

LEGAL INTERVENTION TEAM

CODE OF CONDUCT

Issuing Penalty Notices for unauthorised absence from school

19 August 2024

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Code of conduct: Issuing Penalty Notices for unauthorised absence from schools (19 August 2024)

This local code sets out the procedures and terms under which Penalty Notices for unauthorised absence can, and should, be issued in Hampshire. It applies to statutory school age children from age 5 to age 16 and to all maintained schools and academies within the county of Hampshire. All *authorised persons* must issue Penalty Notices in compliance with this code.

The code is to be read in conjunction with *Guidance for schools on available support and procedures for pursuing legal action against non-attendance at school* (May 2024). [guidance-on-pursuing-legal-action-for-non-attendance](#)

Sanctions for periods of unauthorised absence are for use only where parental co-operation in securing good attendance is either absent or deemed insufficient to resolve the presenting problem. Penalty Notices will be issued before absence patterns become entrenched and where there is a reasonable expectation that to do so will secure improved school attendance.

1 Legal background

- 1.1 Sections 444A and 444B of the Education Act 1996 provide authorised officers of the local authority, headteachers (and deputy headteachers if authorised by them) and the police, to issue Penalty Notices to the parents in cases of unauthorised absence from school.
- 1.2 Section 105 of the Education and Inspections Act 2006 provides that authorised officers of the local authority, headteachers (and a member of staff of a school who is authorised by the headteacher of the school to give penalty notices) to issue Penalty Notices to parents if the authorised officer has reason to believe that a person has committed an offence under Section 103(3) of the Education and Inspections Act 2006.
- 1.3 Section 105 of the Education and Inspections Act 2006 applies where – (1)(a) a pupil of compulsory school age (“the excluded pupil”) is excluded on disciplinary grounds from a school, whether for a fixed period or permanently, and (1)(b) notice under Section 104 has been given to a parent of the pupil. The parent of the excluded pupil must ensure that the pupil is not present in a public place at any time during school hours on a day which (a) is one of the first five school days to which the exclusion mentioned in subsection (1)(a) 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 (b) is stated in the notice under section 104 to be a day on which the parent is subject to this subsection.

- 1.4 If the excluded pupil is present in a public place at any time during school hours on a school day falling within subsection (2), the parent commits an offence.
- 1.5 The Education (Penalty Notices) (England) Regulations 2007 (as amended) require the local authority, in consultation with all the above, to develop a code of conduct for issuing Penalty Notices. Any person issuing a Penalty Notice for the unauthorised absence of a Hampshire child must do so within the terms of this *Code of Conduct*.
- 1.6 The definition of a *parent* includes: all natural parents, whether they are married or not; any person or body 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 their relationship with that child, is considered to be a parent in education law (see Section 576 of the Education Act 1996).

2 Rationale for issuing Penalty Notices

- 2.1 Regular and punctual attendance at school is a legal requirement, as well as essential if pupils are to maximise their educational opportunities.
- 2.2 In law, parents/carers are committing an offence if they fail to ensure the regular and punctual attendance of their child at the school at which the child is registered, unless the absence has been authorised by the school. Only schools have the power to authorise or grant a leave of absence. Further detail is available in Chapter 8 of [Working together to improve school attendance \(applies from 19 August 2024\)](#)
- 2.3 A range of sanctions to enforce regular school attendance exist under Section 444 of the Education Act 1996 and Section 36 of the Children Act 1989. The purpose of a Penalty Notice is to offer a swift intervention for cases of unauthorised absence before the problem becomes entrenched.
- 2.4 The purpose of the *Code of Conduct* is to ensure that the Penalty Notices are issued consistently and fairly across the area that comes under the control of Hampshire County Council (*“the County Council”*) and that suitable arrangements are in place for the administration of the scheme.
- 2.5 The issuing of Penalty Notices must conform to all requirements of the Human Rights Act 1998 and the Equality Act 2010.

