



# **Penalty Notice Code of Conduct (Education Offences)**

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# 1. Introduction

- 1.1.1 Swindon Borough Council ('the Local Authority') is committed to ensuring that children of compulsory school age receive a full-time education suitable to their age, ability and aptitude, and any special educational needs they may have.
- 1.1.2 Regular and punctual attendance at school<sup>1</sup> (in circumstances where a child is educated at a school rather than by way of elective home education) is both a legal requirement and essential in order for pupil to maximise the opportunities available to them. The Local Authority and schools will investigate cases of non-attendance from school and, following appropriate casework, instigate legal action if applicable.
- 1.1.3 There are, in respects of the education of children, a number of criminal offences which are capable of being committed by a child's parent(s)<sup>2</sup>. In the most extreme circumstances, these offences can lead to a person being imprisoned for 3 months and being ordered to pay a fine of up to £2,500.
- 1.1.4 The Local Authority may only issue a Penalty Notice ('PN') in respect of two specific offences:
- Offences under section 444(1) of the Education Act 1996; and
  - Offences under section 103(3) of the Education and Inspections Act 2006.
- 1.1.5 PNs are issued in accordance with the provisions of the Education (Penalty Notices) (England) Regulations 2007 as amended.
- 1.1.6 Where the Local Authority believes that a 'relevant offence' (i.e. an offence set out in paragraph 1.4 above) has been committed it may deal with this in a number of ways, including:
- A Notice to Improve;
  - A PN;
  - A Caution;
  - Prosecution.
- 1.1.7 This Code of Conduct has been adopted pursuant to Regulation 14 of the Education (Penalty Notices) (England) Regulations 2007. The purpose of this Code of Conduct is to provide consistency in the issuing of PNs, including (but not limited to):

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<sup>1</sup> For the purposes of this Code of Conduct 'school' shall also include academies and colleges (in so far as they provide education to children of compulsory school age)

<sup>2</sup> As defined in section 576 of the Education Act 1996

- The occasions when it may (or may not) be appropriate to issue a PN;
  - The maximum number of penalty notices that may be issued to one parent in any rolling three-year period for the same child.
- 1.1.8 PNs provide a parent with the opportunity to discharge their liability for prosecution by complying with the terms of the PN (i.e. the payment of a prescribed sum of money within the prescribed period). The accepting of the offer of an PN (i.e. by paying the PN in accordance with its terms) is not an admission of guilt.
- 1.1.9 The purpose of an PN is to provide a sanction for the relevant offence and, in the case of absence from education, to encourage improved attendance.
- 1.1.10 This Code of Conduct shall take effect from 19<sup>th</sup> August 2024<sup>3</sup> and shall be applied to all relevant offences which suspected to have been committed on or after 19<sup>th</sup> August 2024. This Code of Conduct has been written in line with the New National Framework for Penalty Notices for schools.
- 1.1.11 The National Framework aims to:
- Make penalty notices more effective by ensuring they are only used in cases where they are the most appropriate tool to change parental behaviour and improve attendance.
  - Prioritise the support first approach by expecting support to be used in cases where it is appropriate and using penalty notices in cases where support is not appropriate (e.g. a term time holiday) has not worked or has not been engaged with.
  - Improve consistency in the use of penalty notices across England by introducing a new national threshold at which they are considered.
  - Improve the deterrent effect of a penalty notice by increasing the amount and introducing a new national limit of 2 penalty notices within a 3-year period to break cycles of repeat offending.
- 1.1.12 Specifically, the National Framework includes:
- A single consistent national threshold for when a penalty notice must be considered of 10 sessions (usually equivalent to 5 school days) of unauthorised absence within a rolling 10 school week period.
  - A requirement that when the national threshold is met, schools make an assessment on a case-by-case basis whether a penalty notice can and should be issued. The following should be considered:

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<sup>3</sup> In line with government guidance, [Working Together to Improve School Attendance 2024](#)

