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SHEFFIELD CODE OF CONDUCT FOR THE ISSUING OF PENALTY NOTICES

Reviewed June 2024

Applicable from the 19th 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 Sheffield City Council. The code sets out the arrangements for administering penalty notices in Sheffield and must be adhered to by anyone issuing a penalty notice for school absence in this area. 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.

Consultation

2. This code has been drawn up in consultation with the headteachers, school attendance champions, academy attendance leads, governing bodies of state-funded schools and the local police force.

Legal basis

3. 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).
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, an authorised local authority officer, a headteacher or a deputy or assistant head authorised by them 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. The Local Authority is responsible for the overall administration of penalty notices. The Code of Conduct ensures that the powers are applied consistently and fairly across the Local Authority area and that suitable arrangements for the administration of the scheme have been made.
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. 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).

Where parents are separated, and one parent does not have day to day care of the child during school days/hours we would encourage the parent to share this information with the school. Penalty Notices would not be issued to the parent without day to day during the period of absence if the school or Local Authority are aware this is the case.

Rationale

8. 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.
9. 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.
10. 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.
11. 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 leave in term time) 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?

12. When the national threshold has been met: when a school becomes aware that the national threshold has been met, and all avenues of support have been exhausted and evidenced, 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 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 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)

13. If in an individual case the local authority (or other authorised officer) believes a penalty notice would be appropriate, they retain the discretion to issue one before the threshold is met.
14. If repeated penalty notices are being issued and they are not working to change behaviour they are unlikely to be 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. Authorised officers of Sheffield City Council (Attendance and Inclusion Social Workers) will consider all alternative tools available to them at this point, including where appropriate discussion with social care.
15. For the purpose of the escalation process, previous penalty notices include those not paid (including where prosecution was taken forward if the parent pleaded or was found guilty) but not those which were withdrawn.

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

16. 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/exceptional leave in term time/excluded pupils), consider on a case by case basis:

¹ 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).

- 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 in this case appropriate after considering any obligations under the Equality Act 2010
 - Section 105 of the Education and Inspection Act 2006 empowers designated LA officers, Head Teachers (and Deputy and Assistant Head Teachers authorised by them) and the Police to issue Penalty Notice, if they believe that the parents of a pupil of compulsory school age have committed an offence under Section 103 (an excluded pupil is present in a public place during school hours.)
 - (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: APDR in line with schools' attendance processes and LA attendance response. Evidence of support in line with Attendance Legal Process checklist (Appendix 1).
 - All relevant information, supporting documentation and correspondence with the parent/carer/young person should be supplied to AISW who will take into consideration mitigating circumstances/statutory defences.
 - The circumstances of the pupil's absence meet all the requirements of this Code of Conduct.
 - The issuing of a Penalty Notice fine is considered in line with family circumstances and is believed it will bring about change and secure improved attendance.
 - The issue of a Penalty Notice fine does not conflict with other intervention strategies in place, or other enforcement sanctions already being processed.
 - 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?
 - If there are any significant concerns regarding the welfare or safeguarding of the child, the matter will be referred for further consideration as to whether it would be appropriate to consider applying other options such as referral to Social Care rather than issuing a Fixed Penalty Notice fine.
 - 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 considered.

Notice to improve

17. A notice to improve 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).

In Sheffield, Notices to improve will be discussed at regular meetings held between AISW and school.

The discussion will include what the length of the improvement period should be, this can be between 3 and 6 weeks and will be agreed on a case-by-case basis.

The notice will inform parents/carers that improvement is being sought in line with individual circumstances.

AISW will complete any checks required within 10 school days and where appropriate will direct the school to issue the notice.

School will regularly monitor throughout the improvement period and align any plan to continue to offer support to ensure improvements are and continue to be sustained during and following the improvement period.

Following the improvement period, should school feel the improvement is not sufficient, they will seek a conversation with AISW to discuss if a Penalty Notice is the appropriate tool.

Schools must not issue a Notice to Improve letter without consultation/discussion with an Attendance and Inclusion Social Worker.