- 2.6 Designated officers of Hampshire County Council's Children's Services Department will automatically consider the use of Penalty Notices in all cases of unauthorised absence at the level defined below. If the absence meets any of the thresholds in Section 4, authorised persons in schools should either issue a Penalty Notice, issue a Notice to Improve, or make a referral into their Legal Intervention Team. The team meet weekly to consider the most appropriate interventions to improve school attendance in individual cases.

3 Before issuing Penalty Notices

- 3.1 Schools should take all reasonable steps to ensure good attendance without the use of Penalty Notices. Further details available in [Working together to improve school attendance \(applies from 19 August 2024\)](#)
- 3.2 In cases where an authorised person has ongoing concerns about a pupil's attendance and support has not been engaged with by the parent(s) or has not worked then a Notice to Improve letter should be sent to the parent/carer. A template letter is available, and the letter should be sent by the school to the parent/carer on headed paper.
- 3.3 The Notice to Improve letter should include:
- The pupil's attendance record and details of the offence(s)
 - The benefits of regular attendance and parents' duty under section 7 of the Education Act 1996
 - Support/opportunities for support provided so far
 - Opportunities for further support and the option to access previously provided support that was not engaged with if appropriate
 - Risk of a Penalty Notice being issued, or prosecution considered if improvement is not secured within the improvement period
 - A clear timeframe for the improvement period of 3 school weeks
 - 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)
 - The grounds on which a Penalty Notice may be issued before the end of the improvement period
- 3.4 If the Notice to Improve and the offer of support does not effect a significant improvement in attendance, the authorised person should consider every aspect of a pupil's circumstances before deciding whether to issue a Penalty Notice.

- 3.5 The Department for Education (DfE) guidance indicates that a Penalty Notice can be issued without warning, for example, where a parent takes a child on holiday during term time without the school authorising the absence. Parents should be made aware of this through the school website, school attendance policy, newsletters etc. If a request for leave of absence is declined by the school and the unauthorised absence meets the thresholds in Section 4.2, parents should know that a Penalty Notice will be issued.

4 Circumstances in which a Penalty Notice may be issued

- 4.1 Penalty Notices can only be issued in cases where a pupil of compulsory school age has been absent or late and the absence or lateness has not been authorised by the school.
- 4.2 After taking the steps set out in Section 3, the County Council or the schools in Hampshire should issue a Penalty Notice for any of the following unauthorised absences where the pupil has been, within the last six months:
- unauthorised absent for 10 or more half-day sessions (five school days) over 100 possible school sessions – these do not need to be consecutive and can span different school terms and years.
 - persistently late (coded *U*) for 10 or more half-day sessions after the register has been closed – these do not need to be consecutive.
- 4.3 Penalty Notices are intended to be used in tackling parentally condoned absence, where it is reasonable to expect that the parent can ensure the child's regular attendance, but s/he is not willing to take responsibility for doing so, e.g. where a parent is not co-operating with advice or support offered to help improve his or her child's attendance.
- 4.4 If, after a Notice to Improve letter has been issued, there is sufficient irregular attendance to merit a Penalty Notice, it must be issued within 7 days of the period of absence, unless there are exceptional reasons against taking this action.
- 4.5 The maximum number of Penalty Notices that may be issued to the same parent in respect of the same child, in a three-year rolling period, is two. If a third (or subsequent) offence is committed within the three-year rolling period, the headteacher may wish to refer to the Legal Intervention Team for consideration of a prosecution if the threshold in section 4.2 has been met.
- 4.6 In cases where the pupil has moved between local authority areas in the previous three years, either because the family has moved house or the child

has moved school, an additional check should be carried out. Where the previous local authority area is known, the authority for that area should be contacted to check whether a Penalty Notice has been issued to that parent for that pupil in the previous three years. Each Local Authority will have an email inbox where a check can be made. Hampshire County Council's inbox is crossborder.penaltynotice@hants.gov.uk

- 4.7 In cases where the pupil is in year 11, a referral can be made to the Legal Intervention Team in the autumn term (September-December). In the spring and summer terms, schools should issue a Notice to Improve and if unauthorised absences continue then a Penalty Notice can be issued in accordance with section 3.3.
- 4.8 If the local authority or another authorised officer believes a Penalty Notice would be appropriate in an individual case, they retain the discretion to issue one before the threshold is met. This might apply for example, where a parent is deliberately avoiding the national threshold by taking several term time holidays below threshold, or for repeated absence for birthdays or other family events.
- 4.9 Additionally, a Penalty Notice may be issued by an authorised person where an excluded pupil is in a public place during school hours as set out in sections 1.2-1.4.

