

North Tyneside Council

Penalty Notice Code of Conduct



North
Tyneside
Council

1. Introduction

- 1.1 The purpose of this local code of conduct is to set out the procedures and terms under which penalty notices for unauthorised absence can, and should, be issued by North Tyneside Council. It applies to statutory school age children from age 5 to 16 and to all maintained schools and academies within the borough of North Tyneside.
- 1.2 The code sets out the arrangements for administering penalty notices in North Tyneside and must be adhered to by anyone issuing a penalty notice for school absence in this area.
- 1.3 The code complies with relevant regulations and the Department for Education's (DFE) National framework for penalty notices as set out in 'Working Together to Improve School Attendance' guidance.

2. Legal background

- 2.1 Penalty notices are issued to parents as an alternative to prosecution for failure to ensure regular attendance at school under Section 444 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, and alternative provisions.
- 2.2 The Education (Penalty Notices) (England) (Amendment) Regulations 2024 makes several changes to the procedure for issuing penalty notices for absence under section 444 of the Education Act 1996.
- 2.3 The national framework for penalty notices is published in the DFE's statutory guidance: 'Working together to improve school attendance'. The Education (Penalty Notices) (Amendment) (England) Regulations 2024 came into force on the 19th August 2024.

2.4 The definition of a parent under Section 576 of the Education Act 1996, and the Children Act 1989, 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 day-to-day responsibility for a child. This means a person who lives with and looks after a child, but has no biological relationship to them, can still be considered a parent-in-law and for the purpose of this code. The term “parent” shall be used from hereafter within this code and shall have this definition.

3. Rationale for issuing Penalty Notices

3.1 Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities. Missing out on lessons leaves children vulnerable to falling behind. Children with poor attendance tend to achieve less in Primary and Secondary school.

3.2 In law, parents 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.

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. In cases of general persistent absence, professionals should take a ‘support first’ approach in line with the DFE’s ‘Working together to improve school attendance guidance and only resort to legal enforcement when necessary. North Tyneside Council’s Attendance and Placement Service will consider the use of Penalty Notices in cases where support is not appropriate (e.g. a term-time holiday) or where support has been provided and has either not been engaged with and/or been successful.

3.3 The issuing of Penalty Notices must conform to all requirements of the Human Rights Act 1998 and the Equality Act 2010.

4. Key considerations prior to issuing a penalty notice

4.1 Penalty notices can be used where a pupil's absence has been recorded in the school's register with one or more of the unauthorised codes and the absences(s) constitutes an offence under s444 of the Education Act 1996; bearing in mind the precedent set by the Supreme Court in the case *Isle of Wight Council v Platt [2017]*.

4.2 Penalty notices are intended to prevent the need for court action. In cases of general persistent absence, they should only be used where it is deemed likely to change parental behaviour and support to secure regular attendance.

4.3 Schools should take all reasonable steps to ensure good general attendance without the use of a penalty notice.

4.4 Schools are expected to monitor the attendance of all pupils on their roll and act early to address patterns of absence. Penalty notices should be used where a parent is capable of securing an improvement in their child's school attendance with support, but where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem.

4.5 In cases where a school has concerns about a pupil's attendance, the school should have first ensured that contact has been made with the parent/carer to try to resolve any difficulties.

4.6 The Attendance and Placement Team will consider all referrals on a case-by-case basis to ensure that sufficient support has already been provided before they would consider issuing a penalty notice.

4.7 In cases of general persistent absence, upon referral, the Attendance and Placement Team will require schools to provide the following:

- a. Clear details of the “support first” approach which has been taken to identify the reasons for the pupil’s absence, any barriers impacting the pupil’s attendance, and all support strategies which have been offered (whether engaged with by parents or not) to remove any such barriers.
- b. Copies of all letters/emails sent to parents to advise of the concerns held in relation to their child’s absence record.
- c. Copies of all letters/emails sent and/or details of telephone calls which have been made to arrange meetings with the parents to establish the attendance patterns and prevent further unauthorised absence.
- d. Copies of any attendance contracts which have been agreed with or offered to parents, and confirmation as to whether these have been adhered to, and if so to what extent.
- e. Copies or details of any referrals made to relevant agencies and wider support services.
- f. A link to the school’s Attendance Policy which makes clear the escalation process which may be applied in cases of unresolved irregular school attendance, including the risk of a penalty notice under this code of conduct and legal action under section 444 of the Education Act 1996.

