

# Shropshire Code of Conduct for Issuing Penalty Notices

## September 2024

### Introduction

This document sets out the code of conduct for issuing fixed penalty notices for irregular school attendance in Shropshire. It is based on the national framework for penalty notices as published in the Department for Education's statutory guidance, 'Working Together to Improve School Attendance'. It also incorporates the changes made by the Education (Penalty Notices) (England) (Amendment) Regulations 2024, which came into force on 19 August 2024.

The purpose of this code of conduct is to ensure that penalty notices are issued in a fair, consistent and transparent manner across Shropshire. It also aims to prevent the need for court action in some cases by providing an alternative to prosecution for parents who fail to ensure their child's regular attendance at school or alternative provision.

This code of conduct applies to all state-funded schools in Shropshire, including maintained schools, academies, pupil referral units and alternative provision. It also applies to any person who is authorised to issue penalty notices on behalf of the local authority.

### Legal basis and rationale

Under section 444 of the Education Act 1996, parents have a legal duty to ensure that their child of compulsory school age receives a suitable education, either by regular attendance at school or otherwise. Compulsory school age is defined as commencing at the start of term on or after a child's fifth birthday and concluding on the last Friday in June of the school year in which the pupil becomes 16.

Under section 444A of the Education Act 1996, the local authority may issue a penalty notice to a parent who fails to comply with this duty. A penalty notice is a fine that can be paid by the parent to discharge their liability for the offence. If the penalty notice is not paid within the specified time, the local authority must either prosecute the parent for the original offence or withdraw the notice.

Under section 105 of the Education and Inspections Act 2006, the local authority may also issue a penalty notice to a parent whose child is in a public place during school hours without reasonable justification during the first five days of a fixed period or permanent exclusion from school.

The Education (Penalty Notices) (England) Regulations 2007 and the Education (Penalty Notices) (England) (Amendment) Regulations 2024 set out the procedures and conditions for issuing penalty notices for school absence. They also specify the amount of the penalty, the time limits for payment and the circumstances in which a penalty notice may be withdrawn.

The national framework for penalty notices is based on the principles that a penalty notice 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 has not achieved the desired outcome, and
- where it is the most appropriate tool to change parental behaviour and improve attendance for that particular family.

The rationale for using penalty notices is to provide a swift and effective intervention that can prevent the need for more serious legal action. Penalty notices can also act as a deterrent to parentally condoned absence and encourage parents to work with schools and other agencies to address the underlying causes of poor attendance

## Parental responsibility

Section 576 of the Education Act 1996 defines “parent” as:

*All natural (biological) parents, whether they are married or not; Any person who, although not a natural parent, has parental responsibility for a child or young person; Any person who, although not a natural parent, has care of a child or young person.*

Where this guidance refers to a parent, the school and/or LA will need to decide which adult is most appropriate to work with.

Generally, parents include:

- all natural parents, whether they are married or not,
- all those who have parental responsibility for a child or young person,
- those who have day to day responsibility for the child (i.e. lives with and looks after the child).

A penalty notice can be issued to each parent liable for the offence or offences.

## Schools’ responsibility

Under Section 13, part 7, of The School Attendance (Pupil Registration) (England) Regulations 2024, the Proprietor of a school must make a return to the local authority (an “attendance return”) giving the full name and address of every registered pupil who is not a boarder and who, since the last time an attendance return was made in relation to the school has failed to attend the school regularly, including where a pupil has been absent from school for a continuous period of at least 10 school days and this absence is recorded in the attendance register exclusively using one or more of the following codes:

Code G (absent without leave for the purposes of a family holiday);

Code N (absent in circumstances not yet established);

Code O (absent in other circumstances);

Code U (absent at registration but arrived later).

**For state schools, returns are submitted automatically through the DfE portal to fulfil this duty.**

**For independent schools, the local authority will request that a return is submitted at pre-determined intervals.**

## Circumstances and criteria for issuing penalty notices

**When the national threshold is met**, the local authority may consider issuing a penalty notice for irregular school attendance in the following circumstances:

When a pupil has been recorded as absent for 10 sessions (usually equivalent to 5 school days) within 10 school weeks, with one of, or a combination of, the following unauthorised absence codes:

G (holiday not authorised)

N (no reason yet provided for absence)

O (absent from school without authorisation)

U (late after registration closed)

- The sessions can be consecutive or accumulative over a 10-week period.
- The period of 10 weeks can also span different terms or school years on a rolling basis.
- When a pupil has been absent without authorisation for the purpose of a holiday in term time and the headteacher has not granted leave of absence.
- When a pupil has been found in a public place during school hours without reasonable justification during the first five days of a fixed period or permanent exclusion.
- When a pupil has been absent without authorisation for other reasons, such as birthdays, family events, shopping trips, etc., and the local authority believes that a penalty notice would be appropriate and in the public interest.

