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## **North Lincolnshire Council**

### **Code Of Conduct – Issuing of Penalty Notices for School Absence (from 19 August 2024)**

Draft

## PURPOSE

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 North Lincolnshire. The code sets out the arrangements for administering penalty notices in North Lincolnshire 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 and with the Education (Penalty Notice) Regulations 2007 as amended by the Education (Penalty Notices) (England) (Amendment) Regulations 2024.

Penalty Notices will not be issued outside of the terms of this code of conduct.

Penalty Notices can be requested by all schools (**except Independent Schools**. Penalty Notice requests cannot be received from Independent Schools – enforcement legislation can only be considered at a prosecution level and not the issuing of a penalty notice) where the pupil's absence has been recorded with one or more of the unauthorised codes (G, O, U) and that absence(s) constitutes an offence. Penalty notices are issued to each parent liable for that offence(s).

## CONSULTATION

This code has been drawn up and shared as part of a consultation with the headteachers and principals of state-funded schools and the local police force.

## RATIONALE

Regular school attendance is essential in improving a child's educational opportunities and future employment prospects. Section 7 of the Education Act 1996 states that parents must ensure that children of compulsory school age receive a full-time education suitable to their age, ability and aptitude and to any special educational needs they may have.

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.

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.

Where difficulties arise with general 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 for that particular family.

## LEGAL BASIS

Anti-Social Behaviour Act 2003 amended the Education Act 1996 by introducing section 444A making provision for the issue of penalty notices for cases of unauthorised absence from school

- 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) Education Act.
- 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 constable*. For North Lincolnshire, requests for a penalty notice to be issued, are through the Education Inclusion Service following referral from the school or from the Education Inclusion Service as part of a casework process.
- 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.
- Section 105 Education and Inspections Act 2006 – pupil of compulsory school age is seen in a Public Place during school hours, without reasonable justification during the first 5 school days of a fixed period or permanent disciplinary exclusion.

## DEFINITION OF A 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. 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).

### **“SUPPORT FIRST APPROACH”**

Support is defined as any activity intended to improve the pupil's attendance, not including issuing a penalty notice or prosecution.

As part of this consideration, the expectation is that school **have exhausted all efforts to explore barriers to attendance** including :

- Providing advice, guidance and support to identify and address attendance issues (including holistic approach within the family dynamics);
- Have arranged meetings with parents (not just at school but also considering that the school itself may be interpreted as a barrier for parents) to discuss the situation further including identifying concerns and consequences.
- Have worked with parents (and pupil where age appropriate) to identify support plans aimed at addressing and removing barriers, including consideration of reasonable adjustments and reviews in both informal and formal plans (voluntary eg Early Help, Attendance Action plans)
- Considered and referred to appropriate services and agencies, including internally to school and externally, for support to overcome barriers and resolve difficulties, before a decision is made to request legal intervention such as a penalty notice or prosecution process.

Schools should consider if support is more appropriate on a case-by-case individual basis. If support is more appropriate, this should be arranged or continued if already in place, without a penalty notice or Attendance referral being requested. The local authority will also consider if support is more appropriate as a means of changing parental behaviour.

**If the support arranged stops working or is not being engaged with**, school will need to demonstrate their attempts to engage with the parent and the child / young person to address this.

**EXCEPTION to the “Support First Approach”** is unauthorised leave of absence – including “holiday” – i.e declined exceptional leave of absence requests and includes where no request for exceptional leave has been made.

### **RESPONSIBILITY FOR PENALTY NOTICES**

In North Lincolnshire, the responsibility for the authorisation and administration of the penalty notice process is undertaken by North Lincolnshire Council through the

Education Inclusion Service, including Penalty Notice Officers; and Education Inclusion Officers as part of the School Attendance Support Team. This is held within the Virtual School and Inclusion, and as such hold the accountability for the councils' statutory responsibility for attendance, including any legal interventions associated with this process.

Any **unpaid penalty notices** are for North Lincolnshire Council to explore next steps, including whether the individual cases meet the threshold criteria for prosecution for the original offence and is within the public interest to pursue.

North Lincolnshire Council receives all request for the consideration of issuing a penalty notice; clarifies if the criteria for issuing has been met and will use information supplied by the school (including referral forms/school evidence and a notice to improve letter) to consider, authorise and process the requests.

North Lincolnshire Council will issue parents with a Penalty Notice Notification prior to the issuing of a penalty notice. Following this, the penalty notice will be issued by North Lincolnshire Council by first class post to the address(es) provided by the school at the time of request.

An offence is committed by an individual parent for their child's absence. Therefore, **each parent will receive a separate penalty notice.**

Enquiries and complaints from parents to North Lincolnshire Council in respect of unauthorised leave of absence penalty notice issue – the Council fully support the school in its request and parents should have provided all evidence to the school in their original request for leave of absence. Parents should have ensured they have received confirmation of the school agreement to either authorise or unauthorise any absence prior to taking the leave. Once a school has requested a penalty notice or other legal intervention be issued through the submission of all appropriate evidence, North Lincolnshire Council will not overturn this request.