4.8 If the threshold has been met, then the Attendance and Placement Team will then send a Notice to improve to the parent/carer.

5. Notice to improve

5.1 A notice to improve is a final opportunity for a parent/carer to engage in support and improve attendance before a penalty notice will be issued and legal action will be considered.

- 5.2 In most cases, notices to improve will not be issued where support is not appropriate (for example in circumstances relating to a holiday in term-time).
- 5.3 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 will be sent to the parent to give them a final chance to engage with the support offered.
- 5.4 The Attendance & Placement Team will issue the notice to improve following a referral from school, who will monitor and update the Attendance & Placement Team. The length of the period of improvement will be 4-6 weeks, decided on a case-by-case basis considering the child and family's circumstances. Throughout the period, and at the end, the Attendance & Placement Team will review and consider whether there is or has been a significant improvement in attendance to avoid a penalty notice being issued and/or other legal action being taken.
- 5.5 Where improvement is not being made, a penalty notice can be issued before the improvement period has ended (e.g. if the notice to improve states that there should be no further unauthorised absences in a 4-week period, but the pupil is absent in the first week, there is no need to wait the full monitoring period before issuing a penalty notice.)
- 5.6 If, after a notice to improve has been issued, there is enough irregular attendance to merit a penalty notice, it must be issued unless there are exceptional reasons against taking this action.
- 5.7 The DfE guidance indicates that a penalty notice can be issued for a first offence in certain circumstances, 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. The Attendance and Placement Team will not be required to issue a notice to improve letter for unauthorised attendance due to a term time holiday taken without school

approval.

5.8 Schools must publish their attendance policy in the current academic year, and this must include warning to parents that penalty notices can be issued in instances where a child takes an unauthorised absence in relation to term time holiday. This should be available on schools' websites.

5.9 To request a penalty notice for a term-time holiday (G code in the school's register) schools must refer to the Attendance & Placement Service within 15 days of the pupil returning to school and send the following documents:

- a. A copy of the leave of absence request, if applicable.
- b. A copy of the written response sent by the school, informing them that the absence would not be authorised and that a penalty notice will be issued if the leave of absence is taken without permission.
- c. A copy of the pupil's registration certificate, clearly showing that the national threshold has been met and that the appropriate coding has been used to allow for a penalty notice to be issued.
- d. Where no application for leave has been submitted by parents and the Leave was taken without prior discussion or knowledge of the school (e.g. where a parent has called to report their child is ill but later find out that the child is on holiday during term-time), schools must inform parents of their intention to request a penalty, notice from the LA because of the unauthorised absences recorded.

6. Circumstances in which a Penalty Notice may be issued

6.1 The National Framework for penalty notices, contained within the DFE's guidance, sets out the maximum number of penalty notices which may be issued by a local authority to each parent, for each child, in a 3-year period.

6.2 All schools must consider whether a penalty notice is appropriate in each individual case where a child reaches the national threshold for considering a penalty notice. Schools are required to make judgements on each

individual case to ensure fairness and consistency across the country.

