



Liverpool
City Council

Penalty notice code of conduct

Children's Services

Revised May 2024



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Introduction

This local code of conduct (“the code”) covers the process for the issuing of penalty notices for both unauthorised absence and exclusion.

The code has been agreed between and on behalf of all Liverpool schools, Liverpool City Council (“the LA”) and Merseyside Police. It has been revised to reflect current legislation and local delivery processes.

The purpose of the code is to ensure that penalty notices for school absence are issued in a manner that is fair and consistent across Liverpool.

The code sets out the arrangements for issuing penalty notices in Liverpool and must be adhered to by any authorised person issuing a penalty notice for school absence in this area.

The code complies with relevant legislation, 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.

Any queries or comments should be sent to ewshelpline@si.liverpool.gov.uk or via 0151 233 3916.

Consultation

The code has been drawn up in consultation with headteachers and governing bodies of state-funded schools and Merseyside Police Force.

Legal basis

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).

The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.

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 officer.

The national framework for penalty notices is published within the DfE's statutory guidance '*Working together to improve school attendance*'. This guidance also provides further national guidance on the operation of penalty notice schemes for school absence in England.

Definition of “Parent”

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. Generally, a parent will be all natural parents, whether they are married or not, all those who have parental responsibility for a child or young person or those who have day to day responsibility for the child (i.e., lives with and looks after the child.)¹ As such penalty notices will usually be issued to the parent or parents with day today 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) A penalty notice can be issued to each parent liable for the offence or offences. .

Rationale

Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities.

¹ Page 6 of the DfE Statutory Guidance found at : https://assets.publishing.service.gov.uk/media/65f1b048133c22b8eecd38f7/Working_together_to_improve_school_attendance__applies_from_19_August_2024_.pdf

In law an offence occurs if a parent/carer fails to secure a child's attendance at a school at which they are a registered pupil, and that absence is not authorised by the school. Penalty notices supplement the existing legal interventions currently available under section 444, Education Act 1996 and section 36, the Children's Act 1989 to enforce attendance at school where appropriate.

School Improvement Liverpool supports the LA via the Education Welfare Service ("EWS"). EWS can become involved when attendance begins to become a concern.

Parents and pupils are supported at the pupil's school and by the LA to overcome barriers to regular attendance through assessment, support and intervention strategies.

Penalty notices are used as a strategy to change behaviour. They are particularly relevant where parents/carers are judged capable of securing their child's attendance but are not sufficiently willing to take responsibility for doing so.

Penalty notices for attendance are a strategy recommended to be used in cases where there is an emerging pattern of absence at either a school or an alternative educational placement.

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.

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.

A penalty notice cannot be issued where proceedings under Sec 444 of the Education Act 1996 or section 103 of the 2006 Act are either being contemplated or have commenced.

Parents/carers also have a duty to ensure their child is not present in a public place during school hours without reasonable justification during the first five days of each and every suspension or permanent exclusion. These five days are termed the 'specified days of exclusion' and a penalty notice may be served if a parent/carer fails in this responsibility. They must have been notified by the school of this requirement at the time of the exclusion and of the days to which this relates.

In both attendance and exclusion cases, payment of a penalty notice within the agreed timeframe discharges parental liability for any offence which has been committed. Therefore, penalty notices are issued to parents as an alternative to prosecution.

Recipients of Penalty Notices

Penalty notices can apply to the parents/carers of children of compulsory school age who are registered at a maintained school, a PRU, an Academy, a City Technology College, and a City College for the Technology of the Arts or are attending alternative provision.

All those recognised as a parent under section 576 of the Education Act are parents for the purposes of these provisions.

LA Circumstances where a Penalty Notice may be issued

A penalty notice for attendance may only be issued in cases of unauthorised absence from a school or alternative provision. In line with the national penalty notice threshold the issuing of a penalty notice may be considered appropriate in any of the following circumstances:

when a pupil has been recorded as absent for 10 sessions (usually equivalent to 5

school days) within 10 school weeks², 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
- (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)

During or following a truancy sweep: the LA or police can issue a penalty notice. where a pupil is stopped as part of a truancy sweep.

