



NOTTINGHAM CITY COUNCIL CODE OF CONDUCT IN RELATION TO PENALTY NOTICES

1. Rationale

- 1.1 Regular and punctual attendance of pupils at school is a legal requirement. Under section 7 of the Education Act 1996 parents are responsible for ensuring the efficient fulltime education according to the child's age, ability, and aptitude and to any special needs the child may have for all compulsory school age children. The Education Welfare and EOTAS Service (EW & EOTAS Service) will investigate cases of irregular school attendance by undertaking casework and, where appropriate, instigate legal action under the Education Act 1996 for unauthorised absence.
- 1.2 This Code of Conduct will govern all Penalty Notices issued in respect of children of compulsory school age who are registered at a maintained school, a Pupil Referral Unit, an Academy, A City Technology College, a City College for the Technology of the Arts, Free Schools, and those attending alternative provision within the jurisdiction of Nottingham City Council, hence referred to as the LA (Local Authority). The term 'school' will apply to those establishments listed above.
- 1.3 The purpose of the code is to ensure that Penalty Notices are issued consistently and fairly across the LA. The issuing of Penalty Notices will be administered by the EW & EOTAS Service to ensure independence,

proportionality, and fairness regarding compliance with the law and regulations and that the provisions of this code do not conflict with other forms of statutory intervention pursued by the EW & EOTAS Service.

2. Guidance and Legislation

- 2.1 The Anti-Social Behaviour Act 2003, Section 23, Sub-Section (1) adds two new Sections (444A and 444B) to Section 444 of the Education act 1996. The Act empowers designated LA Officers, Head Teachers (and Deputy/Assistant Head Teachers authorised by them) and the Police, Community Support Officers and accredited persons to issue Penalty Notices. These Sections enable Penalty Notices to be issued as an alternative to prosecution under Section 444(1) Education Act 1996 and enable parents to discharge liability for conviction for that offence by paying the penalty.
- 2.2 The Education (Penalty Notices) (England) (Amendment) Regulations 2013 amended the Education (Penalty Notices) (England) Regulations 2007 to the effect that leave of absence should only be granted where the application for leave has been made in advance and there are exceptional circumstances for the leave.
- 2.3 From 19th August 2024, the National Framework for Penalty Notices, (National Framework) introduces the following
- increased the payment for penalty notices from £120 to £160 if paid within 28 days, and £60 to £80 if paid within 21 days.
 - A national threshold for when a penalty notice must be considered of 10 sessions (usually equivalent to 5 school days) of unauthorised absence within a rolling 10 school week period. These absences can be a combination of all forms of unauthorised absence. Penalty

Notices can be issued outside this threshold if it considered that the parent is avoiding triggering the threshold.

- The option of using a Notice to Improve where support is appropriate but not working or being engaged with, giving the parent a final opportunity to engage in support before they are issued with a penalty notice.
- An escalation whereby, any if a second penalty notice is issued to the same parent for the same child within a rolling 3 year period, the parent will be charged at a higher rate of £160 with no option for this second offence to be discharged at the lower rate of £80.
- A maximum of 2 penalty notices can be issued to a parent for the same child within a rolling 3 year period, so at the 3rd (or subsequent) offence(s) another tool will need to be considered (such as prosecution or one of the other attendance legal interventions).
- The Local Authority retains the right to refer the matter straight to Court if a Penalty Notice is not deemed appropriate.

2.4 In relation to exclusions, The Education and Inspections Act 2006 section 103 places a duty on parents in relation to an excluded pupil to ensure that their child is not present in a public place during the first five days and school hours without reasonable justification. This criterion applies to each and every fixed term or permanent exclusion. These days are known as the 'specified days of exclusion.' Under section, 104 schools must notify parents in writing that they are responsible for the child during these days. Section 105 allows for a Penalty Notice to be issued to a parent guilty of an offence under section 103(3)

- School hours are defined 'as school session or the break between sessions on the same day'
- Public place means any highway or other public place to which the public have access

- Unless reasonable justification is provided by the parent prior to the issuing of a Penalty Notice. A justification which is reasonable will depend on points of fact and proof and is a matter for the Court.

2.5 The parent is liable for a Penalty Notice if they fail to ensure the attendance of a child at the alternative provision following permanent exclusion.

2.6 Within this Code of Conduct, a parent is as defined in Section 576 Education Act 1996.

3. Procedures for Issuing Penalty Notices

3.1. The EW & EOTAS Service will consider requests for service and determine the appropriate response based on the evidence provided, the level of unauthorised absence and previous involvement. The decision to request a Penalty Notice may be discussed at Targeted Support Meetings and/or with the school link EWO. The decision to issue a Penalty Notice will be made on a case-by-case basis. When requesting Penalty Notices, Schools should adopt the DfE guidance 'Working together to improve school attendance' and follow the National Framework demonstrating why a penalty notice is the appropriate method to improve attendance. When the threshold is met, schools should make an assessment on a case-by-case basis whether a penalty notice can and should be requested. The following should be considered:

- if support or further support is appropriate instead, and
- whether there is a different tool or legal intervention that is more likely to improve attendance in this particular case and demonstrate why a penalty notice is the appropriate method to improve attendance.