- if support or further support is appropriate instead, and
  - whether there is a different tool or legal intervention that is more likely to improve attendance in this particular case.
- The option of using a Notice to Improve where support is appropriate but not working or being engaged with, to give a parent<sup>4</sup> a final opportunity to engage in support before they are issued with a penalty notice if it is appropriate in the individual case. 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.
  - An increase to the rate of a penalty notice from £120 to £160 if paid within 28 days, and £60 to £80 if paid within 21 days.
  - An additional rung to the ladder of escalation, with any second penalty notice issued to the same parent for the same child within a rolling 3-year period being charged at a higher rate of £160 with no option for this second offence to be discharged at the lower rate of £80.
  - A national limit of 2 penalty notices that can be issued to a parent for the same child within a rolling 3-year period, so at the 3rd (or subsequent) offence(s) another tool will need to be considered (such as prosecution or one of the other attendance legal interventions).
  - Widening the purposes for which the revenue from penalty notices can be used so that local authorities can spend any surplus on attendance support as well as administering the system and prosecution. In practice, support is defined as any activity intended to improve attendance, not including a penalty notice or prosecution, in line with the [Working Together to Improve School Attendance 2024](#) guidance.
  - Schools or the police who issue their own penalty notices in a local authority area, checking with the local authority before issuing

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<sup>4</sup> 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.

## 2. Relevant Offences

### 2.1 Section 444(1) of the Education Act 1996

2.1.1 Section 444(1) sets out that:

*“If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.”*

2.1.2 On conviction this offence carries a maximum fine of £1,000.

2.1.3 In the case of *Isle of Wight Council v Platt*<sup>5</sup> the Supreme Court confirmed that regular attendance at a school means to attend in accordance with the rules of that school.

2.1.4 There are limited defences to this offence and it is a strict liability offence.

2.1.5 Pursuant to sections 444A and 444B of the Education Act 1996 an authorised officer of the Local Authority is permitted to issue a PN in respects of an offence under section 444(1) when that officer has reason to believe:

- That the offence has been committed; and
- The offence relates to a relevant place of education.

2.1.6 If the parent was aware of the absence and failed to ensure that the child attended school regularly then they may be guilty of the more serious offence under section 444(1A). This offence carries a maximum penalty of a £2,500 fine, or 3 months' imprisonment, or both.

2.1.7 The issuing of an PN does not prevent the Local Authority from prosecuting a parent for the offence under section 444(1A) if the penalty is not paid.

### 2.2 Section 103(3) of the Education and Inspections Act 2006

2.2.1 Under section 103(3), a parent commits an offence if they are the parent of an excluded child who is found in a public place, during school hours, during the first 5 days of the exclusion (or other days specified within the exclusion notice when the period of exclusion is 5 days or less).

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<sup>5</sup> [2017] UKSC 28

- 2.2.2 Pursuant to sections 105 and 106 of the Education and Inspections Act 2006 an authorised officer of the Local Authority is permitted to issue a PN in respects of an offence under section 103(3) when that officer has reason to believe that the offence has been committed.
- 2.2.3 On conviction this offence carries a maximum fine of £1,000.

## **3. Penalty Notices – How the system will operate in Swindon**

### **3.1 Authority to Issue**

- 3.1.1 A Penalty Notice (PN) may be issued in a number of circumstances, such as:
- Where a school reports that a child has had a period of unauthorised absence;
  - A penalty notice must be considered of 10 sessions (usually equivalent to 5 school days) of unauthorised absence within a rolling 10 school week period.
  - The threshold can be made up of a combination of any type of unauthorised absence eg. 4 sessions of holiday taken in term time plus 6 sessions of arriving late after the register closes, all taken within any 10-week period. The unauthorised absence can be consecutive or not.
  - The 10-school week<sup>6</sup> period 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).
  - Where Local Authority or Police officers find a child of compulsory school age, in a public place, during school hours (i.e. during truancy patrols).
- 3.1.2 The Head Teacher (or authorised Deputy or Assistant Head) may issue PNs in respects of children who are registered pupils at their school. However, in the Borough of Swindon, it has been agreed that the Local Authority, rather than individual schools, may issue PNs when an offence has been committed in relation to non-school attendance. This arrangement facilitates the avoidance of duplication of penalty notice or prosecution arrangements and coordination with other local authorities.
- 3.1.3 It is important to note that when a school makes a report to the Local Authority they are, in effect, reporting a criminal offence. Therefore, in the Borough of Swindon, the decision to issue a PN is made by the Local Authority based upon the specific circumstances of the case, having had consideration of this Code of Conduct and any statutory guidance.
- 3.1.4 The Local Authority uses four codes to distinguish between different types of PN's:
- Code 1: Where a pupil has been absent from school for a known reason (e.g. an unauthorised holiday);
  - Code 2: Where a pupil has been absent from school for an unknown reason;

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<sup>6</sup> A school week is any week in which a school meets at least once



- Code 3: Where a pupil has been found in public during school time not whilst excluded;
- Code 4: Where an excluded pupil has been found in a public place (i.e. an offence under section 103(3) of the Education and Inspections Act 2006).