5 Who may issue a Penalty Notice?

- 5.1 The Legal Intervention team managers and assistant team managers are the designated officers responsible for issuing Penalty Notices on behalf of the County Council Children's Services Directorate.
- 5.2 In schools, the Headteacher is the authorised person, in accordance with DfE guidance. The Headteacher may wish to identify a Deputy or Assistant Headteacher to become the authorised person and to sign the Penalty Notice. However, the Headteacher maintains overall responsibility and his or her signature is **required** on the School Attendance Certificate.
- 5.3 Every school must inform the County Council who the authorised school persons are (Section 2.5 of Hampshire County Council's [guidance-on-pursuing-legal-action-for-non-attendance.pdf](#) (hants.gov.uk))
- 5.4 All schools' attendance policies will include information about the use of Penalty Notices and whether they wish to issue their own Penalty Notices or

have officers within the Children's Services Department issue them on their behalf. This information should also be drawn to the attention of all parents.

- 5.5 The County Council maintains an accurate database of Penalty Notices issued to avoid duplicate Penalty Notices.
- 5.6 The police should decide who, within the police or agents acting on their behalf in relation to Penalty Notices, should issue Penalty Notices. The Police must notify Hampshire County Council if they issue a Penalty Notice and that any sums received in payment of a Penalty Notice must be paid to Hampshire County Council.

6 Procedure for issuing a Penalty Notice

- 6.1 If the Notice to Improve letter has not solved the problem or if the school has refused to authorise absence due to holiday – which will almost always be the case – the authorised person should make a record of his/her considerations and decision and issue a Penalty Notice.
- 6.2 Penalty Notice documentation should be uploaded to the Information Hub within 24 hours of the Penalty Notice being issued. Every school must ensure that the County Council is informed of the issuing of a Penalty Notice so that it can track payment and so that it can complete the statutory annual return to the DfE [guidance-on-pursuing-legal-action-for-non-attendance.pdf](https://www.hants.gov.uk/guidance-on-pursuing-legal-action-for-non-attendance.pdf) ([hants.gov.uk](https://www.hants.gov.uk))
- 6.3 Any Penalty Notice issued must be issued to each parent liable for the offence and must be sent either by First Class post or hand delivered directly to the recipient to whom it relates (delivery via the child or other person will not be considered as served). A Certificate of Service must be completed and signed by the person posting or hand delivering the Penalty Notice.
- 6.4 An authorised person has discretion when deciding whether to issue one or more parents of a child with a Penalty Notice. This is to enable account to be taken of the specific circumstances in individual cases.
- 6.5 If two Penalty Notices in a rolling three-year period have previously been issued to the same parent of the same child, the case should be referred to the Legal Intervention Team providing the threshold in section 4.2 has been met, to decide whether prosecution is appropriate.
- 6.6 In families where more than one child is not attending regularly, or has requested leave of absence, the issuing of multiple Penalty Notices (one for

each child) will need to be carefully considered. It would be the County Council's expectation that the authorised person would need to liaise with another authorised person of any sibling's school before making a final decision.