Support is specific to the child and family and is any activity intended to address the barriers to attendance and improve the child's attendance. For example correspondence, meetings, additional support within school (e.g. learning support, change to class, tutor group, changes to timetable, support with uniform etc) multi-agency meetings referrals to relevant support agencies, parenting contracts, transport provision etc. This is not an exhaustive list.

3.2 Parents will have been warned in writing before a Penalty Notice is issued. The warning will be in the form of a Notice to Improve, they should be tailored to the specific needs of the family, not generic documents and include the following

- a. The pupil's attendance record and details of the offence(s)
- b. The benefits of regular attendance and parents' duty under section 7 of the Education Act 1996
- c. Support/opportunities for support provided so far
- d. Opportunities for further support and the option to access previously provided support that was not engaged with if appropriate
- e. The risk of a penalty notice being issued, or prosecution considered if improvement is not secured within the improvement period
- f. A clear timeframe for the improvement period of between 3 and 6 weeks. If required, the review period can be extended up to the 6-week limit. Penalty Notices can be issued at any time during the review period if there is no improvement in attendance or the parent is not complying with the support
- g. Details of what sufficient improvement within that timeframe will look like in the case (e.g. no further offences within a certain timeframe or attendance improved within a certain timeframe)
- h. The grounds on which a penalty notice may be issued before the end of the improvement period.

A Notice to Improve is not required in all cases e.g. for an unagreed holiday, if recently issued for similar offence or will have no impact to change behaviour.

3.3 In relation to Penalty Notices for exclusions or Truancy Patrols, the parent will be given the opportunity to provide a reason for the child being seen in

a public place. The National Framework does not apply to pupils stopped on Truancy Patrols or the child is seen in a public place while excluded.

- 3.4 No parent will receive more than three Penalty Notices resulting from the unauthorised absence of an individual child in any three-year period. Should the parent receive a second Penalty Notice for the same child within the three-year period, the charge will be £160 with no option of early payment reduction. If a third Penalty Notice is requested, the Local Authority should decide on the appropriate legal action. The three year rolling period ends three years after the first Penalty Notice date. It is unlikely that further Penalty Notices are the appropriate response as they have already been issued and have not acted as a deterrent
- 3.5 Penalty Notices will only be issued subject to the approval of the Service Manager or Legal Intervention Officers.
- 3.6 Penalty Notices will always be issued by first class post unless it is deemed appropriate to hand deliver the Penalty Notice.
- 3.7 The collection of payments and issuing of receipts will be administered by the Local Authority.

4 Circumstances for Issuing a Penalty Notice

- 4.1 Penalty Notices can be issued for
- 10 sessions or more in a 10-week period of unauthorised absence (all forms of unauthorised absence)
 - Unagreed leave for holiday or unagreed leave of absence.
 - A request for service following a non-compliance with a Deferred Prosecution Notice
 - A request for service following a non-compliance with an Advisory Notice

- Excluded pupil failing to attend provision after the fifth day of exclusion
- Excluded pupil seen in a public place within the first five days of the exclusion
- Pupil stopped on a Truancy Patrol on more than one occasion during a three-month period
- On behalf of neighbouring Local Authorities
- When a child moves into the local area, check must be made with the previous local authority whether, and when, any penalty notices were issued as this count towards the total number of penalty notices in a rolling three-year period. Queries to other local authorities must be sent from the cross-border email crossborder.penaltynotice@nottinghamcity.gov.uk

4.2 In the case of unagreed leave of absence, Penalty Notices will be issued if

- There have been at least 10 consecutive school sessions of unauthorised absence or
- The unagreed leave of absence immediately precedes, or is attached to, a school closure (e.g. school holidays/INSET/school closure etc.) or any form of absence. There must be a minimum of 8 unauthorised absences or,
- There are several unagreed absences which do not meet the national threshold

4.3 Unagreed leave of absence is where the school has either not received a reason for absence or the reason given is unacceptable. It is the Head Teacher who determines whether or not the absence is authorised.

5 Withdrawing a Penalty Notice

- 5.1 A Penalty Notice may be withdrawn by the Local Authority in any case the authority determines that:
- It has not been issued in accordance with the Code of Conduct
 - It has been issued to the wrong person.
 - It contains material errors
 - Where the LA decide not to prosecute the offence

Payment of Penalty Notices

- 6.1 Non-payment of the Penalty Notice must result in the consideration of prosecution under section 444(1) Education Act 1996. The fact that a Penalty Notice was issued and unpaid can be used as evidence in the prosecution case.
- 6.2 There is no mechanism to pay by instalments or to appeal the issuing of a Penalty Notice.
- 6.3 Revenue generated from the Penalty Notices will be used to cover the costs of issuing and enforcing notices or the cost of prosecuting parents who do not pay. The National Framework enables Penalty Notice revenue to be used for attendance support, this is defined as any activity intended to improve attendance, not including a penalty notice or prosecution, in line with the Working together to improve school attendance guidance.

6 Administration of the Penalty Notice Scheme

- 7.1 The Penalty Notice Scheme will be administered by the EW and EOTAS Service with support from the Finance Department.

7.2 Any person authorised to issue a Penalty Notice shall only do so in accordance with this code of conduct

This Code of Conduct will be regularly reviewed and developed in accordance with DfE guidance, legislation, case law and local circumstances.

To be reviewed annually.

Last reviewed: 19th June 2024

Next review date: on or before 1st September 2025