

Penalty Notice Code of Conduct - Non School Attendance

Section 1- Introduction

This code sets out the arrangements for administering penalty notices in Cambridgeshire, for non-school attendance. 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' statutory guidance. This came into effect from August 2024. Link below:

<https://www.gov.uk/government/publications/working-together-to-improve-school-attendance>

Section 2- Rationale

- 2.1 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.
- 2.2 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.
- 2.3 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.
- 2.4 The national framework for penalty notices is based on the principles that penalty notices should only be used in cases where:
 - a. support is not appropriate (e.g. a term time holiday) or where support has been provided and not engaged with or not worked, and
 - b. they are the most appropriate tool to change parental behaviour and improve attendance for that family.

Section 3 - Purpose of penalty Notices

3.1 Penalty notices (PN) are issued to parents as an alternative to prosecution where they have failed to ensure that their child of compulsory school age regularly attends the school where they are registered or, in certain cases, at a place where alternative provision is provided.

3.2 A penalty notice can be issued to each parent liable for the offence or offences. They should usually only be issued to the parent or parents who have allowed the absence (regardless of which parent has applied for a leave of absence).

3.3 Penalty notices are intended to prevent the need for court action and should only be used where it is deemed likely to change parental behaviour and support to secure regular attendance has been provided and has not worked or been engaged with or would not have been appropriate in the circumstances of the offence (e.g. an unauthorised holiday in term time).

Section 4 - Circumstances in which Penalty Notices may be issued

4.1- When a school becomes aware that the national threshold has been met for enforcement actions to be considered for irregular school attendance, they must refer to the local authority.

The national threshold will be met when a pupil has been recorded as absent for 10 sessions (5 school days) within 10 school weeks, with one of, or a combination of the following codes:

- a. **Code G** (the pupil is absent without authorisation for the purpose of leave in term time),
- b. **Code O** (the pupil is absent without authorisation and none of the authorised absence codes apply)
- c. **Code U** (the pupil attended late, after the attendance register is taken but before the end of the morning or afternoon session)

Cambridgeshire county council will issue a Penalty Notice fine in the following instances:

4.2 - Ongoing unauthorised absence – When:

- a. a pupil has had a minimum of 10 sessions of unauthorised absence within a period of 10 school weeks;
- b. a school or place of alternative educational provision has completed the relevant attendance procedure and
- c. despite that procedure being followed by the school/alternative provision, there has been little or no improvement in the pupil's attendance; or a notice to improve has been issued but there has been no improvement over a six-week period.

4.3 - Unauthorised Leave in Term Time - When:

- a. a pupil has been taken on an unauthorised “leave of absence” from school (code G) or a place of alternative educational provision for minimum of 10 continuous sessions (five days) and;
- b. the school or place of alternative educational provision have followed the relevant local authority legal intervention process (e.g. parents have been warned about the consequences of unauthorised absence), a penalty notice may be issued.

4.4 - 10 consecutive sessions (5 days) or more using the G code or the child is absent on the 1st or the 5th day with an O code. On the occasion where a child is absent due to unauthorised term time leave for 4 days (recorded with a ‘G’ code) and the child is absent on the 1st or the 5th day, the head teacher may decide not to authorise the absence, based on the reason provided (e.g. validity of the illness is in doubt, recovering from jetlag after travel from abroad, a delay in return travel etc). If the absence is recorded with an ‘O’ code, a Penalty Notice may be issued under the rule of ‘combination of codes’. Please note that the use of an O code in this way, must only be in circumstances where the school does not agree with the validity of the illness or explanation provided.

4.5 - The National Framework allows local authority the discretion to issue a PN fine in circumstances when the above criteria may not have been met. This might apply for example, where parents are deliberately avoiding the national threshold by taking several term time holidays below threshold, or for repeated absence for birthdays or other family events. Therefore, Cambridgeshire will use this discretion in these exceptional cases, where appropriate.