3.1.5 PNs will be issued by an authorised officer of the Local Authority.

3.1.6 Schools can request a penalty notice through completion of an online JADU form. This software system will also keep the school up to date with the current position of the issue of the penalty notice.

3.1.7 The Police can notify the Local Authority if they are considering requesting a penalty notice by emailing them at [FPN@swindon.gov.uk](mailto:FPN@swindon.gov.uk)

3.1.8 Penalty notices can be issued outside the national framework detailed in [Working Together to Improve School Attendance 2024](#), for individual cases where it is determined this is the most appropriate course of action.

## **3.2 Amount of Penalty & Payment Deadlines**

3.2.1 A PN must be paid within 28 days of it being served. The Local Authority has no power to extend this deadline or accept payment after deadline has passed. The PN is deemed served on the second working day after it is posted.

3.2.2 If the 1<sup>st</sup> PN is paid within 21 days the penalty amount is £80. If the PN is paid after day 21 (and on or before day 28) the penalty amount is £160. The Local Authority has no power to extend the reduced payment period or accept payment by instalments.

3.2.3 With any second penalty notice issued to the same parent for the same child within a rolling 3-year period will be charged at a higher rate of £160 with no option for this second offence to be discharge at the lower rate of £80.

3.2.4 A national limit of 2 penalty notices can be issued to a parent for the same child within a rolling 3-year period, so if a 3<sup>rd</sup> (or subsequent) offence(s) occurs other options would be considered e.g. prosecution or other attendance legal interventions.

3.2.5 The three-year period begins from the date of the first penalty notice issued on or after 19 August 2024.

- 3.2.6 Details as to how to pay a PN are contained within the PN itself.
- 3.2.7 PNs are issued on a 'per offence' basis. Therefore, and by way of an example, if a parent takes their two children on holiday they will receive two PN's as they have committed two offences (one offence for each child who failed to attend school regularly). Similarly, if there is more than one parent, each parent will receive separate PNs.
- 3.2.8 There are no changes to the operation of penalty notices for pupils found in a public place during the first 5 days of an exclusion - the amounts remain £60/£120 and does not count towards the national limit as part of the escalation process in the case of repeated offences for non-attendance.
- 3.2.9 The payment of a PN (within the prescribed period) discharges a parent's liability for prosecution for an offence under section 444 of the Education Act 1996 or section 103(3) of the Education and Inspections Act 2006, which have arisen out of the circumstances for which the PN was issued, and as such no prosecution can be commenced in respect of this.
- 3.2.10 Any revenue collected from penalty notices is ring fenced for attendance. Monies should be first used for the administration of the penalty notice system and prosecution. If surplus remains, this can be spent on attendance support. Any surplus at the end of the year is paid to the Secretary of State. In practice, support is defined as any activity intended to improve attendance, not including a penalty notice or prosecution, in line with the [Working Together to Improve School Attendance Guidance 2024](#).

### **3.3 Appeal / Withdrawal of Penalty Notices**

- 3.3.1 There is no statutory right of appeal against a PN.
- 3.3.2 The Local Authority may withdraw a PN where it determines that:
- It should not have been issued – i.e. it was issued outside the terms of the Code of Conduct or where no offence has been committed; or
  - It has been issued to the wrong person; or
  - It is materially defective.
- 3.3.3 Where a PN is withdrawn on the ground of being materially defective, the Local Authority will issue a Notice of Withdrawal and will refund any payment made

under that defective PN. At the same time as issuing the Notice of Withdrawal the Local Authority may re-issue a corrected PN.

