

WESTMORLAND AND FURNESS LOCAL CODE OF CONDUCT FOR ISSUING PENALTY NOTICES FOR SCHOOL ABSENCE 2024

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 Westmorland and Furness. The code sets out the arrangements for administering penalty notices in Westmorland and Furness 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.

Consultation

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

Administration of the scheme

Westmorland and Furness Council Access to Education Service is responsible for the overall administration of the penalty notice scheme and this code sets out our arrangements for the practices required to ensure the operation of the scheme.

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. There is no statutory right of appeal against the issuing of a penalty notice (although the regulations make provisions for the Local Authority to withdraw them in certain limited circumstances).

6. 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.
7. 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.
8. 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).

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.
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?

When the national threshold has been met: 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 absent for 10 sessions (usually equivalent to 5 school days) within 10 school weeks¹, 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 (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).

13. In situations where repeated unauthorised leaves of absence are being taken during the course of year which fall outside the threshold of 10 sessions in 10 school weeks but the total number of sessions missed would be more than 10 the school should discuss with their Attendance Support Officer whether issuing an FPN is appropriate
14. If repeated penalty notices are being issued and they are not working to change behaviour, they are unlikely to be the 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, another tool should be used. In cases where the threshold is met for a third (or subsequent) time in a three-year period the LA will consider alternative action including prosecution, Education Supervision Order or a parenting contract based on the individual circumstances.
15. 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.

¹ 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).

Key considerations prior to the issue of a Penalty Notice for school absence

16. 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:
 - 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:
 - Have parents been made aware of the attendance concerns and given the opportunity to engage with support. Strategies could include: letters, phone calls, invitations to meetings, referral to other services
 - Has tailored support already been provided? This would include evidence of assess, plan, do, review response
 - 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

17. 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). If an authorised officer decides not to issue a notice to improve their reasons for making this decision should be recorded.

The process for issuing a notice to improve:

- The notice to improve will be issued by the Local Authority
- The length of the improvement period will be three weeks (15 school days).
- Agreement as to what sufficient improvement looks like, for example no further unauthorised absences, attendance improved to x within the period or number of late attendances reduced to x. Sufficient improvement should be decided on a case-by-case basis. The notice to improve should include an explanation of what sufficient improvement looks like.
- The school will monitor attendance during the improvement period and will notify their Attendance Support Officer of the outcome.

How authorised officers will work together

18. Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour.
19. Westmorland and Furness Council in consultation with the school and other agencies, is responsible for the decision to serve a penalty notice on parents. This will ensure that there is no duplication of practice, human rights are adhered to, the notice complies with the restrictions identified in the regulations and there is no danger that penalty notices are being served when the process towards prosecution is already underway.
20. Where the school or police request that the LA issues the penalty notice, they need to:
 - Complete a referral form for statutory intervention and include the information requested.
 - A signed headteacher's attendance certificate covering the relevant period of absence.
 - A completed and signed witness statement including details of how the absence has impacted academic progress. This can be provided by a school attendance officer or EWO.
 - Attendance figures for the period of concern. Previous attendance figures may also be helpful in decision making.

If the period of absence relates to an unauthorised holiday in term time schools also include:

- A copy of the request for a holiday (if applicable) and the reply with reasons for refusal.
- A copy of the advisory letter sent to the parent(s) (if applicable) warning of the risk of an FPN or prosecution or a copy of the letter refusing the holiday request which contains that warning.

- Attendance figures for the previous and current academic year.

If permission for a holiday or other absence was not sought in advance this will be seen as an aggravating factor.

Where families are taking leave of absence of more than five consecutive days or more than one holiday within an academic year the LA can consider prosecution rather than issuing a FPN.

The LA will consider the request and notify the school of its decision. The LA may determine that an Attendance Review Conference (ARC) is necessary to explore if further support/engagement with the family by both the school and LA is appropriate and a FPN will only be issued once all reasonable efforts at support/engagement have been exhausted.

