

Peterborough City Council Code of Conduct for issuing Fixed Penalties regarding School Attendance

The Education (Penalty Notices) (England) (Amendment) Regulations 2024

Effective from 19 August 2024

Introduction to all Head teachers and School Attendance Leads

The Peterborough City Council Attendance Team is writing to draw your attention to Peterborough City Council's revised code of conduct for the provision of administering Penalty Notices for school absence. The purpose of this code of conduct is to ensure that the associated powers are applied consistently and fairly across the Local Authority area and that suitable arrangements are in place for the administration of Penalty Notices.

Section 23 of the Anti-Social Behaviour Act 2003 and section 103 of the Education and Inspections Act 2006 enable Local Authorities to issue Penalty Notices for certain offences. These notices can be used as an alternative to prosecution under section 444 of the Education Act 1996 and enable parents to discharge potential liability for conviction for that offence by paying a penalty.

A new National Framework for Penalty Notices for school absence is being introduced through changes to secondary legislation. The regulations will come into effect from the 19th August 2024. The National Framework aims to:

- **Make Penalty Notices more effective** by ensuring they are only used in cases where they are the most appropriate tool to change parental behaviour and improve attendance.
- **Prioritise the support first approach** by expecting support to be used in cases where it is appropriate and using Penalty Notices in cases where support is not appropriate (e.g. a term time holiday) or has not worked or has not been engaged with.
- **Improve consistency in the use of Penalty Notices across England** by introducing a new national threshold at which they are considered.
- **Improve the deterrent effect of a Penalty Notice** by increasing the amount and introducing a new national limit of 2 Penalty Notices within a 3-year period to break cycles of repeat offending.

A Penalty Notice is a suitable intervention in circumstances where the parent is judged capable of securing their child's regular attendance at school or whereabouts during school hours but is not willing to take responsibility for doing so.

This code of conduct is issued under The Education (Penalty Notices) (England) Regulations 2007 as amended by the Education (Penalty Notices) (England)(Amendment) Regulations 2024. The Local Authority's Attendance Team is authorised to act under this code and will strive to ensure the consistent, fair and transparent application of the policy regarding Penalty Notices throughout the County.

All schools wishing to issue Penalty Notices under this code of conduct must evidence that literature provided to parents relating to attendance, such as a school prospectus, attendance and behaviour policies, home school agreements and website information is readily accessible and includes the warning that parents may be issued with a Penalty Notice for any unauthorised absence, including unauthorised term-time holidays.

The responsibility for classifying an absence lies with the school; the Attendance Team will issue a Penalty Notice based on the school's classification and other evidence supplied with the referral. The code of conduct can also be found on the Peterborough City Council's website. Further questions or guidance around the code of conduct can be dealt with by the Peterborough City Council Attendance Team.

Libby Walker
Head of Service – Admissions, Attendance & Transport

Legal Basis for Issuing Penalty Notices

Penalty Notices may be issued to a parent as an alternative to prosecution for irregular school attendance under s444 of the Education Act 1996. Parents may discharge their potential liability for conviction for an offence under s444 by paying a penalty. 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). A child reaches compulsory school age at the start of the term on or after their fifth birthday and continues to be of compulsory school age until the last Friday of June in the school year that they reach 16.

It is a legal requirement under section 7 of the Education Act 1996 that parents of children of compulsory school age ensure that their children receive full-time education that is suitable to their age, ability, aptitude and to any special educational needs that they may have. 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).

The Peterborough code of conduct 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 code has been drawn up in consultation with the headteachers and governing bodies of state-funded schools and the local police force.

There is no legal requirement for a Penalty Notice to be issued before proceeding to prosecution through the magistrate's court.

Issuing Penalty Notices

In Peterborough, only the Local Authority (through the Attendance Service) can issue Penalty Notices. The Attendance Team is authorised to act under this code and will strive to ensure consistent, fair, and transparent application of the policy regarding Penalty Notices.

Schools wishing to participate in the Fixed Penalty Notice scheme must issue all parents with the PCC Fixed Penalty Notice Warning Letter informing them of the national framework; this should be issued annually at the start of each academic year and dated accordingly or, if a child joins mid-year, they need to receive the warning letter at the time of induction. The warning letter that schools are required to issue has been provided to all schools and will be available on the PCC Learn Together website.

Head teachers should be aware that by submitting requests for a Penalty Notice to be issued, they are assuring the Local Authority that they accept and support that, should the parent choose not to make payment within 28 days of the Notice being issued, the Local Authority Attendance Service will progress the matter in line with s444 Education Act 1996, resulting in the parents being prosecuted for their failure to ensure the regular attendance of their child.

