

Penalty Notices

Sunderland City Council Local Code of Conduct for issuing education related Penalty Notices

Purpose of this Local Code of Conduct

1. Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise the educational opportunities available to them.
2. Penalty notices are one of a number of interventions available to promote better school attendance. Improving attendance is essential to improve a child's educational prospects and to avoid putting them at risk of criminal or anti-social behaviour.
3. This Code of Conduct is a requirement of The Education (Penalty Notices) (England) Regulations 2007 as amended. The purpose of this local Code of Conduct ("this Code") is to ensure that Fixed Penalty Notices ("Penalty Notice" or "Penalty Notices") for school absences are issued in a manner that is fair and consistent across the Sunderland local education authority area. This Code sets out the arrangements for administering Penalty Notices and must be adhered to by anyone issuing a Penalty Notice for school absence in this area. This Code complies with relevant regulations and the Department for Education's ("DfE") national framework for Penalty Notices as set out in the ['Working together to improve school attendance'](#) guidance ("the DfE Guidance")
4. This Code supersedes all previous Code(s) of Conduct regarding Fixed Penalty Notices for education related absences.

Consultation

5. 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 for issuing Penalty Notices

6. Section 7 of the Education Act 1996 places a legal obligation on the parents of a child, of compulsory school age, to ensure that the child receives efficient full-time education, that is suitable to the child's age, ability, and

aptitude, and to any special educational needs the child may have by regular attendance at school or otherwise.

7. The Education and Inspections Act 2006 Section 103 places a duty on parents to ensure their child is not present during school hours in a public place during the first five days of each and every fixed period or permanent exclusion from school.

8. In law an offence occurs if a parent fails to secure a child's attendance at the school at which they are a registered pupil and that absence is not authorised by the school.

9. The Education Act 1996 allow Penalty Notices to be issued as an alternative to prosecution under section 444 for the offence of failing to secure regular attendance at school of a registered pupil. 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). It enables parents to discharge potential liability for conviction by paying a penalty. The parent cannot be prosecuted for the particular offence for which the notice was issued (non-school attendance) until after the final deadline for payment has passed and cannot be convicted of that offence if he or she pays a penalty in accordance with the notice.

10. The Education (Penalty Notices) (England) Regulations 2007, as amended, sets out the framework for the operation of Fixed Penalty Notice schemes.

11. Penalty Notices must conform to all requirements of the Human Rights Act and all Equal Opportunities legislation.

12. For the purposes of this Code, a 'parent' is defined under s576 Education Act 1996 as:

- All natural parents, whether they are married or not.
- Any person who, although they are not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person.
- Any person who, although not a natural parent, has care of a child or young person with whom the child lives and who looks after a child, irrespective of their relationship with the child.

13. Throughout this Code, references to 'parent' mean every parent 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.

14. Penalty notices will usually be issued to the parent with day-to-day responsibility for the pupil's attendance or the parent who has allowed the absence (regardless of which parent has applied for a leave of absence).

15. For the purposes of this Code, 'compulsory school age' is defined as: commencing at the start of term on or after a child's fifth birthday and concluding on the last Friday in June of the school year in which the pupil becomes 16.

16. As with any legal action, Penalty Notices should be seen as a matter of enforcement of attendance rather than as a punishment for absence. Decisions on the application of Penalty Notices are taken on a case-by-case basis.

Rationale

17. Where difficulties arise with school attendance, professionals should take a 'support first' approach in line with the DfE 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. **The National Framework aims to:**

- **Make penalty notices more effective** by ensuring they are only used in cases where they are the most appropriate tool to change parental behaviour and improve attendance.
- **Prioritise the support first approach** by expecting support to be used in cases where it is appropriate and using penalty notices in cases where support is not appropriate (e.g. a term time holiday) has not worked or has not been engaged with.
- **Improve consistency in the use of penalty notices across England** by introducing a new national threshold at which they are considered.

Improve the deterrent effect of a penalty notice by increasing the amount and introducing a new national limit of 2 penalty notices within a 3 year period to break cycles of repeat offending.

When may a Penalty Notice for absence be appropriate?

18. A Penalty Notice for absence will be considered when a pupil has been recorded as absent for 10 sessions (usually equivalent to 5 school days) within 10 school weeks¹, 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 O (none of the other rows of Table 3 in regulation 10(3) of the School Attendance (Pupil Registration) (England) Regulations 2024 applies), and/or
- (c) code U (the pupil attended after the taking of the register ended but before the end of the session, where no other code applies)

19. The DfE Guidance sets out that the first Penalty Notice issued to the parent for that pupil will be charged at £160 if paid within 28 days but reduced to £80 if paid within 21 days. For the escalation process where it is deemed appropriate to issue a second Penalty Notice to the same parent for the same

pupil within 3 years of the first Penalty Notice, the second Penalty Notice is charged at a flat rate of £160 if paid within 28 days (no early payment discount).

20. If repeated Penalty Notices are being issued to the same parent, this is indicative that the Penalty Notices are not working to change that parent's behaviour and it is unlikely therefore that a Penalty Notice would be considered to be the most appropriate tool to use to secure the pupil's attendance at school.

21. A third Penalty Notice must not be issued within a 3 year period. In cases where the threshold is met for a third (or subsequent) time within those 3 years, a Penalty Notice cannot be issued and alternative action should be taken instead. Consideration will be given to what other appropriate attendance legal interventions there are, which can include prosecution.

