

Local code of conduct for issuing penalty notices for school absence 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 Rochdale Local Authority. The code sets out the arrangements for administering penalty notices in Rochdale Local Authority 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 and 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, 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. 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).

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 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, 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 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 which will include legal action.
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 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 penalty notice 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 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?

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 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 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 issued.

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).

A Notice to Improve will not be issued to parents where the absence is a result of an unauthorised leave in term time.

The Local Authority will issue the Notice to Improve and set out 15 school days as the improvement period. If there are further absences within this improvement period, a Penalty Notice will be issued.

18. Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour.

19. The Education Welfare Service will issue Penalty Notices on behalf of Rochdale Local Authority. This will ensure consistent and equitable delivery, retain school-home relationships and allow cohesion with other enforcement sanctions.

Penalty Notices will only be issued by post and never as an on the spot action; this is to satisfy that all evidential requirements are in place and to meet Health and Safety requirements.

The Education Welfare Service will receive requests to issue Penalty Notices from schools and from the Police. These requests will be considered individually and against the following criteria:

- All relevant information is supplied in the specified manner
- The circumstances of the pupil's absence meet all the requirements of this Protocol

- Family circumstances/ability to pay is set against the likelihood of securing an improved attendance by issuing a Penalty Notice (this to include any cases of possible multiple issue to any one family)
- The issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed
- Referral(s) for Penalty Notices to be issued for leave during term time will be considered for absences relating to a holiday taken when they are received from school within a reasonable timeframe and where they meet legal expectation.

20. Where the school or police request that the LA issues the penalty notice, they need to complete the referral form for consideration of penalty notice providing the information requested including evidence of support offered to the parents.

21. The Education Welfare Service will endeavour respond to all requests within 10 school days and will:

- Issue a formal Notice to Improve to the parent(s) on behalf of the referrer outlining the details of the offence and advising that a Penalty Notice may be issued if the referral for a fine relates to unauthorised absences. In the same letter, set a period of time, usually 15 school days, within which the pupil must have no further unauthorised absence if the issue of the Penalty Notice is to be averted.
- Issue a Penalty Notice through the post at the end of the prescribed period if the required level of improvement has not been achieved.
- If the referral is for unauthorised leave during term time, the Local Authority will issue the fine without the issue of a warning, subject to the matter meeting the referral criteria.

Where the request to issue a Penalty Notice does not meet the defined criteria of the Protocol or is, in any respect considered to be inappropriate, the Education Welfare Service will:

- Advise the person making the request and provide an explanation for the decision not to issue a Penalty Notice
- Consider, recommend and/or implement alternative strategies that may be more appropriate

22. The Local Authority 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.

23. The Local Authority will inform the school about whether penalty notices are paid, withdrawn or prosecuted for non-payment.

Two penalty notice limit and escalation in cases of repeat offences

24. A penalty notice is an out of court settlement which is intended to change behaviour without the need for criminal prosecution. If repeated penalty notices are being issued and they are not working to change behaviour they are unlikely to be most appropriate tool. Therefore, from autumn term 2024, only 2 penalty notices can be issued to the same parent in respect of the same child within a 3 year rolling period and any second notice within that period is charged at a higher rate:
- The first penalty notice issued to a parent in respect of a particular pupil will be charged at £160 if paid within 28 days. This will be reduced to £80 if paid within 21 days.
 - A second penalty notice issued to the same parent in respect of the same pupil is charged at a flat rate of £160 if paid within 28 days.
 - 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 a third time (or subsequent times) within those 3 years, alternative action should be taken instead. This will often include considering prosecution, but may include other tools such as one of the other attendance legal interventions.

Once 3 years has elapsed since the first penalty notice was issued a further penalty notice can be issued, but in most cases it would not be the most effective tool for changing what may have now become an entrenched pattern of behaviour.

For the purpose of the escalation process, previous penalty notices include those not paid (including where prosecution was taken forward and the parent pleaded or was found guilty) but not those which were withdrawn.

25. Where pupils move between local authority areas, Rochdale Local Authority can be contacted on education.welfare@rochdale.gov.uk to find out if penalty notices have been issued previously.
26. Where pupils attend school in Rochdale Local Authority but live in a different LA, Rochdale Local Authority will liaise with the home Local Authority in cases where a penalty notice is being considered and support is appropriate, and that support is being provided by the home Local Authority.

Procedure for the withdrawal of Penalty Notices:

27. Once issued, a Penalty Notice will only be withdrawn in the following circumstances:
- Proof has been established that the Penalty Notice was issued to the wrong person
 - The use of the Penalty Notice did not conform to the terms of this Protocol

- The Penalty Notice is not paid in full within 28 days and subsequent checks indicate that no offence has been committed

Payment of Penalty Notices:

28. Arrangements for payment will be detailed on the Penalty Notice.

Payment of a Penalty Notice discharges the parent/carer liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Penalty Notice.

The Local Authority retains any revenue from Penalty Notices to cover enforcement costs (collection or prosecuting in the event of non-payment).

Non-payment of Penalty Notices:

29. Non-payment of a Penalty Notice will result either in the withdrawal of the Notice or will trigger the prosecution process under the provisions of Section 444, 1996 Education Act as detailed above.

Policy & Publicity

30. Deployment of Penalty Notices as a sanction is included in the Authority's revised Attendance Policy. All schools intending to utilise this Protocol will include information on the deployment of Penalty Notices in their Attendance Policies and this will be brought to the attention of all parents. The Local Authority will include information on the use of Penalty Notices and other attendance enforcement sanctions in promotional/public information material.

Reporting and Review

31. The Education Welfare Service will monitor procedures relating to Penalty Notices at regular intervals. Outcomes will be evaluated, reported upon and amended as appropriate.

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