The Education Welfare Service will undertake enquiries with the school where the child is registered. In cases where the school has recorded the absence of the pupil as unauthorised, a penalty notice can be issued subject to the national threshold having been met, without recourse to any casework

The national framework for penalty notices set 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, the LA will consider a prosecution under 444 of the Education Act 1996 or another attendance legal intervention.

For 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.

If in an individual case, upon consideration of all the circumstances, the authorised officer believes a penalty notice would be appropriate, the LA retain the discretion to issue one before the threshold is met. Instances where this discretion may apply is, where parents are deliberately avoiding the national threshold by taking several term

² 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).

time holidays below threshold, or for repeated absence for birthdays or other family events. In these instances, the matter will be deferred to the Local Authority Client Officer for final judgement prior to issuing.

Notice to improve

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 the parent has not engaged, or the intervention has not worked a notice to improve will be issued. This provides the parents with a final opportunity to seek support in addressing the barriers to their child's attendance.

A penalty notice for excluded pupils may only be issued where it can be wholly established that:

- The pupil has been excluded (suspension or permanent) from a school, PRU or AEP in the LA area and that the school or alternative provider has followed all agreed processes in notifying parents and the local authority.
- The pupil has been permanently excluded from a school outside the LA area but is a resident of the local authority.
- The parent/carer received notice of their responsibility for the first five days of the exclusion, those five 'specified days of exclusion' were clearly identified and the possible consequences of failing to adhere to this were explained.
- The pupil was present in a public place within the first five days of a suspension or permanent exclusion.
- The parent cannot prove that the pupil was present in a public place with reasonable justification.

To ensure consistent and fair delivery of penalty notices, in the case of exclusion the following criteria for their use shall apply:

- There will be no restriction on the number of such notices that may be issued in any one academic year, though repeat use must be reviewed against

effectiveness and where appropriate a multi-agency response will be considered.

- To ensure evidential requirements in the event of a legal challenge to issue or a prosecution in the event of non-payment, issue of these notices will be restricted to direct and documented pupil contacts by a Merseyside Police Officer and Education Welfare Officer as part of a coordinated truancy operation.
- The circumstances of all cases considered for such notices must be considered on an individual basis to establish whether there is a reasonable justification for their presence in a public place.

Acceptable cause will include pre-arranged or unavoidable medical appointments, attendance at a court or similar statutory venue, but may also take into account particular pupil, parental or family circumstances. Information must be sought from any other agencies or service areas engaged with the pupil or family.

In all cases however the burden of proof rests with the parents/carers.

Procedure for issuing Penalty Notices

School Improvement Liverpool on behalf of the LA will support the administration of penalty notices in Liverpool, via the Education Welfare Service. The final agreement to issue a penalty notice will be made by Liverpool City Council's Client Officer.

This will ensure consistent and equitable delivery, retain school-home relationships and allow cohesion with other enforcement sanctions. It also prevents the risk of duplication of penalty notices as the local authority has a consistent overview of the administration of penalty notices.

All 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.

The Education Welfare Service will decide as to whether proportionate support has been provided, and whether that support has worked or not prior to a penalty notice

being issued. Where there is dispute, authorised officers are expected to defer to the local authority's judgement about whether sufficient support has been provided.

The LA will inform schools if penalty notices are paid, withdrawn, or prosecuted for non-payment.

In respect to cross border practice, Authorities have agreed that:

- Where pupils move between LA areas, Liverpool City Council can be contacted at crossborderpenaltynotice@liverpool.gov.uk to find out if penalty notices have been issued previously.
- Local authorities will take responsibility for any issuing of penalty notices for their own pupils as defined by the school attended in accordance with the national penalty notice framework as defined in the local code of conduct.
- There will be prompt cross LA contact in every case where a penalty notice is being considered and where there is reason to believe that siblings within the family may attend schools in more than one local authority.
- A prompt and accurate transfer of data between local authorities when pupils from another LA are encountered on truancy operations, or a Liverpool resident is permanently excluded from a school in another local authority.

