

## **Local code of conduct for issuing penalty notices for school absence**

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 Darlington Borough Council. The code sets out the arrangements for administering penalty notices in Darlington Borough Council 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 national framework for penalty notices as set out in the ['Working together to improve school attendance'](#) guidance.

### **Legal Basis**

1. Under section 7 of the Education Act 1996, parents are responsible for making sure that their children of compulsory school age receive 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. This can either be regular attendance at school or by education otherwise. Compulsory school age begins from the start of the term immediately following the child's fifth birthday and continues until the last Friday of June in the school year that they reach the age of sixteen.

If a child of compulsory school age fails to attend regularly at a school at which they are registered or at alternative provision made for them then the parent may be guilty of an offence under section 444 of the Education Act 1996.

2. 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).
3. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.
4. A penalty notice for attendance will only be issued by an authorised officer: in the local authority. This is most likely to be the School Attendance Officer
5. 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.

6. 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).
7. Under section 447 of the Education Act 1996 a Local Authority must consider applying for an Education Supervision Order (ESO) under section 36 of the Children Act 1989 before prosecuting a parent under section 444 of the 1996 Act. A Local Authority may apply for an ESO instead of or as well as prosecuting the parent.

## **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 weeks<sup>1</sup>, 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 repeated penalty notices are being issued and they are not working to change behaviour they are unlikely to be the 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 considered. This will include:

- Straight to prosecution for unauthorised holiday related absences or where families do not wish to engage in offers of support,
- Fast track for families where further support will be required to improve attendance.

14. 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.**

15. 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:

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<sup>1</sup> 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).

- i. 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?
  - ii. Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010?
  - iii. 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:
  - i. Has sufficient support already been provided?  
Sufficient support will include first day calling, meeting with the child, meetings with parents, attendance action plan/attendance contracts, school plans, reasonable adjustments, signposting to single agency support, consideration of child's special educational needs and a need for an EHCP, and to offer an Early Help Assessment where multi agency support is needed.
  - ii. 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?
  - iii. Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010?
  - iv. 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.

### **Holidays during term-time**

16. For clarification, in accordance with regulation 7 of the Education (Pupil Registration) (England) Regulations 2006 as amended by the Education (Pupil Registration) (England) (Amendment) Regulations 2013, parents do not have an entitlement to take their children out of school for the purpose of a family holiday during term-time. A leave of absence may only be granted if an application has been made in advance to the school and the school consider that the leave of absence should be granted due to the exceptional circumstances relating to the application.

It is expected that schools will remind parents on a termly basis of the legal position with regard to holidays taken during term-time and that schools' policies and paperwork will reflect this position.

### **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).
18. A notice to improve will be served on the parent(s) giving them a 15-school day period in which to improve their child's attendance. If there are any sessions missed within that 15-school day period, as a result of unauthorised absence, a Penalty Notice will be issued.
19. Where there are any sessions recorded as unauthorised holiday absence, a warning will not be served on the parent(s) and Penalty Notices can be issued immediately.
20. A notice to improve does not always have to be considered. There are times where progressing straight to penalty notice and/or prosecution will be appropriate if a previous notice to improve has been ineffective or if subsequent attendance immediately after the previous notice to improve is not sustained.

### **How authorised officers will work together?**

21. The School Attendance Officer is the authorised officer who will issue penalty notices in Darlington for school attendance.
22. Authorised officers should work together with referrers to ensure that penalty notices are used when likely to be effective and change behaviour.
23. Where the school or police request that the Local Authority issues the penalty notice, they need to:
  - Complete a referral via the Liquid Logic EYES portal. (Schools only)
  - Discuss with a School Attendance Officer (Police only)

### **Procedure for issuing Penalty Notices**

24. Penalty Notices will only be issued within the terms of this Code of Conduct. The Local Authority will ensure that Penalty Notices are properly issued and

only issued for offences where the Local Authority is willing and able to prosecute.

25. The School Attendance Support Team is responsible for the issue of Penalty Notices in Darlington. This ensures consistent and equitable delivery, retains home-school relationships and allows cohesion with other enforcement sanctions.
26. Penalty Notices will only be issued by first class post and never as an “on the spot” action to ensure that all evidential and health and safety requirements are met.
27. The School Attendance Support Team will accept requests to issue Penalty Notices from schools, Durham and Darlington Constabulary and neighbouring Local Authorities. These requests will be actioned provided that:
  - All relevant information is supplied in the specified manner.
  - The circumstances of the pupil’s absence meet all the requirements of this Code of Conduct; and
  - The issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.
28. All Penalty Notices that are issued are recorded on Liquid Logic. All offences that proceed to prosecution, or where such proceedings are being contemplated, are also recorded on Liquid Logic.
29. Before issuing a Penalty Notice, the School Attendance Officer will check the Database to ensure that a notice has not already been issued for this offence to the parent(s); that prosecution proceedings have not already been commenced or are being contemplated for the offence; and that there hasn’t already been two Penalty Notices issued within a rolling 3-year period.
30. The penalty notice will be issued to the parent responsible for the absence. This could be both parents or an individual parent. This will be considered on a case-by-case basis.

