support first' approach, in line with the 'Working Together to Improve School Attendance' statutory guidance. Where sufficient evidence has not been provided, the LA, as the independent prosecutor, will not support the issuing of a penalty notice.

## Payment of Penalty Notice Fines

28. Arrangements for payment will be detailed within the Penalty Notice.
- The first PN issued will be charged at £160 per parent, per child if paid within 28 days, reducing to £80 if paid within 21 days;
  - Where it is deemed appropriate to issue a second PN to the same parent for the same pupil within 3 years of the first notice, the second PN will be charged at £160 if paid within 28 days, there is no reduced fee for paying early;
  - Part payments or payment plans are not accepted, fines must be paid in full within 21 or 28 days at the rate specified within the PN;
  - Payment after the deadline may be accepted in exceptional circumstances. In this situation, the higher amount of £160 is usually payable and must be paid immediately and in full. This is at the discretion of the Local Authority.
  - When paying a PN the parent is agreeing to an out of court settlement in respect of the unauthorised absence to which the notice refers. Payment in full discharges the parents' legal responsibility for the period of unauthorised absence outlined in the notice and the parent cannot be subsequently prosecuted for that period.
29. Schools can contact the Education Welfare Service on a termly basis requesting a report detailing the outcomes of the penalty notices issued for their school. Requests should be emailed to [ews@wakefield.gov.uk](mailto:ews@wakefield.gov.uk)
30. Where pupils move between local authority areas, Wakefield Councils Education Welfare Service can be contacted on [crossborder.penaltynotice@wakefield.gov.uk](mailto:crossborder.penaltynotice@wakefield.gov.uk) to find out if a penalty notice has been issued previously for that pupil. Wakefield Council will make cross border enquiries as appropriate.

## Penalty Notices for Excluded (Suspended or Permanently Excluded) Pupils Seen in a Public Place

31. When a pupil is excluded from school, the parent(s) is responsible for ensuring that their child is not seen in a public place during school hours on the first 5 days of each and every period of exclusion.
32. When schools request a PN in respect of an excluded pupil, the following information should be included (and attached) within the referral:
- The excluding school must have notified the parent of their duty and warned the parent that a PN could be issued if they allow their child to be seen in a public place while excluded. Evidence of the letter and the telephone call to parent should be detailed;
  - A written statement from the member of staff that has seen the pupil in a public place, detailing where and when the pupil was seen;

33. Penalty Notice's issued under this code of conduct in respect of excluded pupils will be charged at £60 if paid within 21 days, rising to £120 if paid between 22 and 28 days. Unpaid PN's may proceed to parental prosecution.

34. A maximum number of 2 PN's may be issued per parent / per child in relation to excluded pupils seen in a public place, within any rolling 12 month period.

#### **Procedure for withdrawing Penalty Notices**

35. The Local Authority may only withdraw penalty notices were:

- It ought not to have been issued i.e. where it has been issued outside the terms of the code of conduct or where no offence has been committed / evidence does not support the issuing of a penalty notice;
- It contains material errors;
- It has been issued to the wrong person