4.6 - We will check our data base and liaise with other local authorities, where appropriate, to ensure duplicate PN fine is not issued for the same offence. This will include checks carried out to establish if a PN fine was issued in a 3-year rolling period by another local authority. Our online referral process for the schools will ensure relevant information is shared by them and an investigation plan may be appropriate to gather further evidence. This will be managed through our weekly Attendance Legal Panel meetings. Outcome of any referrals for a PN fine will be communicated with the school by the attendance legal panel.

4.7 - Contrary to the above criteria of 5 days of absence to warrant a Penalty Notice fine being issued, in exceptional circumstances where a parent takes a child out of school during term time for an extended period (20 days or more), not authorised by the school, prosecution in relation to Section 444 Education Act 1996, may be considered as an alternative to a Penalty Notice fine being issued.

Section 5 - Key consideration before a Penalty Notice fine is issued

5.1 - The key consideration in deciding whether to issue a Penalty Notice should be whether it is considered likely to be effective in helping the child to whom it relates to return to regular attendance.

5.2- Before issuing a Penalty Notice for unauthorised absence (absence recorded with O and U codes), due consideration should be given to other strategies which may help return the child concerned to regular school attendance. Such strategies might include:

- a) writing to the child's parents to remind them of their legal responsibilities;
- b) meeting with the child's parents;
- c) ensuring a first-day response to any absence;
- d) setting targets for improvement;
- e) involvement of other services/agencies.

5.3- General considerations include:

- (a) Has sufficient support already been provided? – this will usually include an offer of Early Help Assessment (EHA); the offer of a formal support meeting / attendance contract or as specified in the school's attendance policy
- (b) Is a penalty notice the best available tool to improve attendance and change parental behaviour for the parents or would one of the other legal interventions be more appropriate?

These strategies do not apply to term time unauthorised leave. (absence recorded with a G code).

5.4- It is expected that schools will communicate with parents and issue a warning about potential Penalty Notice fine being issued for unauthorised absences. This warning can be in the form of communication sent to parents via school Newsletters, School Web page as well as any direct mail sent to individual parents

5.5 - The Local Authority will not agree to sanction the issuing of a Penalty Notice unless he/she considers that with regard to the offence to which it relates there is sufficient evidence to secure a conviction under Section 444 of the Education Act 1996. Evidence could be letters sent to parent, minutes of meetings and record of telephone conversations. Where a PN has been issued for TTL, this will not be taken into account when considering a PN for an Attendance PN.

Section 6 - Penalty notice amount

6.1 - The PN fine is £160 if paid within 28 days. This will be reduced to £80 if paid within 21 days.

6.2 - A second fine within a 3-year rolling period is issued at a flat rate of £160 – no option to pay at the lower rate.

6.3 - A PN fine is issued per parent per child. The 3-year rolling period relates to the same child.

6.4 - A maximum of 2 PN fine may be issued to the same parent in respect of the same child within a 3-year rolling period.

6.5 - If 2 PN fine has been issued over a 3-year rolling period then for a third offence, prosecution in relation to Section 444 Education Act 1996, may be considered as an alternative to a PN fine.

6.6 If the first 2 Penalty Notices issued are not paid for any reason and the parent was not prosecuted for failing to pay, a third offence will still result in prosecution, on the basis that it counts as 'committed an offence' for the third time.

6.7 - Multiple PN issued for Term time leave (TTL) / Attendance:

When a PN has been issued for TTL, and a referral is received within the 3-year rolling period for an Attendance PN, this will be treated separately and not be counted as "accumulation" of PNs issued. Therefore, if a parent has been issued with 2 PNs for TTL and prosecuted for a third TTL offence under section 444(1) via SJP, then if a referral is received for Attendance PN, within the 3-year rolling period, a PN will be issued for the first Attendance PN. A second Attendance offence will trigger SJP prosecution under section 444(1) and a third Attendance offence will result in prosecution in open court under section 444(1A).

