

# **Portsmouth City Council Schools, learning and childcare**

## **Penalty Notices**

### **Code of Conduct**

**Under the provision Education (Penalty Notices) (England)  
2007 (Amendment) Regulations 2013 and Subsection  
(1) Section 23 Anti-Social Behavior Act 2003**

**19 August 2024**

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## 1. Rationale

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.

In accordance with DfE Guidance on '[Working together to improve school attendance](#)' (2024) it is recognised that successfully addressing the causes of absence and removing barriers to attendance, at home, in school or more broadly requires schools and local partners to work collaboratively with, not against families. Parents and children should also be supported by their school to identify and address barriers to regular attendance, through a range of intervention strategies. Where all other avenues have been exhausted and support is not working or not being engaged with, action can be taken to enforce attendance through statutory intervention or prosecution to protect the pupil's right to an education.

Penalty Notices are an alternative to the prosecution of parents for failing to ensure that their child of compulsory school age attends the school where they are registered or at a place where alternative educational provision is provided. The purpose is to offer early intervention for cases of unauthorised absence before the problem becomes too entrenched.

An offence occurs if a parent/carer fails to secure a child's regular attendance at school, or alternative provision, at which they are a registered pupil and that absence is not authorised by the school, or alternative provision. In addition, a Penalty Notice can be used to help ensure parents fulfil their responsibilities to ensure their child is not out in a public place without reasonable justification during the first five days of any suspension from school.

Portsmouth City Council administers the issuing of all Penalty Notices. The Code of Conduct is written to ensure consistent application in the issuing of Penalty Notices. The code complies with the relevant regulations and the Department for Education's national framework for penalty notices. Penalty Notices will be used as a means to challenge parents to meet their legal responsibilities and where there is a reasonable expectation that their use will secure improved school attendance.

The Council's School Attendance Team (SAT) will act upon requests to issue Penalty Notices from schools, academies, or registered alternative education providers and Police, provided:

- a) All relevant information is supplied in the specified manner;
- b) The circumstances of the pupil's absence meet the requirements of this Code of Conduct; and

- c) The issuing of a Penalty Notice does not conflict with other interventions strategies in place or other enforcement sanctions already in process.

## 2. Legal Framework

Section 444 of the Education Act 1996 (as inserted by section 23 of the Anti-Social Behaviour Act 2003) empowers designated Local Authority (LA) officers, head teachers (as well as deputy and assistant head teachers authorised by them) and the Police to issue Penalty Notices in cases of unauthorised absence from school. The key areas of legislation and guidance are as follows:

- The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments)
- The Education and Inspections Act 2006
- The issuing of Penalty Notices must conform to all requirements of the Human Rights Act 1998 and the Equality Act 2010
- Section 444 of the Education Act 1996 makes it an offence if a parent fails to secure their child's regular attendance at school at which they are registered if that absence is not authorised by the school. Penalty Notices supplement the existing sanctions currently available under s444 Education Act 1996 or s36 Children Act 1989 to enforce attendance at school where appropriate
- 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.

Within the Portsmouth City Council Local Authority, it has been agreed that all Penalty Notice applications will be issued via the School Attendance Team. They may be issued for children at maintained schools, academies, free school, independent schools, or registered alternative provision providers within Portsmouth.

## 3. Definition of a Parent

The education-related provisions of the Anti-Social Behaviour Act 2003 apply to all parents who fall within the definition set out in Section 576 of the Education Act 1996. This defines 'parent' as:

- All natural parents, whether they are married or not
- Any person who, although they are not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person
- Any person who, although not a natural parent, has care of a child or young person – having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law.

Throughout this document, references to 'parent' mean each and every parent coming within the definition, whether acting jointly or separately, and should not be taken to mean that provisions only apply to 'parent' in the singular.

#### 4. Circumstances where a Penalty Notice may be issued.

- A Penalty Notice can be issued only in cases of unauthorised absence, or;
- The presence of a suspended child in a public place at any time during school hours in the first five days of suspension.