Parents should note that in cases of unauthorised leave of absence due to family holidays or other family events, schools will have checked and submitted the correct evidence to the local authority for the issuing of a penalty notice or other legal proceedings and parents should be mindful that any discussion regarding the issuing of a penalty notice should have taken place between the school and parent prior to the school request for this action. There is **currently no statutory right of appeal** against the issuing of penalty notice and parents will not be referred back to the school for further consideration once this action has taken place.

## WHEN MAY A PENALTY NOTICE FOR ABSENCE BE APPROPRIATE?

### NATIONAL THRESHOLD

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 unauthorised absent for 10 sessions (usually equivalent to 5 school days) within**

**a rolling 10 school weeks period<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),
- (c) code **O** (the pupil is absent and the school has deemed this unauthorised)
- (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).

- **During or following a truancy sweep / truancy call**, when a child is found in a public place without reasonable justification and the school has unauthorised the absence. The local authority can issue a penalty notice for that period. In respect of a pupil who has been found in a public place during a truancy sweep / truancy call, the school will need to provide confirmation that the absence is unauthorised and the local authority will consider if there are a the number of unauthorised absences – i.e if a one of incident or a pattern of unauthorised absence is present. If a penalty notice is not deemed appropriate by the local authority, a warning may be issued to parents. In respect of a pupil who has been suspended/ excluded from school, the school must provide evidence that they have notified the parents of the days the pupil must not be present in a public place – in respect of any suspension / exclusion from school within the first 5 days. This type of penalty notice is not included in the National Framework 2024 and therefore not subject to the same considerations regarding support being provided or count towards the limit as part of the escalation process in the case of repeat offences for non-attendance. This means that North Lincolnshire has the capacity to issue a penalty notice for pupils who have been found in a public place without authorised absence from the school without the need to meet the National Framework criteria of 10 sessions of unauthorised absence in a 10 rolling weeks.

Parents can also be prosecuted under **Section 103 Education 7 Inspections Act 2006** where a pupil of compulsory school age, remains on the schools Admissions register, is found in a public place during school hours, after being excluded from school – this can also be a fine for up to £1000.

- 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.
- If repeat penalty notices are being issued and they are not working to change behaviour they are unlikely to be the most appropriate tool. The national

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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). These sessions can be consecutive or not (e.g 10 sessions of unauthorised holiday or 4 sessions of unauthorised holiday one week and a pattern of unauthorised absence 2 sessions a week for next 3 weeks – total 10 sessions)

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, another tool should be used. This may include prosecution including under section 444 1/1A Education Act 1996 for the offence relating to parent's failure to secure the regular school attendance of their child or other legal interventions available such as Parenting Orders, Attendance Orders or Education Supervision Orders.

**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**

When the National threshold is met, schools will make their own assessment on a case by case basis as to whether a penalty notice can and should be requested to be issued by the local authority. The following considerations should be made :

- In cases where support is not appropriate (for example, for holidays in term time) considered on a case by case basis
- If support or further support is appropriate instead (exception being in terms of unauthorised leave of absence which is already identified as parental choice)
- 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
- School will have completed the **Notice To Improve School Attendance** process (15-30 school days where support is appropriate, but not being engaged with, to give a parent a **final opportunity** to engage before a penalty notice is being requested (if it is appropriate). The level of improved attendance within the notice will need to be carefully considered in terms of attendance prior to the notice. For example block patterns of absence previously and now re-engaged; where non-attendance previously is now more regular including U codes now in place of full days of absence; where there is no more than 2 unauthorised sessions, but still a total of 10 unauthorised sessions within the 10 rolling weeks including prior to the issuing of the notice and after – we have the option here to define this more clearly and say what we would do etc so need to clarify what we agree.

North Lincolnshire Council will consider if it is in the public interest to issue a penalty notice in any 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, North Lincolnshire Council will consider on a case by case basis :

- Has sufficient support already been provided? Sufficient support will usually include that as outlined within the **“Support First Approach”**
- 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

## **NOTICE TO IMPROVE SCHOOL ATTENDANCE**

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 should issue a notice to improve school attendance prior to consideration of a referral to Education Inclusion in respect of attendance concerns.

Education Inclusion Officers may also issue a Notice To Improve school attendance as part of the received referral process and their own interventions.

Notice to Improve school attendance can be from 15 – 30 school days with an initial meeting and review meeting with parents to discuss expectations and the outcome / progress of the pupils attendance.

