

# **STATUTORY CODE OF PRACTICE**

**The County Attendance Team**

**Learner Engagement Services – Children Education  
and Families Directorate**

**Issuing Penalty Notices for unauthorised absence from  
schools**

**September 2021**

## **1. FRAMEWORK**

- 1.1 The purpose of this code of practice is to ensure that suitable arrangements are in place for the administration of Penalty Notice Fines and that the associated powers are applied consistently and fairly across the local authority area.
- 1.2 The law empowers designated county council officers, head teachers, or the police to issue Penalty Notices in cases of unauthorised absence from school for pupils of compulsory school age. This code is for their use.
- 1.3 Penalty Notices can be issued to parents and those with parental responsibility in the circumstances outlined in this code. In this context, any reference to a “parent” means:
  - natural parents (irrespective of whether they are married or live with the child)
  - a person who (although not a natural parent) has either parental responsibility for, or care of a child. A person having care of a child lives with and looks after the child, irrespective of their relationship to the child.
- 1.4 Penalty Notices may be issued in respect of unauthorised absence of pupils registered in maintained schools, academies, free schools, alternative provision providers in Oxfordshire and, under certain circumstances, independent schools.

## **2. RATIONALE**

- 2.1 Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities. Failure by a parent to secure his or her child’s regular attendance at the school where the child is registered is a criminal offence for which the parent may be prosecuted in the Magistrates’ Court.
- 2.2 A Penalty Notice is an alternative to prosecution and is one of a range of options available to local authorities to encourage school attendance. The aim is to support parents to meet their responsibilities in law. These options will be used only where parental cooperation in this process is either absent or deemed insufficient to resolve the presenting problem. Penalty Notices will only be used where there is a reasonable expectation that their use will secure an improvement. They offer a means of swift intervention at an early stage, before attendance problems become entrenched. Whatever action is taken, parents and pupils will continue to be supported by school, with the aid of other agencies if appropriate, to overcome apparent barriers to regular attendance, through a range of intervention strategies.

- 2.3 The aim is:
- to ensure consistent and equitable delivery of Penalty Notices
  - to allow schools to maintain good relationships with parents
  - to allow cohesion with other enforcement sanctions and
  - to comply with statutory and other requirements
- 2.4 Whilst not a strict requirement of the Code, it is strongly recommended and anticipated that schools undertake annual training to maintain high standards and to keep up to date with current legislation and guidance. This training is available from the County Attendance Team at a cost subsidised by the County Council.

### **3. CIRCUMSTANCES WHERE A PENALTY NOTICE MAY BE ISSUED**

- 3.1 Before making a Penalty Notice referral to the local authority, school staff should carry out a thorough investigation of the pupil's circumstances, reasons for absence and have considered referring to other agencies for support. Early Health Assessment is the best tool for this work. Following such investigations, Head teachers (or those listed at 1.2) are required to determine each case on its individual circumstances taking into account the results of any investigation, any other relevant information, any guidance, the school attendance policy, this code and the law.
- 3.2 A formal warning letter pre-empts the issue of a Penalty Notice. Warning letters (and then Penalty Notices) may only be issued as a consequence of unauthorised absences. Whilst there is no restriction on the number of times a parent may receive a formal warning of a possible Penalty Notice, these should be used sparingly for maximum effect. Warnings should only be used where there is an intention to follow through to enforcement where appropriate.
- 3.3 Use of Penalty Notices should be restricted to one per pupil every two academic years. Each parent of the pupil may be issued with his or her own Penalty Notice. In cases where there is more than one poorly-attending pupil in a family, Penalty Notices may be issued to each parent in respect of each pupil. This decision will involve careful consideration and consultation between school and the County Attendance Team. Where a second holiday in term time has been taken without authorisation of the Headteacher, a prosecution will be considered.
- 3.4 The issue of Penalty Notices to parents may be considered in the following circumstances:
- A permanently excluded or suspended pupil is present, without reasonable justification, in a public place during school hours in the first five days of a permanent exclusion or suspension.
  - there have been at least six unauthorised absences in a period of six consecutive school weeks and this is in breach of the school's attendance policy.

Unauthorised absence includes:

- Absence for which no explanation was provided, or the school was not satisfied with the explanation given;
- Late arrival at school after the registers have closed;
- Holidays taken during term-time for which permission in advance was not granted by the Headteacher;
- Failure to return to school after a period of authorised absence or after a suspension.

3.5. Penalty Notices should not be issued where:

- a pupil is “Looked After” (as defined by law in the Children Act 1989), as other interventions should be used. In Oxfordshire, we use the term Children We Care For.
- it is clear that any legal and other requirements have not been complied with.
- When a child is deemed as Clinically Extremely Vulnerable and Covid-19 guidance requires their non-attendance at school for health protection purposes.

3.6. A Penalty Notice must be requested within one month of the unauthorised absence taking place except for penalty notices required for unauthorised holidays/leave of absence, where requests should be made within 5 school days of the child returning to school.

