

Penalty notices - code of conduct

Introduction

This Code of Conduct is issued by the local authority (LA) in accordance with the requirement of regulation 14 of The Education (Penalty Notice) (England) Regulations 2007. This follows consultation with the police and schools in Lincolnshire as required by the regulations.

The purpose of the code is to promote regular and punctual attendance at school or any alternative provision as this is essential for children to realise their educational potential. It is a legal requirement for all children of compulsory school age. Schools have a multitude of tools available to ensure regular school attendance. Such strategies will be sufficient for most families where attendance is an issue.

However, Penalty Notices must only be used as an option where support to secure regular school attendance has been provided and has not worked or been engaged with by the parents, or would not be appropriate in the offence (for example, unauthorised holiday in term time). This ensures that any Notices are issued in a fair, consistent and lawful manner.

The law

School attendance

- to ensure consistency in approach to the issuing of Penalty Notices throughout Lincolnshire and
- to provide a clear, consistent and transparent approach to the use of the Penalty system for
 - all school types
 - the police
 - parents in Lincolnshire

Under Section 7 of the Education Act 1996 the parent of every child of compulsory school age has a duty to ensure that the child receives efficient full-time education suitable to the child's age, ability and any special educational needs they may have. This duty can be met by:

- child regularly attending a school or alternative educational provision made by the LA or the school, or
- by the parent providing other suitable educational provision

The parent may be guilty of an offence under Section 444 of the Education Act 1996 if they fail to ensure:

- their child's regular attendance at a school at which they are a registered pupil, or

- other educational provision is made for their child

Where a child has not attended regularly at school, the LA have the options of:

- issuing a Penalty Notice in respect of the parents of the child
- bringing proceedings before the family courts for an Education Supervision Order or
- prosecuting the parents under Section 444 before the Magistrates Court

Non-school attendance includes any day when a child should be in attendance at school, and they are absent without the authorisation of the school. This includes:

- unauthorised holidays during term time
- persistent late arrival at school beyond the registration period

Penalty Notices can be issued for persistent lateness where the child arrives after the closure of registration. This is coded U in the register.

Excluded pupils

Section 103 of the Education and Inspections Act 2006 makes it a duty for parents in relation to pupils subject to a period or permanent exclusion, to ensure that their child is not present in a public place during school hours, without reasonable justification, during the first five days of any such exclusion. If a child is present in a public place during the first five days of an exclusion during school hours the parent may be guilty of an offence for which they can be prosecuted by the LA before a magistrates' court.

Alternatively, the school or LA can deal with the matter by issuing a Penalty Notice.

Note: To proceed with a Penalty Notice and, or prosecution, under section 103 of the Education and Inspection Act 2006 the head teacher at the school or the LA must have issued the relevant letter to the parent(s) under Section 104 of the Act. This letter should inform the parent of their liability and set out the dates on which this liability arises. (This should be included in the standard exclusions letter). This can be included in the letter sent to the parent providing other information about the exclusion. It can be served by first class post, but where the opportunity arises to hand it to the parent(s) this is the preferred method.

Where an excluded pupil is of compulsory school age, the head teacher must also notify parents without delay, and by the end of the afternoon session. For the purpose of the letter above, the letter should include:

"that for the first five school days of an exclusion (or until the start date of any alternative provision where this is earlier) parents are legally required to ensure that their child is not present in a public place during school hours without reasonable justification, and that parents may be given a Penalty Notice or prosecuted if they fail to do so. This will therefore apply to you from (Insert first date of exclusion) to the end of the school day on (insert fifth date of exclusion)."

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 which is discussed in more detail on the next page.

Penalty notices

The Education (Penalty Notices) (England) Regulations 2007 as amended set out the framework for the operation of the Penalty Notice scheme.

Parent

For the purposes of education law and this code of conduct a “parent” means all natural parents, whether they are married or not. It includes any person having parental responsibility for a child (a person under 18 years of age) who, although not the child’s natural parent, has care of that child. Having care of a child means an adult with whom the child lives and who looks after the child on a day-to-day basis. Any reference to a “parent” in this code of conduct is a reference to anyone having care of a child as set out above.

Use of Penalty Notices

Lincolnshire County Council’s Attendance team are responsible for delivering this function. Penalty Notices will only be issued within this Code of Conduct.

Penalties are one of the tools available to the LA to tackle poor school attendance. Where thought appropriate alternative approaches such as Education Supervision Orders and prosecution may be utilised at the discretion of the LA.

Penalty Notices are intended to prevent the need for court action and should only be used where it is likely to change parental behaviour and support to secure regular school attendance has been provided and has not worked or been engaged with, or would not have been appropriate in the offence (e.g. unauthorised holiday in term time).

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)

- 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?
- (For local authorities only) 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, consider on a case-by-case basis:

- Has sufficient support already been provided? As detailed in the notice to improve
- 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?
- (For local authorities only) 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.