### **Procedure for withdrawing Penalty Notices**

31. The Local Authority may withdraw a Penalty Notice where:
  - It 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
  - It has been issued to the wrong person; or
  - It contains material errors.
  - It is felt that the family have not been offered a ‘support first’ approach to address difficulties the family may be experiencing which directly impact on

school attendance e.g. finances, mental health, physical health, special educational needs etc. This applies only to non-holiday related absences.

### **Payment of Penalty Notices**

32. Payment of a Penalty Notice discharges liability for prosecution for the offence to which the notice relates. Neither the fact that a Penalty Notice was issued and paid nor the pattern of unauthorised absence or presence in a public place of an excluded pupil to which a paid notice relates can be submitted as evidence in a prosecution for any subsequent offence.

The Local Authority retains any revenue from Penalty Notices to cover the costs of issuing or enforcing notices or the cost of prosecuting recipients of notices who do not pay.

### **Right of Appeal**

33. There is no statutory right of appeal against a Penalty Notice.

### **Non-payment of Penalty Notices**

34. If the Penalty Notice is not paid in full by the end of the 28-day period, the Local Authority must either prosecute under section 444 of the Education Act 1996 or withdraw the notice. Where a Penalty Notice is withdrawn the parent will be informed of this in writing.

### **Policy and Publicity**

35. The use of Penalty Notices is included in all schools' attendance policies, and this will be brought to the attention of all parents.
36. The Local Authority will include information on the use of Penalty Notices and other attendance enforcement sanctions in promotional and public information material.

### **Reporting and Review**

37. The School Attendance officer will notify the referrer via e-mail of the outcome of the penalty notice in terms of:
- Payment or non-payment of the penalty notice.
  - If the local authority is withdrawing legal action.
  - If the local authority is progressing to Prosecution
  - The outcome of the prosecution.
38. The School Attendance support team will maintain accurate records identifying the implementation of Penalty Notices and will report at regular intervals to head teachers, Police and Community Safety Partnerships on their use.

39. The Early Help Service will review Penalty Notice intervention at regular intervals and make amendments as required. Local Authority reports on attendance matters will include Penalty Notice use.

**Contacting the School Attendance Officer**

**Tracey Doyle – School Attendance Officer**

e: [tracey.doyle@darlington.gov.uk](mailto:tracey.doyle@darlington.gov.uk)

Tel: 01325 406354

Primary	Secondary
Abbey Infant School, Abbey Junior School Heathfield Primary School Heighington Church of England Primary School High Coniscliffe Church of England Primary School Holy Family Roman Catholic Primary School, Marchbank Mount Pleasant Primary School Mowden Infant School, Mowden Junior School Reid Street Primary School Rydal Academy Skerne Park Academy St Augustine’s Roman Catholic Primary School St Mary’s Cockerton Primary School West Park Academy	Carmel College (A Catholic Academy), Hummersknott Academy Polam Hall School Wyvern Academy

**Brian Dean – School Attendance Officer**

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Tel: 01325 406235

Primary	Secondary
Beaumont Hill Academy Corporation Road Community Primary School Gurney Pease Academy ( <b>Lindsey Armstrong Holiday requests</b> ) Harrowgate Hill Primary School Northwood Primary School Red Hall Primary School Springfield Academy Whinfield Primary School ( <b>Tracey Doyle Holiday Requests</b> )	Beaumont Hill Academy Haughton Academy Rise Carr College St. Aidan’s Church of England Academy





**Lindsey Armstrong – School Attendance Officer**

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tel: 01325 406356

Primary	Secondary
Bishopton and Redmarshall Church of England Firthmoor Primary School. Hurworth Primary School St Georges Church of England St John's Church of England St Teresa's Roman Catholic Primary School St. Bede's Roman Catholic Primary School	Hurworth School Longfield Academy of Sport

**Kelly-Ann Reay – Early Help Coordinator/School Attendance Support Team Manager**

Childrens Initial Advice Team (Front door)

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