Summary:

TTL

- 1st offence- PN issued at lower rate
- 2nd offence – PN issued at higher rate
- 3rd offence – prosecuted under section 444(1) via SJP

If an Attendance referral is received within the 3-year rolling period whilst PNs have been issued for TTL:

- 1st Offence- PN issued at lower rate
- 2nd offence- prosecution under section 444(1) via SJP
- 3rd offence – prosecution under section 444(1A) via open court listing

Section 7 - Notice to improve

7.1 - A notice to improve is a final opportunity for a parent to engage in support and improve attendance before a penalty notice is issued in cases of ongoing unauthorised absence from school. 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 may be sent to give parents a final chance to engage in support. The local authority 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).

Decisions as to whether a notice to improve or other actions should be taken will be made by the local authority once a referral is made by the school.

7.2 - If a notice to improve is issued, the local authority will notify the school and ask for the child's attendance to be monitored for a maximum of six weeks. Should there be any further unauthorised absence accrued within the improvement period, the local authority must be advised immediately by the school and a penalty notice will be issued

Section 8 - Authority to Issue a Penalty Notice

The Attendance Legal Panel may issue a Penalty Notice to the parent of a child who is a registered pupil at a school in Cambridgeshire or who is a registered pupil at a school in an authority, which has an agreement to that effect with Cambridgeshire County Council.

Section 9 - Form and Content of Penalty Notices

9.1 - A Penalty Notice should give the following particulars alleged to constitute the offence to which the notice relates and should contain:

- a. the name and address of the person to whom the notice is issued;
- b. the name and address of the child who is failing to attend school regularly and the name of the school at which he/she is a registered pupil;
- c. the name, title and official details of the authorised person issuing the notice;
- d. the date of the offence and of the issue of the notice;
- e. the amount of the penalty which is to be paid and details of the timescales and any variation involved;
- f. the address of the County Council office at which the penalty is to be paid and to which any correspondence relating to the notice may be sent;
- g. the method/methods by which payment may be made;
- h. the specified period within which the penalty should be paid;
- i. a statement that full payment within the specified period will discharge any liability for the offence;
- j. an explanation of the consequences should the penalty not be paid in full before the expiry of the specified period;
- k. an explanation of the grounds on which the notice may be withdrawn.

9.2- Should there be more than one person liable for the offence (Section 576 Education Act 1996) a separate notice should be issued to each person, per each child.

9.3 Should the offence involve more than one child a separate notice should be issued for each child, per each parent.

Section 10 - Service of Penalty Notices

10.1 - A Penalty Notice may be served by:

- a. giving it to the recipient; or
- b. leaving it at the recipient's usual or last-known address; or
- c. sending it to the recipient at that address by first-class post.

10.2 - Service by post is deemed to have been effected, unless the contrary is proved, on the second working day after posting the notice by first-class post.

Section 11 - Methods of Payment

The preferred method of payment of a Penalty Notice would be on-line payment via the Cambridgeshire County Council website. However, alternative methods are available on request. Late or part payments (including instalments) will not be accepted, and no reminders will be sent.

Section 12 - Failure to Pay a Penalty Notice

12.1- Should the recipient of a Penalty Notice fail to pay the full amount before the expiry of the period for paying it the County Council will either begin proceedings against the parent under Section 444 of the Education Act 1996 or withdraw the notice in accordance with specified conditions (see section below).

12.2 - An electronic record will be retained to monitor that the recipient of a Penalty Notice has or has not paid the amount due on or before the date specified and presented as evidence in any subsequent Section 444 Education Act 1996 proceedings.

Section 13 - Withdrawal of a Penalty Notice

13.1 - A Penalty Notice may be withdrawn by the County Council, regardless of whom within the authority issued it, if it is deemed that:

- a. the notice ought not to have been issued (i.e. where it has been issued outside of the terms of this Code of Conduct or where no offence has been committed); or
- b. the notice ought not to have been issued to the person named as the recipient.
- c. - Should a Penalty Notice be withdrawn:
- d. notice of the withdrawal should be given to the recipient;
- e. any amount already paid by the recipient should be reimbursed;
- f. any proceedings under Section 444 of the Education Act 1996 instituted against the recipient should be discontinued.