The local authority will apply the following criteria for issuing penalty notices:

- The penalty notice will be issued by an authorised officer of the local authority, either by post or by hand delivery.
- The penalty notice will be issued to each parent of the pupil who is liable for the offence, regardless of which parent applied for a leave of absence or condoned the absence.
- The penalty notice will be issued within 6 months of the last session of unauthorised absence.
- The penalty notice will be issued in accordance with this code of conduct and the national framework for penalty notices.
- The penalty notice will be issued only after an initial assessment of the case and consideration of the key factors by the issuing Officer, such as the level and pattern of absence, the availability and effectiveness of support, the impact of the penalty notice on the parent and the pupil, the obligations under the Equality Act 2010 and the public interest.
- The penalty notice will be issued only after a warning notice or a notice to improve has been given to the parent unless the absence is due to an unauthorised holiday in term time or being present in a public place when excluded.
- The penalty notice will be issued only after consultation with the school and, where appropriate, other relevant agencies.
- The penalty notice will not be issued if the parent can provide evidence of reasonable justification for the absence, such as illness, medical appointments, religious observance, bereavement, etc.
- The penalty notice will not be issued if the pupil is registered at more than one school and the absence is authorised by one of the schools.
- The penalty notice will not be issued more than twice to the same parent in respect of the same pupil within a three-year period. If the national threshold is met for a third or subsequent time within three years, alternative legal action will be considered, such as prosecution or an education supervision order.

## When the national threshold is not met

If, in an individual case, the local authority believes a penalty notice would be appropriate, it retains the discretion to issue one before the threshold is met.

Circumstances where this may apply include (not exhaustive):

- Several term-time holidays below the threshold.
- Repeated absence for birthdays or other family events.
- Where the police, anti-social behaviour teams, neighbourhood teams or similar have reason to believe that an offence has been committed under section 444(1) of the education act 1996 and this relates to a relevant school, and on subsequent investigation of the circumstances by the LA concludes the absence(s) constitute an offence (there are no authorised circumstances).

**In all cases the local authority retains the discretion to consider going straight to prosecution.**

## Amount and payment of penalty notices

The amount of the penalty is £160 if paid within 28 days of receipt of the notice, reduced to £80 if paid within 21 days. The penalty must be paid in full by the end of the 28-day period. If unpaid after 28 days, the local authority will prosecute the parents.

For a second offence committed by the same parent in respect of the same pupil, the amount will be the higher rate of £160 per parent, per child. The penalty must be paid in full by the end of the 28-day period. If unpaid after 28 days, the local authority will prosecute the parents.

Exception - Penalty notices issued for a child being present in a public place during school hours when excluded from school will be charged at the rate of £160 if paid within 28 days of receipt of the notice, reduced to £80 if paid within 21 days. The penalty must be paid in full by the end of the 28-day period. The same rate will apply if further offences are committed. If unpaid after 28 days, the local authority will prosecute the parents.

The payment must be made directly to the local authority by the methods specified on the notice. The local authority will retain the revenue from the penalty notices to cover the costs of issuing and enforcing them. Any surplus revenue will be used for the purposes of supporting and improving pupil attendance and access to education.

If the penalty is not paid in full by the end of the 28-day period, the local authority must either prosecute the parent for the original offence under section 444 of the Education Act 1996 or withdraw the notice. There is no right of appeal against a penalty notice.

## Withdrawal of penalty notices

The local authority may withdraw a penalty notice in the following circumstances:

- It ought not to have been issued, i.e. it was issued outside the terms of this code of conduct or the national framework, or no offence was committed.
- It was issued to the wrong person or contains material errors.
- It was issued in respect of a pupil who is registered at more than one school and the absence was authorised by one of the schools.

- It was issued in respect of a pupil who is receiving suitable education otherwise than at school, such as home education, alternative provision or elective home education.
- The parent can provide evidence of reasonable justification for the absence, such as illness, medical appointments, religious observance, bereavement, etc.

If a penalty notice is withdrawn, the local authority will notify the parent and the school in writing and will consider taking alternative legal action if appropriate.

## Monitoring and review

The local authority will monitor the implementation and effectiveness of this code of conduct on an annual basis. The local authority will also review the code of conduct in consultation with schools and other stakeholders at least every three years or whenever there are changes to the national framework or the relevant legislation.