The national threshold can be met with one or 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 (circumstances of the pupil's absence has not yet been established)
- c) Code O (none of the other rows of table 3 in the regulation 10(3) of the School Attendance (Pupil Registration) (England) Regulations 2024 applies), and
- d) Code U (the pupil has attended after the school registers have closed but before the end of the session, where no other code applies).

##### **a) Leave of Absence in term-time resulting in unauthorised absence (A notice to improve attendance will not be issued)**

A Penalty Notice may be issued when:

- Parents have not sought permission from the Head Teacher before taking their child out of school for a holiday in term time.
- The Head Teacher has refused the request, but the absence occurs anyway, or
- A pupil has not returned to school by the agreed date with no satisfactory explanation.
- And there have been 10 sessions of unauthorised absence in a 10-school week period.

Under the Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments), Headteachers can only grant leave under exceptional circumstances. It is for Headteachers to determine whether such a request is exceptional and to state the number of days granted. Each request can only be judged on a case-by-case basis, but it is usual that Headteachers will be very sparing in their use of this discretion.

Headteachers should only apply the above guidance and follow up with each parent in writing advising them any leave will be marked as unauthorised. In these circumstances the School Attendance Team may serve a Penalty Notice without issuing a notice to improve attendance.

##### **b) Pupil who has persistent unauthorised absences/lateness - not consecutive (A notice to improve attendance will be issued)**

All unauthorised absence should be addressed by the school with the parent. Schools should request a meeting with parents where there are concerns over attendance and where the absences are consecutive or not.

A Penalty Notice may be issued when:

- There must have been at least 10 sessions (One session = ½ day) of unauthorised absences over a 10-school week period. The absences do not have to be consecutive.

As part of this process the parent(s) will first be issued with a “Notice to Improve”. The notice will clearly advise that if further unauthorised absence (including lateness after the school registers have closed), a Penalty Notice may be issued. This is to allow the parents a further period to address their child’s irregular attendance by working with the school or other agencies. It is part of a graduated approach and affords the parents an opportunity to avoid receiving a Penalty Notice. If there are further unauthorised absences / lateness following the Notice to Improve and after reviewing all the circumstances, the school may refer for a Penalty Notice to be issued.

### **c) Suspended Pupils**

The parent of the suspended pupil must ensure that the pupil is not present in a public place at any time during school hours on a day that they are suspended. If the suspended pupil is present in a public place at any time during school hours on a school day specified above the parent commits an offence under section 103 of the Education and Inspections Act 2006 and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

In such cases the school should provide:

- A copy of the suspension letter sent to parent(s) pursuant to s.104 of the Education and Inspections Act 2006 warning them to ensure that the child is not permitted to be present in a public place in the first five days of suspension.
- Robust and formal evidence stating how the child is known to the witness, where the child was seen including the date and time.

### **d) Other Conditions**

- If repeated penalty notices are being issued and they are not effective to change behaviour, they are unlikely to be 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, the Local Authority are required to consider prosecution under Section 444, or Section 444(1a) of the Education Act 1996. 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.

- If in an individual case the local authority believes a penalty notice would be appropriate, Portsmouth City Council retain the discretion to issue one before the national threshold is met.
- During or following a truancy sweep, the LA can issue a Penalty Notice and any notice issued will be done by post.
- In cases where there is more than one pupil in a family with unauthorised absences, Penalty Notices may be issued for more than one child.
- Penalty Notices will be issued to all parents identified within the referral under the Section 576 Education Act 1996 - Definition of a Parent. In such circumstances, separate notices will be issued to each person.
- The School Attendance Team on assessment of the Penalty Notice request from a school retain the right to not process the request but determine an alternative course of action e.g.
  - In cases of persistent unauthorised absence further casework and intervention is required to support the family to improve the attendance of the child.
  - Previous Penalty Notices issued have not resulted in sustained attendance improvement therefore an escalation in enforcement procedures is required.
  - Repeated breaches of the school policies and procedures.
  - The number of absence sessions is high (this does not need to be consecutive) within a period of 10 school weeks and a penalty notice is deemed not to the appropriate pathway.