All Penalty Notice referrals will be actioned provided that:

- All relevant referral documentation is supplied and meets the requirements of the national framework for penalty notices.
- The circumstances of the pupil's absence meet all the requirements of the local code of conduct.
- Family circumstances/ability to pay is set against the likelihood of securing an improved attendance by issuing a penalty notice.
- The issue of a penalty notice does not conflict with other intervention strategies that may be in place or where prosecution is being considered or could be reasonably viewed as a more suitable intervention.

The Education Welfare Service will action all referrals for attendance-related penalty notices and where all criteria are met will:

- Issue a Notice to Improve to the parent/carer (if this action has not already been undertaken by the school where the pupil is registered) of the possibility of a penalty notice being issued; except where: leave of absence is deliberately taken in term time, without school permission, creating a period of unauthorised absence of 10 sessions or more; and it can be shown that the parent/carer understood that permission had not or would not be given. In such cases, the LA will issue a penalty notice without any warning period.
- In the Notice to Improve set a period of 20 school days within which the pupil must have no unauthorised absence.
- Request the LA issue a penalty notice through the post at the end of the 20 day period if the required level of improvement has not been achieved (or earlier if further unauthorised absences can be shown to have occurred within the improvement period).

The Education Welfare Service will receive and investigate the circumstances of each referral for exclusion-related penalty notices and respond where all criteria are met the service will:

- Advise schools and any other agencies /service areas involved with the pupil or family of the actions taken.
- Record and monitor the progress of the penalty notice.

Procedure for withdrawing Penalty Notices

Once issued, a penalty notice may only be withdrawn in the following circumstances:

- Proof has been established that the penalty notice was issued to the wrong person or address.
- The use of the penalty notice did not conform to the terms of the code.
- It contains material errors.

Payment of Penalty Notices

Arrangements for payment are 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.

Payment of a penalty notice within 21 days is £80 and payment after this time but within 28 days is £160.

If a second penalty notice is issued to the same parent for the same child within a rolling three year period, the charge is a £160 with no option for this second offence to be charged at the lower rate of £80.

The LA retains any revenue from penalty notices in respect of pupils registered at a school in their area to cover costs (strategies to support improving attendance, issue of penalty notices, collection, or prosecutions in the event of non-payment).

Non-payment of Penalty Notices

Non-payment of a penalty notice within the 28 day period will result in the withdrawal of the Notice and will normally trigger consideration for prosecution under the provisions of Sec 444(1), 1996 Education Act for the original offence of failing to secure the attendance at school of a registered pupil. Upon conviction for an offence under Section 444(1) the Court may impose a fine of up to £1000 upon each parent who is prosecuted.

In the event of pupil circumstances clearly mitigating against effective prosecution each case will be discussed carefully with the referring school to reach an agreement on an effective way forward.

In cases of exclusion-related Notices the parent is guilty of an offence under Section 103 of the Education and Inspections Act and parents may be liable to a similar range of disposals as for truancy, including a level 3 fine.

The LA may use the fact that a penalty notice was not paid as evidence in a subsequent prosecution.

Policy and publicity

All school attendance policies should include information on the deployment of penalty notices and this information will be brought to the attention of all parents.

The LA will include information on the use of penalty notices and other attendance enforcement interventions in promotional/ public information material.

1 Reporting and review

All matters relating to prosecutions and penalty notices are reported to the Department for Education in the annual Parental Responsibility, Attendance & Behaviour return (PRMA).

The Education Welfare Service will report locally at regular intervals on the deployment and outcomes of penalty notices.

Liverpool Children's Services will review the use of penalty notices at regular intervals and recommend amending the code of conduct in line with regulations.