22. If 3 years has elapsed since the first Penalty Notice was issued to the parent a further Penalty Notice can be issued if appropriate, but in most cases, it may not be the most effective tool for changing what may have now become an entrenched pattern of behaviour.

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

23. The following should be considered as a minimum before issuing (or requesting that another authorised officer issues) a Penalty Notice, to ensure a fair and consistent approach. For the avoidance of doubt the following should be considered for all cases where a Penalty Notice is being considered

- Is a Penalty Notice the best available tool to improve attendance and change parental behaviour for this family or would one of the other legal interventions be more appropriate?
- Is issuing a Penalty Notice appropriate after considering any obligations/duties under the Equality Act 2010?
- Is there any other additional support that can be offered to the family to address the attendance concerns before a Penalty Notice is considered?
- Is it in the public interest to issue a Penalty Notice?

Circumstances when a Penalty Notice may be issued

24. The responsibility for issuing Penalty Notices and managing arrangements for their payment, and the collections of monies rests with the Attendance Team for Sunderland City Council. This ensures that all procedures relating to Penalty Notices are consistently applied, that enforcement action is not duplicated, and that any subsequent court action is

integrated into the existing attendance procedures. Where schools, Police or neighbouring local authorities request Sunderland City Council to issue a Penalty Notice, their request will be investigated and actioned by the Attendance Team provided that:

(a) The circumstances of the case meet the criteria specified in this Code and all necessary evidence is provided to the Attendance Team to establish that an offence under Section 444 of the Education Act 1996 has been committed.

(b) Where the absence relates to a term time holiday, it would have to be clearly demonstrated that the parent understood and had been warned that permission for the holiday had not or would not be given. The school must be able to demonstrate that the parent had full knowledge of the school's procedures and the possible consequences.

(c) Where a child who has been excluded is present in a public place during the first five days, a Penalty Notice will be issued on the first occasion if appropriate after considering the parent's action or inaction which led to the child being in a public place at a proscribed time, the parent's justification if any, and the parent's attitude to having failed to meet their statutory responsibility.

(d) The liable parent or carer has received a formal warning from Sunderland City Council of the possibility of a Penalty Notice being issued and shall be given a maximum of 15 school days to affect an improvement.

(e) Confirmation that the matters set out in Paragraph 23 of this Code have been considered.

25. The Attendance Manager will oversee the administering of Penalty Notices in Sunderland to ensure that they comply with the appropriate legislation and ensure that the practice is applied consistently, fairly and transparently across Sunderland. This will also allow cohesion with other enforcement sanctions.

When a Penalty Notice would not be appropriate

26. Sunderland City Council may not consider a Penalty Notice to be appropriate in the following situations (this list is not exhaustive):

- Where there are statutory defences for the child's absence;
- Where a case does not meet the appropriate evidential and public interests tests applicable for a prosecution;
- Where the irregular attendance is shown due to an unmet SEN need or the child's registered disability;
- Where the child in question is a Cared for Child.

When a Penalty Notice may be withdrawn

27. Sunderland City Council may withdraw a Penalty Notice in the following circumstances:

- Evidence has been provided that the Penalty Notice was issued to the wrong person;
- The issue of the Penalty Notice did not conform to this Code; or
- There is evidence to the appropriate criminal standard that no offence has been committed.

Amount of a Penalty Notice and payment

28. An individual issued with a Penalty Notice has 28 days to pay the amount stated.

29. The amount of a Penalty Notice is £80 if paid within 21 days (early payment discount), with the amount of the Penalty Notice increasing to £160 if payment is made after 21 days but within 28 days.

30. Arrangements for payment of the Penalty Notice will be detailed on the Penalty Notice itself.

31. The time frame of the payment and the amount payable are stated in law and cannot be amended. Sunderland City Council has no discretion to agree a different amount.

32. Payment of a Penalty Notice discharges the parent's liability for an offence for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the same period covered by the Penalty Notice.

33. The Attendance Team will keep records of Penalty Notices issued. These records will include a copy of all Penalty Notices issued, payments received, details of withdrawn Penalty Notices, and records of any subsequent prosecutions following non-payment. The Attendance Team retains any revenue from Penalty Notices to cover operational costs of the Penalty Notice scheme.

34. Penalty Notices will be sent via first class post to the parent's home address. Posted notices will take effect from the second working day after posting.

35. For the purposes of this Code "working day" means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.

Failure to pay the Penalty Notice

36. If the Penalty Notice is not paid in full by the end of the 28 day period the Attendance Team will either prosecute for the offence to which the Penalty Notice relates or withdraw the Penalty Notice.

37. There is no statutory right of appeal against the issuing of a Penalty Notice.

Policy and publicity

38. The use of Penalty Notices, as a sanction will be included in the Attendance Team's internal guidance document on the enforcement of attendance.

39. Sunderland City Council will include information on the use of Penalty Notices and other sanctions in promotional or public information material.

40. Schools should include reference to this Code and other legal sanctions as noted in the Attendance Team's internal guidance document in their attendance policies.

41. Sunderland City Council will report statistics on the numbers of Penalty Notices issued in their annual parental responsibility measures attendance census return to the DfE.

Review

42. The Attendance Team will review the numbers of Penalty Notices issued on an annual basis. This Code will be reviewed and amended as appropriate, in line with changes in legislation or other changes to policy/guidance.

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