3.7 Any school wishing to utilise the Penalty Notice tool to improve attendance needs to articulate this possibility in their school Attendance Policy which needs to be reviewed regularly, ratified by Governors and available to parents.

#### **4. PROCEDURE FOR ISSUING PENALTY NOTICES**

4.1 In Oxfordshire, the County Attendance Team will issue Penalty Notices. If the correct procedure is not followed by schools, the County Attendance Team has discretion to decline the referral or request further action to be taken before a Penalty Notice is issued. This will avoid the possibility of inconsistent use of Penalty Notices across the county.

4.2 Penalty Notice Warning Letters (a warning letter) may be issued by those listed at 1.2.

4.3 Parents should be sent a warning letter for unauthorised absence in term time before a Penalty Notice is issued. Where the unauthorised absence is for reasons other than a term-time holiday, the warning letter should indicate the period of time over which improvement in attendance is expected, as otherwise a Penalty Notice will be issued (typically after a further 15 school days).

- 4.4 A warning letter may not necessarily be considered appropriate for multiples of leaves of absence for the purpose of unauthorised holiday. A judgement should be made about how best to proceed in these circumstances, with the ultimate decision held with the Local Authority.
- 4.5 Precedent forms must be used to make sure that the content complies with legal requirements. Precedents are available from the Attendance Team and are provided as part of the training (2.4). (The County Attendance Team can issue warning letters at the request of the school at a cost).
- 4.6 Penalty Notices will only be issued by first class post and never as an on the spot action (e.g. during a truancy sweep). This is to ensure that correct procedures are followed and to ensure staff safety.
- 4.7 Where schools, the police or neighbouring local authorities consider the issuing of a Penalty Notice is appropriate, this request will be investigated and actioned by the County Attendance Team provided that:
- it is appropriate to do so in the circumstances, which includes that to do so would not conflict with other enforcement sanctions or action being taken
  - there is a reasonable expectation that to issue a Penalty Notice would improve attendance.
  - all necessary information and documentation are provided promptly to the County Attendance Team in order to establish that an offence has been committed.
- 4.8 The County Attendance Team should respond to all requests within 10 working days of receipt, and where all criteria are met, will issue a Penalty Notice.
- 4.9 Non-payment of Penalty Notices will usually result in prosecution for non-attendance through the Single Justice process at the Magistrates Courts.
- 4.10 Warning letters are required prior to the issuing of a Penalty Notice. Save for a significant and immediate improvement in attendance following receipt of a Warning letter, a Penalty Notice will be issued provided that the conditions specified in the warning letter, by which the parent would avoid a Penalty Notice, have not been met.

## **5. PROCEDURE FOR THE WITHDRAWAL OF PENALTY NOTICES**

- 5.1 Once issued, a Penalty Notice should only be withdrawn in the following circumstances: -
- proof has been established that the Penalty Notice was issued to the wrong person;
  - that it contains material errors;
  - it ought not to have been issued
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## **6. PAYMENT OF PENALTY NOTICES**

- 6.1 Arrangements about how to pay are outlined in Penalty Notice documentation.
- 6.2 Timely payment of a Penalty Notice discharges the parents' liability for the offence specified on the Penalty Notice. This means the parent cannot be prosecuted subsequently for the same period. However, the issue of an earlier Penalty Notice (or failure to pay) may be relevant to what action is taken over subsequent offences and this information may be given in evidence in any later court proceedings in accordance with relevant legal provisions.
- 6.3 The Penalty is £60 if paid within 21 days of receipt of the notice, increasing to £120 if paid between day 21 and day 28. This amount is prescribed by the Education Penalty Notices (England) Regulations 2007. Failure to pay a Penalty Notice within the prescribed period may result in prosecution for the underlying offence of failure to secure regular school attendance.
- 6.4 The County Council retains any revenue from Penalty Notices. This is used to off-set the cost of early intervention and prevention attendance work with parents and schools.

## **7. NON-PAYMENT OF PENALTY NOTICES**

- 7.1 Where a fine is not paid after 28 days, the County Attendance Team may refer the case to the County Solicitor for prosecution.  
The County Solicitor has final discretion over whether to prosecute.

## **8. POLICY AND PUBLICITY**

- 8.1 Schools that wish the local authority to issue Penalty Notices must include information about this possibility in their attendance policies and bring it to the attention of parents.
- 8.2 The local authority will include information about the use of Penalty Notices and other enforcement sanctions in promotional/public information material.

## **9. REVIEW**

- 9.1 The County Attendance Team will review this code and Penalty Notice use when required or otherwise biannually.

**Signed**            Deborah Bell .....

                          Learner Engagement Head of Service  
                          Oxfordshire County Council

**Dated:**

This Code of Practice will be reviewed in 2023 or earlier in the event of a change in the pertinent legislation