21. Whoever is issuing the penalty notice should 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.
22. The LA will inform the school about whether penalty notices are paid, withdrawn or prosecuted for non-payment. The Attendance Support Officer will agree with the school how they will be informed.
23. Where pupils move between local authority areas, Westmorland and Furness can be contacted on:
crossborder.penaltynotices@westmorlandandfurness.gov.uk to find out if penalty notices have been issued previously.
24. Where pupils attend school in Westmorland and Furness but live in a different LA, Westmorland and Furness will liaise with the home LA to determine the most appropriate next steps which could include identifying additional support and agreeing outcomes, issuing an FPN or considering other measures such as prosecution or an Education Supervision Order.
25. All funding from penalty notices will go to the Local Authority to cover the costs of issuing or enforcing notices including the cost of prosecuting recipients who do not pay.
26. The amount of the penalty notice to be paid where no previous notice under Section 444A (1) of the 1996 has been issued for the same child in the preceding three year period is £80 if paid within 21 days of receipt of the notice, rising to £160 if paid after 21 days but within 28 days of receipt of the Where a penalty notice has been issued under Section 444A(1) of the Act in the preceding three

year period the amount of the notice is £160 to be paid within 28 days from the date the notice is received.

A notice served by post is deemed to have been received on the second working day after posting it by first class post.



Overtyping date

Our reference: CS/EI/AE/**

Name

Address 1

Address 2

TOWN

County

Postcode

Dear

School Attendance Notice to Improve

School attendance is hugely important. For your child to gain the full benefit from their education, for their learning, wellbeing, and wider development, they need to attend on time, every day possible.

If your child of compulsory school age, who is a registered pupil at a school, fails to attend regularly or regularly arrives late after the close of registration at the school, you as the child's parent may be guilty of an offence under s.444 Education Act 1996. **OR** If your child is a registered pupil at an alternative provision, in the circumstances set out in section 444ZA of the Education Act 1996, you as the child's parent may be guilty of an offence.

You, «**Parents_Name**» are a parent/carer of «**Students_Name**», (called in this notice "the pupil") who is a registered pupil at «**School_Name**».

The school have offered support to you and your family to try and help improve «**Students_Name**»'s attendance, including:

1. **Telephone calls.** The school contacted you every day your child was absent to understand why your child was absent and to offer their support with any issues your child may be having.
2. **An Attendance Overview Letter.** The school wrote to you, letting you know about «**Students_Name**»'s attendance, the impact of their continued absence, and inviting you to contact the school to discuss the situation further.

3. **An Attendance Support Meeting Invite.** The school invited you to a meeting to discuss your child's unauthorised absences and to offer support to ensure that their attendance improved. You were notified of the consequences should your child continue to have unauthorised absence and you did not effectively engage with the support offered.

Unfortunately, despite the support that was offered to your family, attendance remains a cause for concern. Between «**WARNING_START_DATE**» and «**WARNING_END-DATE**» the pupil failed to attend regularly at «**School_Name**» which resulted in 10 sessions (half days) or more of unauthorised absences being recorded. Please see the attached registration certificate for details.

You now have fifteen school days (3 weeks) in which to improve your child's attendance. During this time your child must show significant improvements in attendance and avoid having any unauthorised absences from school during this period. Should we not see sufficient improvement and further unauthorised absences take place during this period, a Penalty Notice may be issued. A penalty notice is charged at £160 if paid within 28 days. There is usually the opportunity to pay a reduced amount of £80 if paid within 21 days.

NB – A Penalty Notice may be issued as soon as a further unauthorised absence is recorded.

If you wish to discuss this notice, or discuss what further support is available, please contact our team as soon as possible:

Contact Name

Name of Team/Service

Address

Telephone

Yours sincerely

Name

Position/title

T: *****

E: *****@westmorlandandfurness.gov.uk