- 6.7 If the unauthorised absence is continuing but the authorised person decides not to issue a Penalty Notice, they should refer the case to the Legal Intervention Team.
- 6.8 Where an authorised person recommends that the County Council should issue a Penalty Notice they should refer the case to the Legal Intervention Team. The team will consider the recommendation to issue a Penalty Notice as well as any alternative means of intervention it may take. This would include the offer of Family Help, an attendance contract, referral to another agency or parental prosecution.
- 6.9 The County Council will ensure that a Penalty Notice is not issued in respect of an offence when proceedings for that offence under section 444 of the Education Act 1996 (or an offence under subsection (1A) of that section arising out of the same circumstances) or section 103(3) of the Education and Inspections Act 2006, as the case may be, are contemplated or have been commenced by the County Council.

7 Payment of Penalty Notices

- 7.1 Arrangements for the payment will be detailed on the Penalty Notices themselves. Penalties are to be paid to the County Council. For detailed guidance see Section 4.3 of [guidance-on-pursuing-legal-action-for-non-attendance.pdf \(hants.gov.uk\)](https://www.hants.gov.uk/guidance-on-pursuing-legal-action-for-non-attendance.pdf)
- 7.2 If paid within 21 days of deemed service the **first** Penalty Notice within a rolling three-year period is £80. If not paid within 21 days, the penalty is automatically increased to £160 to be paid within 28 days of deemed service of the Penalty Notice.
- If paid within 28 days of deemed service the **second** Penalty Notice within a rolling three-year period is £160.00. There is no option for this second offence to be discharged at the lower rate of £80.
- 7.3 Additionally, a Penalty Notice may be issued by an authorised person where an excluded pupil is in a public place during school hours, as set out in sections 1.2-1.4. If paid within 21 days of deemed service, the Penalty Notice

is £60. If not paid within 21 days, the penalty is increased to £120 to be paid within 28 days of deemed service of the Penalty Notice.

- 7.4 Any revenue resulting from payment of penalties will be retained by the County Council and is used to cover the enforcement costs, i.e. costs associated with the issue, collection, or prosecution in the event of non-payment, of Penalty Notices and for attendance support. Payment of a Penalty Notice discharges a parent's liability for the period in question and means that they cannot subsequently be prosecuted under any other enforcement powers for the period of unauthorised absence covered by the Penalty Notice.

8 Non-payment of Penalty Notices

- 8.1 The non-payment of a Penalty Notice within the prescribed period of time will result in the Legal Intervention Team and authorised person who issued the notice, to consider next steps. It is likely that non-payment will lead to a prosecution under Section 444 of the Education Act 1996. The prosecution is not for the non-payment of the Penalty Notice but will relate to the original unauthorised absences.

9 Withdrawal of a Penalty Notice

- 9.1 There is no statutory right of appeal against the issuing of a Penalty Notice. Furthermore, once issued, a Penalty Notice can only be withdrawn if it is established that it ought not to have been issued or that it contains material errors e.g. where it has been issued outside of the terms of the *Code of Conduct*, or where no offence has been committed, or where it has been issued to the wrong person.
- 9.2 A school can make a request to withdraw a Penalty Notice through the Penalty Notice Team by providing evidence of why it ought not to have been issued or details of the material error. The County Council will decide whether the Penalty Notice can be withdrawn or whether to continue with a prosecution. If a Penalty Notice is withdrawn the school must notify the parent of the withdrawal.

10 Other roles and responsibilities

- 10.1 The Attendance Manager – Vulnerable Children will monitor the use of Penalty Notices and will report at regular intervals to the Children's Services

Department Management Team (CSDMT), and on the deployment and outcomes of the use of Penalty Notices.

- 10.2 Annual training will be offered to all authorised persons in schools. This will help ensure consistent and equitable delivery and allow cohesion with other enforcement sanctions.
- 10.3 The Attendance Manager – Vulnerable Children will complete the DfE annual census return in respect of Parental Responsibility Measures.
- 10.4 The Attendance Manager – Vulnerable Children will provide annual feedback to the police (and neighbouring local education authorities (LAs) where appropriate) on the use of Penalty Notices in Hampshire and resulting outcomes.
- 10.5 Where it appears to the County Council that the *Code of Conduct* requires amendment, the Children's Services Directorate will consult schools, the police, and any other person or body it deems appropriate, regarding the proposed changes.