Schools can submit referrals for consideration of a Penalty Notice through emailing PNInbox@peterborough.gov.uk.

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).

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):
 - 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
 - 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:
 - Has sufficient support already been provided? Subject to parental engagement, sufficient support will usually include but is not limited to: ensuring a first-day response to any absence, communicating with the child's parents to understand the barriers to school attendance, completing wishes and feelings work with the child to understand their views on why they are absent from school, offering a minimum of 3 meetings with child's parents, agreeing an effective plan with parents to support improvement in attendance - which could lead to the creation of an attendance contract with parents, offering to refer to other services/agencies where appropriate and confirming that parents are aware of their legal responsibilities regarding ensuring their child's regular attendance at school by issuing a Notice to Improve. Schools will need to be able to evidence the support they have offered; this could be in the form of letters sent to parents, minutes of meetings and a record of telephone conversations.
 - 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
 - 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.

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 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.

Schools will issue the Notice to Improve as part of their support and intervention work prior to referring for a Penalty Notice. The Notice to Improve lays out a period of 6 weeks in which parents must ensure that there is an improvement in attendance and ensure that the child attends regularly. If no further unauthorised absence is recorded within the 6 school weeks, school will be expected to continue to offer support but will not refer for a Penalty Notice. However, if further unauthorised absence occurs within the 6-week period school do not need to wait until the end of the 6 weeks to submit the referral for consideration of a Penalty Notice. On receipt of the referral, it will be the Attendance Teams duty to review the individual circumstances of the case and the support that has been put in place by the school and decide whether the issuing of a Penalty Notice is appropriate or to consider an alternative Legal Intervention.

The 1996 Act also sets out the circumstances in which a pupil has not failed to attend school regularly and therefore the parent has not committed an offence under s444 of the Act (the statutory defences). Therefore, it should be established that none of the available statutory defences apply prior to issuing a Penalty Notice, these are:

- The parent proves the pupil was prevented from attending by their ill health or any unavoidable cause, including exclusion.
- The pupil has been granted leave of absence by the school or, in case of alternative provision, by a person authorised to do so.
- The absence was on a day set aside for religious observance by the religious body to which the pupil's parent(s) belong.
- The parent proves the Local Authority were under a duty to provide transport to the school and have failed to do so.
- If the absence was from certain types of alternative provision, the parent proves the child is receiving education otherwise than by regular attendance.
- If the absence was from alternative provision, the parent had not been notified about the provision in writing before the absence.
- The Local Authority have a duty to make travel arrangements in relation to the child for the purpose of facilitating the child's attendance at the school and have failed to discharge that duty.
- The child has no fixed abode and the parent can prove that their trade/ business requires them to travel, and the child has attended school as regularly as the nature of the trade or business permits, and (if the child is 6 or over) the child has attended school for at least 200 sessions during the preceding twelve months up to and including the date on which the proceedings were instituted.

National Threshold

To ensure consistent delivery of Penalty Notices, the following national framework criteria will apply:

- at least 10 sessions (usually equivalent to 5 school days) lost to unauthorised absence by the pupil within 10 school weeks¹.

However, if in an individual case the Local Authority believes a Penalty Notice would be appropriate, we retain the discretion to issue one before the threshold is met. This might apply for example, where parents are deliberately avoiding the national threshold for taking several term time holidays

¹ A school week means any week in which there is at least one school session.

below threshold. We also retain the discretion to consider going straight to prosecution where appropriate.

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, the Attendance Team may instead choose to prosecute a parent under the Education Act 1996 s444.

On receipt of a referral for a Penalty Notice to be issued the Attendance Team will complete a check to ascertain whether a previous Penalty Notice has been issued to the parent in respect of that child. If the child has moved between Local Authorities in the previous 3 years and the previous Local Authority/Authorities are known, they will make contact and check whether a Penalty Notice has been issued to that parent for that child in the previous 3 years.

Peterborough City Council's email mailbox for the purpose of these enquiries is crossborder.penaltynotice@peterborough.gov.uk.

Service of Penalty Notices

A Penalty Notice may be served by:

- Sending it to the recipient's address by first-class post.

A notice served by post is deemed to have been received on the second day after posting it by first class post.

Payment of Penalty Notices

The first Penalty Notice issued to a parent in respect of a particular child 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 child 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 will be taken.

The arrangement for the payment will be detailed on the Penalty Notice.