## **ALL NOTICES TO IMPROVE SCHOOL ATTENDANCE ARE EXPECTED TO INCLUDE :**

- Details of the pupil’s attendance record and details of the offences.
- The benefits of regular attendance and parents’ duty under section 7 of the Education Act 1996.
- Details of the support provided so far.
- Opportunities for further support and the option to access previously provided support that was not engaged with.
- A clear warning that a penalty notice may be issued or prosecution considered if attendance improvement is not secured within the improvement period.
- A clear timeframe for the improvement period of between 3 and 6 weeks.
- Details of what sufficient improvement within that timeframe will look like.
- The grounds on which a penalty notice may be issued before the end of the improvement period.
- Each parent will be issued with Notice To Improve School attendance.
- If the school are posting out letters, they will need to give sufficient notice for the start of the period and consider alternative options (such as hand delivering,



giving direct to parent) to ensure that the Notice is received within sufficient time scales.

What sufficient improvement looks like should be decided on a case by case basis taking the individual family's circumstance into account, rather than a blanket coverage. For some families, no further unauthorised absences will be appropriate, for others some absences may be tolerated if considerable improvement is seen (eg U late attendance after closed of register on 2 occasions is a significant improvement for a case where there has been continued blocks of non-attendance).

Where it is clear that improvement is not being made, it may be appropriate to issue a penalty notice before the improvement period has ended. For example, a Notice to Improve stated there should be no further unauthorised absences in a 6 week period but the pupil is absent for unauthorised reasons in the first week. The parent should be informed before a penalty notice is requested/issued if it is before the end of the improvement period.

North Lincolnshire Council retain the right to consider on a case by case basis what constitutes sufficient improvement within a notice to improve school attendance and may use unauthorised absence before, during and after the period in the consideration of issuing a penalty notice or other legal action, as long as the National threshold is met of 10 unauthorised absences in a 10 week rolling period.

A referral in respect of Attendance may not automatically result in the issuing of a penalty notice and an Education Inclusion Officer (where applicable) may explore the case further, offering meetings with parents in order to clarify the situation further.

## 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.

Two penalty notice limit and escalation in cases of repeat offences. 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.

**NB the cost of the penalty notice may change over time linked to any changes to the National Framework and / or penalty notices (as per the Anti-Social Behaviour Act 2003 and Education Act 1996)**

## EXCEPTIONS

### HOLIDAYS IN TERM TIME – UNAUTHORISED LEAVE OF ABSENCE

A **Notice to Improve letter** is not required to have been issued by the school when an unauthorised holiday of a minimum of five school days or more has been taken during within the rolling 10 week period. The “Support First Approach” is also not required as the process to request exceptional leave of absence identifies that “holiday” is not an exceptional circumstance and parental choice. Where this is applicable, the school can request a penalty notice without having to issue a Notice to Improve letter to parents.

*Where parents are deliberately avoiding the national threshold by taking several term time holidays below threshold, for example returning to school on the fourth day (before the five-day minimum) or using the days before and after school holiday dates during the academic year, or repeated absence for birthdays or other family events. The local authority will exercise discretion and consider issuing a penalty notice if appropriate.-*

### NATIONAL FRAMEWORK FOR PENALTY NOTICES

North Lincolnshire Council’s code of conduct complies with all expectations as set out in the new national framework effective as of 19 August 2024, as outlined below :

- **Making penalty notices more effective** – by ensuring they are used only in cases where they are the most appropriate tool to change parental behaviour and improve attendance.
- **Prioritising Support First Approach** – expectation that support first is in place (where appropriate) and where support is not appropriate (e.g a term time holiday), has not worked or has not been engaged with (consistently) in a meaningful way.

- **Improve consistency in the use of penalty notices across England** – by introducing a new national threshold by which they are considered
- **Improve the deterrent effective of a penalty notice** – increasing the amount including across the timescales of payment (21 days and doubling at 28 days) and introducing the new national limit of two penalty notices within a three- year period to break the cycle of repeat offences (per adult per child).

## **FAILURE TO PAY A PENALTY NOTICE IN FULL WITHIN TIMESCALES**

By submitting the request for a penalty notice, school accepts that should the parent choose not to pay the fine within timescales, the local authority may progress in line with section **444 1/1A Education Act 1996** – resulting in parents/ carers being prosecuted for their failure to secure the regular school attendance of their child.

**Legal action (penalty notices / prosecution) cannot be initiated where absences are authorised by the school.**

## **NEIGHBOURING AUTHORITIES :**

Legal proceedings where parents fail to pay the penalty notice may extend to those parents residing in neighbouring councils. North Lincolnshire Council will make reasonable attempts to liaise with any neighbouring council to discuss any prosecution that is undertaken for their residents.

Where pupils move between local authority areas, North Lincolnshire Council can be contacted on [crossborder.penaltynotice@northlincs.gov.uk](mailto:crossborder.penaltynotice@northlincs.gov.uk) to find out if penalty notices have been issued previously.

Where pupils attend school in **North Lincolnshire** but live in a different local authority, North Lincolnshire Council will work with such authorities to ensure support is appropriate and that support is being provided by the home local authority.