In some circumstances a Notice to Improve may not be the appropriate tool, if this is the case AISW will work with schools to identify appropriate next steps.

How authorised officers will work together

18. Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour.
19. An authorised officer is a local authority officer, a headteacher or someone authorised by them (a deputy or assistant head), or the police. In Sheffield the LA officers will be responsible for the issuing of all Penalty Notices relating to education.

Issuing penalty notices for pupils present in a public place.

20. Excluded pupil present in a public place (during the school hours of the school where the pupil is on roll), without justification during the first five days of each and every fixed period or permanent exclusion. The liable parent/carer will receive a formal warning of the possibility of a Penalty Notice being issued, after the first time a pupil is present in a public place.
21. If a parent/carer of an excluded child fails to ensure the attendance of the child at the alternative provision provided by the school or LA, from the sixth day of fixed period exclusion or permanent exclusion, the parent will be liable under the irregular attendance provisions.
22. In the case of an excluded pupil, for a parent/carer to incur either form of legal responsibility, the school must give them notice informing them of their duty to ensure their child is not present in a public place, the days when their duty applies, and as appropriate, of the arrangements for alternative provision. Ordinarily these notices will be combined with the notice the school must issue when a child is excluded.
23. Before a Penalty Notice fine is issued to the parent/carer of an excluded pupil, consideration must be given to every aspect of the case, such as:
 - number of occasions the child has been present in a public place,
 - the parent's actions (or inactions) which led to the child being in a public place at a prescribed time,
 - the parent's justification if any,
 - The parent's attitude to having failed to meet their statutory responsibility.
24. It will be for a parent to prove reasonable justification. A justification that is capable of being reasonable will depend on points of fact and proof.
25. A medical emergency may be more straightforward: hospital records, doctor's certificates etc. can be used as evidence. Other justifications, such as the pupil shopping for food or clothes, are unlikely to be classed as reasonable. However, every case should be considered on its merits and all relevant evidence provided considered.

In the case of requests to issue a Penalty Notice fine, where the excluded pupil is found in a public place (during school hours where the pupil is on roll), the liable parent/carer will receive a warning letter. The letter will outline the possibility of a Penalty Notice fine being issued if the pupil is present once again in a public place, during the remaining days of the exclusion.

Issuing Penalty Notice fines for Unauthorised Leave of Absence

26. All Sheffield Schools are required to develop documentation relating to the school's Unauthorised Leave of Absence Policy. This documentation should be made available to parents to ensure that they are fully aware of the procedure for notifying school of Unauthorised Leave of Absence and are made aware of prosecution if leave is not authorised. It is recommended that this information is made available in a variety of media, including the school's website.
27. All Sheffield schools wishing to use Penalty Notices for Unauthorised Leave of Absence should ensure that they follow their own policy regarding responding to parents.
28. A penalty notice can be issued where a child has not returned to school on an expected and agreed date and no satisfactory explanation has been given or the leave has not been granted by the head teacher.
29. Each parent/carer can be issued with a Penalty Notice for each individual child. If the fines remain unpaid, the parent/carer may be taken to court.
30. Sheffield schools should refer to Sheffield City Council Leave in term time Policy for the referral process for issuing Penalty Notices.

In all circumstances the following applies:

31. The Local Authority will issue all Penalty Notice fines in Sheffield. This will ensure consistent and equitable delivery, retain school-home relationships and allow cohesion with other enforcement sanctions. It will also prevent Penalty Notice fines being issued in circumstances where criminal proceedings are contemplated or have been commenced, with respect to the same period of absence.
32. Penalty Notice fines will only be issued by post and never as an on-the-spot action. This is to ensure that all evidential requirements are in place and to meet Health and Safety requirements.
33. The LA will receive requests to issue Penalty Notice fines from schools, South Yorkshire Police and neighbouring LAs. These requests will be considered by the Attendance and Inclusion Social Workers with advice taken from the Legal Service where required.