- 3.3.4 Where a PN is withdrawn for a reason other than it being materially defective a Notice of Withdrawal shall be sent to the parent and, in the event that the PN has been paid, any payment made shall be refunded. A Notice of Withdrawal, in these circumstances, also acts to discharge a parent's liability for prosecution for an offence under section 444 of the Education Act 1996 or section 103(3) of the Education and Inspections Act 2006, which have arisen out of the circumstances for which the PN was issued, and as such no prosecution can be commenced in respects of this.

### **3.4 Circumstances where a Penalty Notice may / may not be issued**

- 3.4.1 If the parent satisfies all of the criteria below they may receive a PN
- Where the parent has not, within the proceeding 3 years, been convicted of, or cautioned for, the offence for which the PN would be issued (for a PN issued for an offence under section 444(1) of the Education Act 1996 this would include a conviction or caution under section 444(1A)) regardless of whether the prosecution was in relation to the same or a different child;
  - If in an individual case the local authority believes a penalty notice would be appropriate, they retain the discretion to issue one before the threshold is met.
- 3.4.2 If any of the following apply the parent may not receive a PN:
- The parent has, within the preceding 3 years, been convicted of, or cautioned for, the offence for which the PN would be issued (for an PN issued for a suspected offence under section 444(1) of the Education Act 1996 this would include a conviction or caution under section 444(1A)) regardless of whether the prosecution was in relation to the same or a different child;
  - Where the parent has received 2 PNs, in respect of the same child, in the previous 3 years;
  - Where there is an outstanding prosecution against the parent for the offence for which the PN would be issued (for a PN issued for a suspected offence under section 444(1) of the Education Act 1996 this would include a conviction or caution under section 444(1A));
  - In respect of the offence under section 103(3) of the Education and Inspections Act 2006 where the child has previously (during the same period of exclusion) been found in a public place.

- 3.4.3 In cases falling within paragraph 3.4.2 the Local Authority may opt to proceed to prosecution.

### **3.5 Non-Payment**

- 3.5.1 Where a PN is not paid the parent may face prosecution for an offence. It is important to note that the non-payment of the PN is not, in of itself, an offence. Accordingly, any prosecution will be commenced under section 444(1) or 444(1A) of the Education Act 1996 or section 103(3) of the Education and Inspections Act 2006.

### **3.6 Providing Support**

- 3.6.1 When deciding to issue a penalty notice or not, consideration should be given if support should be appropriate. If yes, the specific circumstances of the case should be considered to decide which available tool is most likely to change behaviour and improve attendance.
- 3.6.2 Before a penalty notice is issued the following points should be considered
- Is the penalty notice the best available improvement tool to change behaviour and improve attendance?
  - Is issuing a penalty notice appropriate after considering any obligations under the Equality Act 2010?
  - Is it in the public interest to issue a penalty notice?
- 3.6.3 In cases where the national threshold is met and support is appropriate, that support should be continued or provided straightaway. In most cases this support is provided at school level and should start early when absence issues are first detected.
- 3.6.4 In deciding whether support is appropriate of not, the school and local authority (and police, if involved) should consider whether the cause of the absence is something for which support could be provided.
- 3.6.5 Support can be any activity intended to improve the child's attendance not including issuing a penalty notice or prosecution.

- 3.6.6 An example of where support would not be appropriate is in cases where the absence is clearly condoned by the parent with no mitigating factors, such as a holiday taken in term time.
- 3.6.7 Schools should evidence the support they have provided for individual cases by utilising the Attendance Graduated Response 2024-25 document available from the [Swindon Hub for Education](#) before issuing a penalty notice

### **3.7 Notice to Improve**

- 3.7.1 If the threshold is met and offers of support have not been engaged with by the parent(s) or have not worked then a Notice to Improve should usually be sent. This is to make clear that without improvement or engagement in support, legal action is likely to be taken. The Notice to Improve will be issued by the Local Authority at the request of the school or review of the evidence provided as appropriate.
- 3.7.2 The Notice to Improve Should include:
- The pupil's attendance record and details of the offence(s)
  - The benefits of regular attendance and parents' duty under section 7 of the Education Act 1996
  - Support/opportunities for support provided so far
  - Opportunities for further support and the option to access previously provided support that was not engaged with if appropriate
  - Risk of a penalty notice being issued or prosecution considered if improvement is not secured within the improvement period
  - A clear timeframe for the improvement period of between 3 and 6 weeks
  - Details of what sufficient improvement within that timeframe will look like in the case (e.g. no further offences within a certain timeframe or attendance improved within a certain timeframe)
  - The grounds on which a penalty notice may be issued before the end of the improvement period
- 3.7.3 The length of the improvement period will be determined on a case by case basis up to maximum limit of 6 weeks.
- 3.7.4 What sufficient improvement looks like should be decided on a case by case basis.
- 3.7.5 Where it is clear that improvement is not being made, a penalty notice can be issued before the improvement period has ended.