Section 14 - Rights of appeal

14.1 - There is no statutory right of appeal against the issuing of a Penalty Notice. A parent should therefore, if possible, be given warning of the possibility of a notice being issued in order to allow him/her to make representations should he/she wish

to do so. If a head teacher refuses to authorise any absence or requests for holidays during term time and parents are not happy with the decision, they should make representations to the Governing Body of the school. They should not wait and make a representation to the County Council once a Penalty Notice has been issued.

- 14.2** - Although there is no right of appeal against the issuing of a Penalty Notice, if it is identified that the PN notice has been issued wrongly (i.e., it has been issued outside of the terms of this Code of Conduct or where no offence has been committed); or issued to the wrong person or wrong address, a parent may contact the LA to make a representation. This should be submitted in writing to the Education Legal Panel within 21 days of PN being issued. The requirement to pay the fine within the prescribed time will be paused whilst an investigation is carried out. If a decision has been made to uphold the PN, the LA will allow a further 10 days to pay the fine at the lower rate of £80, if the 21 day deadline for payment has expired. This rule of reduced rate does not apply in the instance where a second PN fine has been issued over a 3 year rolling period as the fine amount is at a flat rate of £160.

Section 15 - Retention of Receipts and Revenue Collection

15.1 - The County Council will retain all revenue from the issuing of Penalty Notices in order to cover the costs of issuing and enforcing notices and the cost of prosecuting those recipients of the notices who fail to pay.

15.2 - The County Council will produce an annual audit statement as part of its usual audit procedures in order to show that income received from Penalty Notices does not exceed enforcement costs as defined above. Any surplus acquired will be surrendered to a consolidated fund.

Appendix

Legal Framework

1. Under Section 23 of the Anti-Social Behaviour Act 2003 local education authority officers, headteachers and the police have the discretionary power to issue Penalty Notices in cases of unauthorised absence from school or an Alternative Provision. In Cambridgeshire, the Attendance team retains the authority to issue Penalty Notice fines.
2. The the above power, provides an alternative to prosecution of parents under Section 444 of the Education Act 1996 and enables parents to discharge potential liability for conviction for that offence by paying a penalty notice fine .
3. The Education (Penalty Notices) (England) Regulations 2004 require the Local Authority, to develop a code of conduct for issuing of Penalty Notices. Any person issuing a Penalty Notice must do so within the terms of this code of conduct.
4. Penalty Notices may only be issued in Cambridgeshire in accordance with the terms of this Code of Conduct. The purpose of the Code of Conduct is to ensure that the power is applied fairly and consistently across the County Council and

that suitable arrangements are in place for the effective and efficient administration of the scheme.

5. The Education (Penalty Notices) (England) Regulations 2005 extends the issuing of Penalty Notices to alternative provision.
6. The Education (Penalty Notices) (England) (Amendment) Regulations 2024 increases the amount of the penalty set out in the Education (Penalty Notices) (England) Regulations 2007 as amended, from £120 to £160 if paid within 28 days and £60 to £80 if paid within 21 days for the first penalty notice issued to a parent in respect of an individual child in any 3 year period. This came into force from the 19th of August 2024.
7. Should the Penalty Notice remain unpaid or have been paid only in part at the end of the 28 day period Cambridgeshire County Council must prosecute the parents for the offence to which the notice relates, or, in specified circumstances
8. In implementing this Code of Conduct the County Council will liaise when appropriate with neighbouring education and police authorities.
9. This Code of Conduct has been drafted in accordance with the Education (Penalty Notices) (England) Regulations 2004: Statutory Instrument 2004 No 181 and guidance issued by the Department for Education and Skills.
10. In preparing this Code of Conduct the County Council has consulted with Cambridgeshire headteachers and the Chief Officer of Cambridgeshire Constabulary. This complies with The Education (Penalty Notices) (England) Regulations 2007 and Education (Penalty Notices) (England) (Amendment) Regulations 2024. It also complies with guidance issued by the Department for Education (DfE)- 'Working Together to improve school attendance [August 2024].
11. School Attendance (Pupil Registration) (England) Regulations 2024.