

## **Dorset Council code of conduct for issuing penalty notices for school absence from 19<sup>th</sup> August 2024 (including lateness and pupils subject to a suspension or exclusion)**

1. 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 Dorset Council. The code sets out the arrangements for administering penalty notices in Dorset Council and must be adhered to by anyone issuing a penalty notice for school absence in this area. The code complies with the regulations under the Department for Education's new national framework for penalty notices as set out in the ['Working together to improve school attendance'](#) guidance.

### **Consultation**

2. This code has been drawn up in consultation with the headteachers and governing bodies of state-funded schools and Dorset police.

### **Legal basis**

3. 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).
4. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.
5. 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. In Dorset Council it has been agreed that Dorset Council will be the organisation that issues penalty notices.
6. 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.
7. 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).

8. Under this code a penalty notice may be issued to each parent who has responsibility for attendance and in respect of each individual child.

## **Rationale**

9. 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.
10. 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.
11. Where difficulties arise with 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.
12. 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.

## **When may a penalty notice for absence be appropriate?**

13. The national threshold has been met when a pupil has been recorded as absent for 10 sessions (in accordance with the school's attendance policy and

usually <sup>1</sup>equivalent to 5 school days) and within 10 school weeks<sup>2</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),
- (b) code N (the circumstances of the pupil's absence have not yet been established),
- (c) code O (Unauthorised absence) (none of the other rows of Table 3 in regulation 10(3) of the School Attendance (Pupil Registration) (England) Regulations 2024 applies), and
- (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)

14. [Working together to improve school attendance \(applies from 19 August 2024\) \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) provides further information on absence codes.
15. 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.
16. If repeated penalty notices are being issued and they are not working 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 (for holidays taken after the 18<sup>th</sup> August 2024). If the national threshold is met for a third time (or subsequent times) within 3 years, Dorset Council will utilise other legal interventions available to Local Authorities, such as Education Supervision Orders and criminal prosecution.
17. 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**

18. 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), consider on a case by case basis:

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<sup>2</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 within 10 school weeks).

- 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? Sufficient support may include: adaptations made by the school, attendance contract, advice from Dorset Council's Inclusion Leads, Family Network Meetings, Targeted Youth Work, and Family Help
    - 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.

### **Notice to improve**

19. 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).
20. The issuing of a notice to improve will need to be an agreed action at an inclusion panel which is attended by the school's link Inclusion Lead.

21. Once the issuing of a notice to improve has been agreed, the school will complete Dorset Council's notice to improve template and will require their link Inclusion Lead's signature before sending to families.
22. The length of the improvement period will usually be six weeks. The parent will be notified if consideration is being given to issuing a penalty notice before the end of the improvement period.
23. Sufficient improvement to attendance will be decided on a case by case basis but there should be no further unauthorised absences during the improvement period.
24. The school and Inclusion Lead will monitor the attendance over the monitoring period and the Inclusion Lead will discuss the attendance at the Dorset Council Legal Attendance Panel. The decision to issue a penalty notice will be made at this panel following the Inclusion Lead's liaison with the school.

### **How authorised officers will work together**

25. Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour.
26. An authorised officer is a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police. In Dorset it has been agreed that Dorset Council will be the organisation that issues penalty notices.
27. When the school or police request that Dorset Council issue the penalty notice, they need to
  - complete the penalty request form and send it to Dorset Council's penalty notice team
  - Ensure their link Inclusion Lead has been CC'd into the email
  - Ensure they provide the correct address for the family
  - Check personal information is correct i.e., DOB & surname spelt accurately
  - Attach an up-to-date attendance certificate which shows the pupil's name which is signed by the Head Teacher
  - Ensure that the request is for the parent or parents with responsibility for the pupil's attendance
28. Schools must request a penalty notice for leave of absence within two weeks of the child returning to school. Penalty notices requested for leaves of

absence after this time will not be processed. This will help to issue penalty notices in a timely manner.

29. A penalty notice request for a leave of absence will not be processed without the following documentation attached to the request:

- the parental request for leave in term time
- evidence of the school's response unauthorising the request
- registration certificate signed and dated by the Head Teachers
- where the parents did not request a leave absence, a letter from the Head Teacher to the parent informing them that their child has had a period of unauthorised absence

30. Dorset Council's Legal Attendance Panel will make a decision as to whether proportionate support has been provided, and whether that support has worked or not. Where there is dispute, authorised officers are expected to defer to the local authority's judgement about whether sufficient support has been provided before issuing a penalty notice.

31. The LA will inform the school about whether penalty notices are paid, withdrawn or prosecuted due to non-payment. They will be done via the school's link Inclusion Lead following Dorset's attendance legal panel.

32. Where pupils move between local authority areas, Dorset Council can be contacted on [childrensAdviceandDutyService@dorsetcouncil.gov.uk](mailto:childrensAdviceandDutyService@dorsetcouncil.gov.uk) to find out if penalty notices have been issued previously.

33. Where pupils attend school in Dorset Council but live in a different LA, Dorset Council will liaise with the neighbouring authority to ensure support is in place where appropriate.

## **Lateness**

34. A penalty notices can be issued where a pupil regularly arrives to school late (after the attendance register has closed and where a U code has been entered into the register in line with the school's published attendance policy) AND where no valid reason is provided for the lateness, meaning that it could have been avoided.

## **Pupils subject to a suspension/exclusion**

35. A penalty notice can be issued when a child is suspended/excluded from school and is found in a public place during normal school hours on the first five days of each and every suspension or permanent exclusion (Section 103 Education and Inspections Act). The suspending/excluding school must have informed the parent/s, in writing, of their duty to ensure their child is not found in a public place and a warning that a penalty notice can be issued if their

suspended or excluded child is found in a public place during normal school hours.

36. Where a pupil is present in a public place with no valid reason during the first five days of a suspension/exclusion, Dorset Council would be responsible for issuing a penalty notice if the school is in their area. Where the child has been permanently excluded, the issuing of penalty notices would be actioned by the local authority in which the child resides.

### **Withdrawal of penalty notice**

37. A penalty notice may be withdrawn by the local authority named in the notice under the following circumstances:

- where the local authority deems it ought not to have been issued i.e. where it has been issued outside the terms of the local code of conduct or where the available evidence does not support the issuing of a penalty notice;
- it appears to the local authority that the notice contains material errors; or
- where it has been issued to the wrong person named as the recipient

### **Payment of penalty notice fines**

38. Arrangements for payment will be detailed within the Penalty Notice. The first penalty notice issued to the parent for a child will be charged at £80 if paid within 21 days, rising to £160 if paid between days 22 and 28.

39. In circumstances where a second Penalty Notice is issued to the same parent for the same pupil within 3 years of the first, the second notice is charged at a flat rate of £160 and is payable within 28 days. There is no reduced sum available in this instance.

40. There are no payment plan options available in respect of penalty notice fines issued under this Code of Conduct. Fines must be paid in full by the relevant payment deadlines.

41. There is no statutory right of appeal against the issuing of a penalty notice.