- 3.7.6 A Notice to Improve should only be used in cases where support is appropriate. They do not need to be issued in most cases for term time holiday where a simple warning by the school that a penalty could be issued, if an unauthorised holiday is taken, will suffice.
- 3.7.7 A Notice to Improve does not need to be issued in every case where support is appropriate. The authorised officer can choose not to use one, for example where they believe it would not have any behavioural impact eg. where the parent has recently had one for a similar offence.

### **3.8 Pupils who have moved school or local authority area within the 3-year rolling period**

- 3.8.1 If a pupil has moved schools within the previous three years within the local authority area, the local authority will check if a penalty notice (or notices) has been issued in the previous three years.
- 3.8.2 If the pupil has moved between local authority areas in the previous 3 years, either because the family has moved house or school, additional checks will be carried out with the previous local authority to confirm if a penalty notice has been issued to the parent for a given pupil within the specified timeframe. Checks will be carried out by the local authority, based on information supplied by the current school.
- 3.8.3 The local authority has set up the following email address to facilitate information sharing between local authorities  
[crossborder.penaltynotice@swindon.gov.uk](mailto:crossborder.penaltynotice@swindon.gov.uk)
- 3.8.4 In cases where the previous local authority is not known or the information cannot be, or is not, provided by the previous local authority, it should be assumed that the parent has not previously received a penalty notice and the escalation process started as a new case.

## **4. Key definitions / phrases**

### **4.1 Parent**

- 4.1.1 Section 576 of the Education Act 1996 defines a parent as being someone who is a parent of a child, or someone who is not a parent of a child but who has parental responsibility for a child, or someone who has care of the child.
- 4.1.2 Accordingly all biological parents will be parents, as will adopted parents or any other person on whom parental responsibility has been granted (except where the person is a corporate entity, such as a local authority).
- 4.1.3 Other persons who have care of the child may also be classed as a parent, such as grandparents, step-parents etc.
- 4.1.4 Any person falling within this definition is capable of committing the relevant offences.

### **4.2 Regular Attendance**

- 4.2.1 A child attends regularly if they attend in accordance with the rules of that school. This means that a child must attend school on every day that the school requires him or her to do so and failure to do this may amount to a failure to attend school regularly.

### **4.3 Unauthorised Absence**

- 4.3.1 An absence is unauthorised when it has not been authorised by the Head Teacher (or authorised Deputy) of a school.
- 4.3.2 A school registration certificate will classify unauthorised absence using one of four possible codes:
  - Code G – Unauthorised Holiday
  - Code N – Reason not yet provided
  - Code O – Absent without authorisation
  - Code U – Arrived in school after registration closed
- 4.3.3 Code L is used when a child attends school after the registers for a registration session opens but before it closes. This differs from Code U which is used where the child does not attend until after the registration session has ended.

- 4.3.4 Registration sessions take place twice a day (in cases where the school is open for a full day). The morning registration session must take place before the commencement of lessons. The afternoon session can take place at any time as specified by the school.
- 4.3.5 If a child fails to attend school for an entire day this will be marked as two unauthorised absences (one for each registration session).



## 5. Investigation Process

+ This flow chart is applicable for penalty notices issued one or after the 19 August 2024.

+ The 3-year rolling period begins from the date the 1<sup>st</sup> penalty notice was issued (on or after 19 August 2024).

+ If the 1<sup>st</sup> PN is paid within 21 days the penalty amount is £80. If the PN is paid after day 21 (and on or before day 28) the penalty amount is £160. Any second PN issued to the same parent for the same child within a rolling 3-year period will be charged at a higher rate of £160.