Use of Penalty Notices will be restricted to two per parent, per child in a three-year rolling period. In situations where a parent meets the criteria for more than one Penalty Notice to be issued because there is more than one child with irregular school attendance, multiple issues may occur. Where a child resides with two parents a separate Penalty Notice may be issued to each parent. A Penalty Notice should only be issued to the parent who has allowed the absence.

Threshold

The threshold for prosecution is 10 sessions of unauthorised absence in a rolling period of 10 school weeks. A session is a morning or afternoon registration session, meaning two sessions in an ordinary school day.

The threshold 'A school week' means any week in which there is at least one school session. This can be met with any combination of unauthorised absence (for example, 4 sessions of holiday taken in term time plus 6 sessions of arriving late after the register closes all within 10 school weeks). These sessions can be consecutive (for example, 10 sessions of holiday in one week) or not (for example, 6 sessions of unauthorised absence taken in 1 week and 1 per week for the next 4 weeks). The period of 10 school weeks can also span different terms or school years (for example, 2 sessions of unauthorised absence in the summer term and a further eight within the autumn term).

All state funded schools **must** consider whether a Penalty Notice is appropriate in each individual case where one of their pupils reaches the national threshold for considering a Penalty Notice. Schools should not have a blanket position of issuing or not issuing Penalty Notices and should make judgements on each individual case. Evidence of this consideration may be requested by the LA.

A Penalty Notice from being used in other cases where the threshold of 10% absence in a 10-week period has not been met but where an offence has been committed. Before doing so authorised officers will make the same considerations regarding the likely impact of such action. If in an individual case the local authority (or other authorised officer) believes a Penalty Notice would be appropriate.

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. Parents must always be forewarned of the possible issue of a Penalty Notice by the school through this letter. This letter will be sent to the parents directly by the school, and a copy sent to the local authority through the [report a notice to improve form](#).

A notice to improve letter can also be issued by the school in cases where a Penalty may not be suitable as the threshold has not been met but a period of unauthorised absence has occurred. This would show consistent practice in relation to application for absence during term time.

The notice to improve is 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 three and six 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

What sufficient improvement looks like can be decided on a case by case basis taking the individual family's circumstances into account. For some families, no further unauthorised absences will be appropriate, for others some absence may be tolerable if considerable improvement is seen. Details of what sufficient improvement for each case should be made clear in the notice to improve.

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. The parent must be informed in writing before a Penalty Notice is issued if it is before the end of the improvement period.

There is no restriction on the number of times a parent may receive a notice to improve letter of the possible issue of a Penalty Notice.

Non-attendance

It must be remembered that to count as non-attendance at school the absence must be unauthorised. The Education (Pupil Registration) (England) (Amendment) Regulations 2013 have removed the reference to holidays during term time. It now provides that a leave of absence during term time will only be granted where an application is made in advance to the school and the school consider that the leave of absence should be granted due to exceptional circumstances relating to that application.

What amounts to "exceptional circumstances" is a matter for the discretion of the head teacher. It should be judged on a case-by-case basis. It is unlikely to amount to an exceptional circumstance if it is merely claimed that:

- a holiday abroad can only be afforded in term time or
- that a parent is unable to take leave during school holidays. (This is a matter between the parent and their employer)

Head teachers should also consider asking for evidence of the circumstances that has arisen where appropriate.

Action by the police

Before issuing a Penalty Notice as a school or approaching the LA to issue the same it is important to ensure that evidence is available to support the Notice. This will often require the school and the police sharing information and working together.

Where a pupil is found in a public place when they should be in school or during a period of exclusion, enquiries should be made to ensure in terms of a Penalty Notice for failure to attend regularly at school under section 444(A) EA 1996 that:

- the pupil's absence on the day they are found in public by the police taken with other absences over a ten-week period gives an unauthorised absence rate of 10% or above
- the school do not already have actions in place aimed at addressing the non-school attendance of the pupil where the issue of a Penalty Notice would be counterproductive or inappropriate. This could be for example if the matter is already being referred to the LA for prosecution

If a child is in a public place during a period of exclusion it will need to be verified with the school:

- that the child was found in a public place during school hours in the first five days of that exclusion and
- that the appropriate letter was served on the parents at the time the exclusion was imposed

Consideration should also be given to calling at the pupil's home address to ascertain whether a parent is at home in a supervisory capacity and to make them aware that the child has been found in public when either the child should have been in school or during the first five days of an exclusion.

Procedure for issuing penalty notices

Penalty Notices will only be issued within the terms of the Code of Conduct.

The Attendance Team of the LA are responsible for the administration and issue of Penalty Notices in Lincolnshire. To avoid duplication, any school considering such action must first check with the LA that action has not already been taken by emailing Penalty.Notice@lincolnshire.gov.uk.