## **5. Administration of the Penalty Notice Scheme**

To avoid duplication of Penalty Notices and to ensure consistency, cost effectiveness and equality, Portsmouth City Council will be solely responsible for issuing Penalty Notices within Portsmouth. The School Attendance Team will process all requests from all schools.

The Local Authority will not levy a charge to any schools for this function. Referrals will be processed provided that:

- All relevant information is supplied in the specified manner to the Local Authority, in accordance with the Penalty Notice online request;
- The requirements of this Code of Conduct are met; and
- The issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already in process.

Penalty Notices shall be issued in a prescribed manner and revenue from such notices shall be collected through the current Portsmouth City Council scheme allowing for various methods of payment.

The School Attendance Team will be able to track payments made enabling a swift response in bringing a prosecution under Section 444(1) and 444 (1A) of the Education Act 1996 when necessary. There is no mechanism within the legislation or within this Code of Conduct for the collection of non-payment, neither is there an opportunity to pay in instalments and there is no right of appeal to the notice. Non-payment of a Penalty Notice may result in a prosecution of that person for the offence of failing to ensure their child's regular attendance at school.

There are exceptions when a notice may be withdrawn:

- When it has been issued outside of the terms of the Code of Conduct
- When it is issued to the wrong person
- When it contains material errors
- When after the expiry of 28 days the Penalty Notice remains unpaid, and the Local Authority has not started legal proceedings or opts not to proceed with a prosecution under Education Act 1996 Section 444(1) or 444(1A).

## **6. Key considerations prior to the issue of a Penalty Notice for school absence**

The following considerations will be made before issuing (or requesting that another authorised officer issues) a penalty notice to ensure consistency of approach:

In cases where support is not appropriate (for example, for holidays in term time), consideration will be on a case-by-case basis and will be subject to the following key questions:

- 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, consideration will be given on a case-by-case basis:

- Has sufficient support already been provided? Sufficient support will usually include:
  - a Pastoral Support Plan
  - attendance letters from school to home
  - attendance report with tutor/nominated staff member
  - re-integration plan following suspension
  - contact with parents
  - gathering student voice
  - review of pupil needs and changes made, if necessary
  - referral to medical support
  - referral to counselling support services
  - use of peer mentors
  - Early Help assessment and relevant referrals made
  - personal attendance plan
  - phased return
  - SEN review/Annual Review (this may be a review of a child's needs without an EHCP)
  - Medical review (review of reasons for absence and medical support on offer)

- Is a penalty notice the most effective 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.

## 7. 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. 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).

Schools will be able to apply to the School Attendance Team for a Notice to Improve be issued to a child's parents. School's will be able to do this via an online request. Within the request form school will need to be able to demonstrate the support they have offered, and what has been engaged with. Should a Notice to Improve be issued it will include a period of review (in most cases this will be 6 weeks although it could be shorter if that meets the needs of the case). The notice will also make clear what sufficient improvement would look like. Although the School Attendance Team will issue the Notice to Improve, it will be a joint notice from school and SAT.

## 8. How Authorised Officers Will Work Together

Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour. An authorised officer is a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police. The LA should set out which authorised officers will issue penalty notices in their area.

The LA will inform the school about whether penalty notices are paid, withdrawn, or prosecuted for non-payment. They will do this via the Shared Secure Environment (SSE).

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

## 9. Payment of Penalty Notices

- Arrangements for payment will be detailed on the Penalty Notice.
- Payment of a Penalty Notice discharges the parent's or carer's liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Penalty Notice.
- The payment due for a Penalty Notice is £160. This amount is reduced to £80 if paid within 21 days of the notice being issued to the parent for the initial offence period.
- If the parent is issued a second Penalty Notice within a 3-year rolling period the payment required is £160, due within 28 days. The amount due **is not reduced to £80** in this circumstance.
- The Local Authority retains any revenue from Penalty Notices to cover enforcement costs (collection or prosecuting in the event of non-payment) and costs of providing support to families to improve school attendance