34. Regardless of which agency is named or recognised lead professional involved in the case, the decision on actions to be taken rests with the Local Authority. The Attendance and Inclusion Social Worker execute this duty on behalf of Sheffield City Council.

35. Whoever is issuing the penalty notice should make a decision as to whether 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 before issuing a penalty notice.

36. The LA will inform the school about whether penalty notices are paid, withdrawn or prosecuted for the original offence of failure to educate a child. This will be provided as and when requested by schools.

37. Where pupils attend school in Sheffield but live in a different LA, Sheffield will liaise with the home authority to identify the appropriate support required to support a plan for the family/young person.

38. Where pupils move between local authority areas, Sheffield can be contacted on crossborder.penaltynotice@sheffield.gov.uk to find out if penalty notices have been issued previously.

Procedure for Withdrawing Penalty Notices:

39. Once issued, a Penalty Notice fine will only be withdrawn in the following circumstances:

- If proof has been established that the Penalty Notice fine was issued to the wrong person or a person who did not have day to day care of the child.
- If the Head Teacher notifies the LA they wish to withdraw
- When the use of the Penalty Notice fine did not conform to the terms of this Code of Conduct, or otherwise ought not to have been issued
- If it contains material errors
- Where after 28 days the Penalty Notice fine is unpaid, and the LA does not wish to bring legal proceedings under s444

Where appropriate and practical, discussion will take place with the school before withdrawal of the notice.

Payment of Penalty Notices:

40. The Education (Penalty Notices) (England) (Amendments) Regulations 2024 has reformed the amount of the penalty notices. Payment must be made of £80 within 21 days, or £160 within 28 days for a first offence within a 3 year period. A second offence within a 3 year period will require payment of £160 paid within 28 days. If a third offence is committed within a 3 year period consideration will be given alternative legal interventions.
41. Arrangements for payment will be detailed on the Penalty Notice.
42. Payment of a Penalty Notice fine discharges the parent/carer from criminal liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers, for the period covered by the Penalty Notices.
43. There is no right of appeal
44. The changes to Penalty Notice fines after the 19th August 2024 have been shared with schools and parents. Term time leave planned prior to the changes will not be considered as a defence and the new guidance will be adhered to when issuing Penalty Notice fines.

Contacting the Local Authority

For information and advice regarding this Code of Conduct or any other attendance related issue please contact:

sheffieldinclusion&attendance@sheffield.gov.uk

** If a parent can secure regular attendance but not willing to take responsibility or failure to engage with strategies and agencies, then a Penalty Notice may be issued without notification.*

** No formal warning is given in the case of leave of absence*

Appendix A

ALP checklist	Yes/No	Is Evidence Available
School to have referred to the Ideas for challenging and improving attendance Checklist and completed the identified actions relevant to the situation		
Child to be discussed at whole school inclusion meeting this may include wider school staff, safeguarding, SEN, Pastoral, Attendance, and any other relevant staff to ensure any barriers are discussed at a whole school level regarding attendance, well-being, behaviour and learning		
School to ensure they have spoken to all services involved with the child or young person		
Schools to establish any siblings and liaise with those schools		
Mapping across education, health, and care to identify need and barriers		
A plan that demonstrates APDR with SMART targets (see attached doc)		
Parents to be given the opportunity to attend at least two meetings within the APDR process		
Any meetings recorded and parents provided with a copy whether they are present or not setting out expectations/plan		
Where appropriate ensure evidence of the impact irregular attendance has on child's learning is discussed with parent/carer		
Schools to formalise support by way of an attendance contract, if not appropriate school must provide their rationale		
Parent voice captured and recorded		
Child voice captured and recorded		
School to ensure all parents/carers with day-to-day care have been informed of any attendance issues and the legal duties placed upon them to provide a full-time education		
School to ensure all parent/carer details are up to date (who is in the household? Do both parents have parental responsibility/day to day care and responsibility for education? If so, on which days?)		
School to demonstrate how they have considered where the family live in relation to school and show what support has been offered if this is a barrier		