The LA will ensure that Penalty Notices are properly issued. They will only be issued for offences where it is satisfied that the matter meets the threshold for a prosecution. To request a Penalty Notice schools must use the online system.

The school will receive an acknowledgement that the request for a Penalty Notice has been received, authorised and paid. The school will be notified once the period of 28 days has passed if the fine has not been paid. Requests for the issue of Penalty Notices will be accepted from:

- schools in Lincolnshire
- Lincolnshire Police
- the LA

They must include:

- the name and address of all the parent(s)
- the name and address of the child concerned and their date of birth
- details of the offence in terms of documentary evidence. Where the matter relates to an unauthorised absence from school, this should include a signed copy (by head teacher or those with delegated authority within the school) of a pupil absence record (PAR) form showing the period of unauthorised absence
- confirmation of the date or dates over which the offence was committed
- details of any other absence in the same 10-week period
- details of any other offences within the past 3 years

Applications should be made as soon after the date(s) of the alleged offence as possible. Late submission of a request for a Penalty Notice may result in the application being rejected if the time that has elapsed since the alleged offence is such that court proceedings would no longer be viable if the option of a Penalty Notice is not taken up by the parent. (There is a six-month time limit on issuing legal proceedings).

The Court expects action to be taken without undue delay in order to address non-attendance issues. Any unreasonable delay could result in a prosecution case being weakened. More importantly, the education opportunities for the child are being missed.

On receipt of an application for a Penalty Notice to be issued the LA will assess whether the application:

- is a proper matter upon which a Penalty Notice should be issued and
- meets the criteria provided for either a formal warning or a Penalty Notice

The LA will communicate its decision in writing to the school.

Where a referral for a Penalty Notice is accepted, the LA will notify parents writing to the parent(s) concerned. Where there is more than one parent a separate written notification will be sent to each parent for each child that the Notice relates to. The Notice will be sent to the parent by first class post and by email if an email address is provided by the school.

Effect of penalty notice being issued

The Penalty Notice is presumed to be served on the parent to whom it is sent on the second working day after it was posted.

For a first offence, if a parent pays the Penalty Notice within 21 days from the date it is served the sum due from the parent to discharge the Penalty Notice is £80.

The parent can still pay the Notice after 21 days, but the payment increases to £160. This must be paid before 28 days have passed from the date of service.

If a parent pays the amount due within the times set out above, then no further action will be taken against that parent for the offence on the date(s) set out in the Penalty Notice.

For a further offence within a three-year rolling period, the payment will be £160. There is no discretion permitted for early payment.

Once a Penalty Notice has been issued, no prosecution for the non-attendance detailed in the Penalty Notice can be brought against the parent until the payment period of 28 days has passed and the Penalty has not been paid.

All payments must be made to the LA.

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.

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. Schools will be responsible for checking if previous PN's have been issued when requesting the LA progress a new PN. If data cannot be obtained, it is to be assumed that this is a first offence.

If a Penalty Notice is issued, whether paid or not, it may be used in evidence in subsequent criminal proceedings in relation to either:

- non-school attendance or
- being in a public place during school hours whilst excluded from school.

This includes regular patterns of term time absence such as unauthorised annual holidays.

Appeal against the penalty notice

There is no right of appeal against a Penalty Notice. A parent can either:

- accept and pay the fine or
- decline payment subject to them being aware that further action as set out below may be taken by the LA if the Penalty Notice remains unpaid.

The LA has the discretion to withdraw the Notice if the LA is satisfied that:

- the Penalty Notice has been sent to the wrong person.
- it contains a material error (in these circumstances a fresh amended Penalty Notice could still be issued)
- for any other reason the LA are of the opinion that it should not have been issued

Non-payment of the penalty notice

Non-payment of a Penalty Notice is not in itself an offence. The Penalty Notice is issued as an alternative to bringing a prosecution in the magistrates' court for the offence set out in the Formal Warning letter.

However, if the offer of dealing with the offence as a Penalty matter is not taken up by payment of the sum due within the 28-day period then consideration will be given to issuing criminal proceedings against the parent in the magistrates' court for the non-attendance of their child.

If a Penalty Notice has not been paid after 28 days from the day, it is taken to be served then the LA will contact the school or police officer who made the application for the Penalty Notice to be issued. They will discuss with them the available evidence to bring proceedings in the magistrates' court for the alleged offence under Section 444 of the Education Act 1996 or Section 103 of the Education and Inspection Act 2006.

If the LA believes that prosecution is a viable option, then a request will be made that the school or police officer concerned submits a report to the Local Authority's Legal Panel. This will enable a formal decision to be taken as to whether to proceed with the matter by issuing criminal proceedings before the magistrates' court.

Prosecution of offences is a matter within the discretion of the local authority. A decision will be taken in line with the LA prosecution policy for these matters. Proceedings, where commenced, will be issued by the LA.