Peterborough City Council will retain all revenue from the issuing of Penalty Notices. However, the Penalty Notice system is not a money-making scheme and Peterborough City Council do not have income targets with regards to this income. Monies collected will first be used for administration of the Penalty Notice system and any subsequent prosecution. Any surplus left after this will be spent on attendance support. This revenue will not be considered part of wider Local Authority funding or relied upon to fund the core attendance expectations of the Local Authority or be pooled in wider legal services budgets or allocated outside the Local Authority's attendance functions. Any remaining surplus at the end of the year must be paid to the Secretary of State.

Withdrawal of Penalty Notice

There is no statutory right of appeal against a Penalty Notice. If the Penalty Notice is not paid, the Local Authority can proceed to prosecution. A head teacher's decision on authorisation of absence is final. Therefore, applications for leave must be made in advance so that the head teacher has time to consider the application and be satisfied that there are exceptional circumstances which warrant the leave. There will be no obligation on the head teacher to reconsider authorising the leave if an application has not been made in advance.

If a head teacher refuses to authorise any absence or request for leave 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.

Although there is no right of appeal against the issuing of a Penalty Notice, if it is identified that the Penalty 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 Attendance Team to make a representation. This should be submitted in writing to the asadmin@peterborough.gov.uk.

Where schools wish to provide evidence to the Local Authority to consider withdrawing a Penalty Notice once issued, they must email asadmin@peterborough.gov.uk with the pupils attendance record showing the absences in question as authorised and with clear rationale why authorisation is being given.

Prosecution for non-payment of a Penalty Notice

Should a Penalty Notice remain unpaid or have been paid only in part at the end of the 28-day period, Peterborough City Council via The Attendance Team will prosecute the parent(s) for the offence to which the notice relates, or, in specified circumstances, withdraw the notice.

The prosecution would not be for non-payment of the Penalty Notice, but for the original offence of failing to ensure the child's regular attendance at school. The Attendance Team may use the fact that a Penalty Notice has been issued and remains unpaid as evidence. The Attendance Team would look at all the circumstances of the case when assessing the likelihood of securing a conviction for the original attendance offence. If the decision is made to proceed with prosecution the parent will be issued with a Notice of Intended Prosecution in the first instance.

Exclusions

Section 103 of the Education and Inspections Act 2006 places a duty on parents in relation to an excluded pupil. A parent must ensure that his or her child is not present in a public place during school hours without reasonable justification during the first five days of each fixed period or permanent exclusion.

A Penalty Notice may only be issued when there is no reasonable justification for the child being in public during school hours. Reasonable justification may include pre-arranged medical and dental appointments or emergency appointments. It might also be necessary for a child to accompany a parent with similar appointments if the parent considers it inappropriate to leave the child unsupervised. Attendance at a court hearing or an interview at a police station or with the Youth Offending Service may also provide reasonable justification.

The days of exclusion when this duty applies are known as 'specified days of exclusion' and will be detailed in a notice given to the parent under section 104 of the 2006 Act. The parent is responsible for the child during the specified days upon receipt of the notice.

Where a Penalty Notice is requested by a school, it will be necessary for them to evidence that notice under section 104 of the Education and Inspections Act 2006 has been given to a parent of the pupil.

In addition to the above, the school must have evidence that the excluded pupil was present in a public place during school opening hours without reasonable justification. The time and date must be provided to ensure that this falls within the time the school at which the pupil is on roll is open and that the incident occurred within the period set out in the notice issued under section 104 of the Education and Inspections Act 2006.

The Notice allows the parent to pay a penalty as a way of discharging any liability for the offence. The parent must be notified by the school at the time of the exclusion of their duty and the days to which it relates.

Where a penalty has not been paid, it will be necessary for the person who requested the issue of a Penalty Notice to provide evidence for the court by way of a Section 9 statement (a witness statement admissible in court under the Criminal Justice Act and the Magistrates' Courts Act and Rules). If the defendant requests the author of a Section 9 statement to be present at the court hearing the Local Authority Attendance Team will notify the person concerned as soon as such requests are made.

This type of Penalty Notice is not included in the National Framework and therefore not subject to the same considerations about support being provided or count towards the limit as part of the escalation process in the case of repeat offences for non-attendance.

Monitoring and Review

The Attendance Team must maintain records of Penalty Notices including:

- A copy of each notice issued
- A record of all payments made and when they were paid
- Whether the notice was withdrawn and on what grounds
- Whether the Penalty Notice led to a prosecution and the outcome.

Schools will receive email confirmation on receipt of their referral and unless they hear directly from the Attendance Team will be able to assume that the Penalty Notice has been issued and paid by the parent(s).

This code of conduct will be reviewed on a regular basis, and as a minimum when changes to relevant legislation and regulations are made.