6.3 The threshold is 10 sessions of unauthorised absence in a rolling period of 10 school weeks. In this regard:

- a. A school week means any week in which there is at least one school session.
- b. The threshold may be met with any combination of the following unauthorised absence codes: G (unauthorised leave/holiday taken during term-time) O (unauthorised absence) and U (arriving late after registers have closed). For example, the following would all satisfy the threshold if they took place within 10 weeks:
 - i. 4 sessions (2 days) of holiday taken in term time, plus 6 sessions of arriving late after the register within a 10-week period, would meet the threshold.
 - ii. 10 consecutive sessions (5 school days) of holiday absences (G coded)
 - iii. 6 sessions of unauthorised absence taken in one week and 1 further session of unauthorised absence, per week for the next four weeks
 - iv. 5 separate days of absence (10 sessions) taken over several weeks. For example, a pupil who fails to attend school on a Friday on five separate occasions within a 10-week period.
- c. The period of 10 school weeks can also span different terms or school years. For example, 2 sessions of unauthorised absence in the summer Term and a further 8 sessions recorded within the following Autumn Term could meet the threshold.

6.4 If repeated penalty notices are being issued and they are not working to change behaviour, they are unlikely to be the most appropriate and a different tool or legal intervention should be considered in this case.

6.5 The national framework for penalty notices sets out that a maximum of 2 penalty notices per child, per parent can be issued within a 3-year period.

7. Who may issue a penalty notice?

7.1 The Attendance and Placement Service are responsible for issuing penalty notices on behalf of North Tyneside Council.

8 Making a referral for a penalty notice

8.1 If the notice to improve has not solved the problem, or if the child is taken on a term time holiday without approval of the school, the school should record their considerations and decision to make a referral for a penalty notice. This is required as evidence.

8.2 A penalty notice must be addressed to one parent, but notices may be issued to each parent liable for the offence or offences. When more than one parent is issued with a penalty notice for a child, each penalty notice must be paid.

9. Payment of penalty notices: (in line with the National Framework for penalty notices)

9.1 Information as to how to make payment will be detailed in the documentation provided with the penalty notice.

9.2 The first penalty notice issued to a parent in relation to a particular pupil will be charged at £80 if paid within 21 days, rising to £160 if paid between 22 and 28 days. If a previous penalty notice has been issued more than 3 years prior to the current absence, any penalty notice to be issued in respect of the current absence will be treated as the first penalty notice.

9.3 A second penalty notice issued to the same parent in respect of the same child within a 3-year period is charged at a flat rate of £160 and is payable within 28-days. There is no reduced sum available in this instance.

9.4 A third penalty notice cannot be issued to the same parent in respect of the same child within 3 years of the date of issue of the first. In a case where the national threshold is met for the third time (or

subsequent times) within those 3 years, alternative action will include considering prosecution or other legal intervention.

9.5 When paying a penalty notice fine, parents are essentially agreeing to an out of court settlement in respect of the unauthorised absences to which the notice refers. Payment in full against the penalty notice discharges the parent's legal responsibility for the period of unauthorised absence outlined in the notice and the parent cannot be subsequently prosecuted for that period; however, North Tyneside Council may still make reference to it in any prosecution or other legal action taken in respect of absences following it.

10. Cross Border Arrangements

10.1 In cases where a pupil has moved school or to a different Local Authority's area in the previous 3 years, an additional check will be made to ascertain whether previous penalty notices have been issued to the parent in respect of the pupil.

10.2 Checks can be made by the school, or the Local Authority at the school's request. North Tyneside's email for such purposes is crossborder.penaltynotice@northtyneside.gov.uk

10.3 Where pupils attend school in North Tyneside but live outside of North Tyneside, North Tyneside Council will liaise with the home Local Authority in cases where a penalty notice is being considered and support is appropriate.

10.4 As the penalty notice is a fixed penalty, legislation does not allow part-payment to be made or payments by instalments.

10.5 Any revenue resulting from payment of penalties will be retained by the Council and is used to cover the enforcement costs.

11. Non-payment of penalty notices

11.1 It is possible that non-payment of a penalty notice will lead to a prosecution under Section 444 of the Education Act 1996. The prosecution would not be for non-payment of the penalty notice but for the original unauthorised absence. The parent will be issued with a letter advising that legal proceedings will be taken if the penalty notice is not paid within 28 days.

12. Withdrawal of a Penalty Notice

12.1 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 should not have been issued, 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.