If a prosecution is brought and the parent is found guilty or pleads guilty then a conviction for an offence under the following both carry a fine of up to a maximum of £1000:

- Section 444(1) of the Education Act
- Section 103 of the Education and inspection Act 2006

In addition, the LA will seek to recover costs in respect of bringing the proceedings. Further, a successful prosecution will result in a parent having a criminal record. This could be disclosed should they apply for a position where a DBS check (formerly known as a CRB Criminal Records Bureau Check) is required.

Administration of penalty notices

All administrative functions in respect of the issue of Penalty Notices and the collection of payments for the same will be undertaken by the LA. This is unless schools or academies choose to issue their own, although

non-payment of fines will still be monitored by the LA.

The LA will keep central records in respect of the issue of such Notices within Lincolnshire. This must include:

- a copy of each Notice issued
- a record of all payments made and the date of payment
- whether the Notice was withdrawn and on what grounds
- whether the parent(s) following non-payment of the same was subsequently prosecuted for:
 - the offence set out in the Notice or
 - offence arising out of the same circumstances

Schools will make enquiries directly to other LAs for details of previous Penalty Notices and include this information on their submissions to the LA.

If you wish to make these enquires regarding previous PN's for a child who has moved into Lincolnshire from another county, please contact us at crossborder.PenaltyNotice@lincolnshire.gov.uk.

Summary

All schools should ensure their attendance policy:

- is up-to-date
- displayed on their website
- includes all relevant guidance, legislation and any templates

Schools and academies are required to be proactive in sharing these documents with parents. This includes the relevant legislation relating to the issuing of PNs for unauthorised absences.

When promoting good attendance, schools should refer to their attendance policy when communicating with parents or carers. This includes via their website, parent hub or school app communications. This will:

- ensure that parents are kept up to date with any changes to legislation
- provide a new method of prior warning to parents, without the need to re-issue formal Notices to Improve

Emails are accepted when applying for PNs relating to holidays taken during term-time, as are other forms of communication, such as parent hub or school app messages sent as a direct or generic message to all parents.

Notice to improve letters will still be required when applying for an PN for persistent absence.

Please see below for each relevant scenario.

PN: term-time holiday - parental holiday request received

Where there is a request for a term-time holiday (leave of absence) that the school refuses because it does not meet the criteria for 'exceptional circumstances', the school must issue a letter or email in response to parent. The letter or email should:

- give their reasons for refusal to authorise.
- confirm to the parent that if the child is not in school on the days requested the absence will be recorded as unauthorised absence. (The school will presume they have gone away on their intended holiday).

Schools should then advise the parent that they will request us to issue a PN for a holiday taken during term-time.

PN: term-time holiday – no parental holiday request received

For cases where:

- evidence suggests the absence was a term-time holiday.
- no application or request for leave is received from parents in advance of a holiday.
- there may be other factors which imply to the school that the family were away on a holiday.

The school can apply for a PN retrospectively. Schools can now request a PN from the LA, without formally issuing parents with a notice to improve, providing that this information was available for parents, such as through school updates or reminders of the school attendance expectations to all parents. This relates only to holidays during term-time.

It is, however, best practice to write to families, referencing:

- their attendance policy
- any recent communications regarding their stance on holidays taken during term-time.

Over the last two to three years, the use of PNs for term-time holidays has grown. It is now established nationally as a method to discourage absence during term-time.

Schools who have regularly communicated with their parents regarding the use of PNs, can now request these, specifically in the case of holidays, without issuing a formal written warning prior to the holiday.

Schools will be able to demonstrate to us how they have communicated to parents. This could be via:

- emails
- school publications
- Parent Hub or apps, photos of their website publications

PN: persistent absence and, or unauthorised absence

When requesting an PN from the LA for persistent absence, schools will be required to share copies of all recent and relevant communications with parents. This demonstrates they have provided guidance to all parents on the use of PNs for unauthorised absences.

Schools wanting to request that the LA issue a PN for persistent absence should first discuss this with the LA attendance team.

Schools have a designated attendance and safeguarding education welfare officer. They should consult with them prior to requesting a PN for persistent absence. PNs for persistent absence are only successful if issued within the first term of poor attendance. This should be taken into account when considering issuing a Penalty Notice.

The attendance team may agree to a PN as a next action if all other support has already been provided. In this circumstance, schools will issue parents with a PN notice to improve letter. The letter must be sent to each individual parent. It must inform them that if the child's school attendance does not improve, the school will request a PN. If the PN fine remains unpaid, The LA could choose to prosecute the parents, for failure to ensure regular school attendance.

The LA will not discuss parental complaints, appeals or queries regarding PNs issued but will instead advise parents to liaise with their schools. A fine will only be withdrawn or re-issue a fine upon request of the school.

