



Derby City Council

PENALTY NOTICE CODE OF CONDUCT – Revised July 2025

The purpose of this local code of conduct is to ensure that the penalty notices for school absence are issued in a manner that is fair and consistent across Derby City Council. The code sets out the arrangements for administering penalty notices in Derby City and must be adhered to by anyone issuing a penalty notice for school absence in the 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.

1. Legal Framework

1.1 Regular and punctual attendance at school is a legal requirement under Section 7 of the Education Act 1996.

1.2 Under Section 444 of the Education Act 1996, an offence occurs if a parent/carers fails to secure a child's regular attendance at school at which they are a registered pupil, and the absence is not authorised by the school and none of the statutory defences apply.

1.3 In February 2004, the Anti-Social Behaviour Act 2003, section 23, sub-section 1 added sections 444A and 444B after section 444 of the Education Act 1996. These sections enable penalty notices to be used as an alternative to prosecution and provide parents with the opportunity to discharge liability for conviction of an offence under section 444 by paying a financial penalty to the Local Authority.

1.4 Section 105 of the Education and Inspections Act 2006 enables penalty notices to be issued to parents in relation to an excluded pupil of compulsory school age, should they fail to ensure their child is not present in a public place during school hours in the first five days of each and every fixed period or permanent exclusion without reasonable justification.

1.5 Penalty notices 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).

1.6 The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.



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1.7 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.

1.8 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).

1.9 When issuing penalty notices, the Local Authority must have regard to The Education (Penalty Notices) (England) Regulations 2007, the guidance issued by the Secretary of State, and the following legislation: Human Rights Act 1998, Equality Act 2010, Data Protection Act 1998.

2. Rationale

2.1 Penalty notices must be applied consistently and fairly.

2.2 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.

2.3 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, and only resort to legal enforcement when necessary. The aim is that legal enforcement is reduced by taking a supportive approach to tackle the barriers for irregular school attendance.

2.4 The national framework for penalty notices is based on principles that penalty notices should be used in cases where:

2.4 (a) Support is not appropriate (e.g. a term time leave)

2.4 (b) Support has been offered and not engaged with or not worked.

2.4 (c) A penalty notice is deemed an appropriate tool to change parental behaviour and improve attendance for that family.



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3. Escalation in cases of repeat offences

3.1 A penalty notice is an out of court settlement which is intended to change parental behaviour without the need for criminal prosecution. Where a repeated penalty notice is being considered for the same parent and same child a further penalty notice is unlikely to be the most appropriate tool available. A limit of no more than 2 penalty notices being issued to the same parent and child within a 3 year (calendar year) rolling period will apply from the 19th August 2024. Notices prior to this date will not count as part of this escalation. The Local Authority retains the right to refer matters straight to Court if a Penalty Notice is not deemed appropriate.

3.2 The first penalty notice issued to the parent for that child will be charged at £160 if paid within 28 days reducing to £80 if paid within 21 days.

3.3 Where it is deemed appropriate to issue a second penalty notice to the same parent and child within the 3-year period of the first notice, the second penalty notice is charged at a flat rate of £160 if paid within 28 days.

3.4 A third penalty notice must not be issued within a 3-year period. In any case where the threshold has been met for a third (or subsequent) time within the 3 years period, a further penalty notice cannot be issued, and alternative action should be considered instead. This may include considering prosecution but can include other legal interventions.

3.5 In cases where the 3 years has elapsed (issue date of 1st penalty notice) a further penalty notice can be issued if appropriate. The 3-year escalation will commence again.

3.6 For the purposes of paragraphs (3.2) and (3.3), any penalty notice issued under section 444A(1) of the 1996 Act before 19th August 2024 is to be disregarded.

3.7 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.

4. Circumstances where a penalty notice may be issued

4.1 The school have published their attendance policy and/or written notification in the current academic year which includes a warning to parents that penalty notices can be issued in instances where a child takes an unauthorised leave of absence.



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4.2 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 5 school days (10 sessions) within a rolling (100 sessions) 10 school weeks. This minimum period may only be relevant where a leave of absence in term time has been taken and support is not appropriate in this instance. Otherwise, penalty notices should be considered as per 4.5.

4.3 The national framework states the following; 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. Derby City Council retain the right to exercise this discretion. An example of when such discretion could be used is where a child has a pattern developing where fewer than 5 days of unauthorised absence occurs that is linked to holidays or trips away.

4.4 The use of Penalty Notices will be restricted to two per parent per the same child in a 3-year rolling period (see point 3)

4.5 Where a child has irregular attendance which includes the O and U codes, school should take a 'support first' approach as set out in the DfE guidance "Working together to improve school attendance". Where a 'support first' approach is not deemed appropriate or has failed, then a penalty notice can be considered if the Local Authority deems this as an appropriate course of action.

4.6 When a pupil persistently arrives late, schools should investigate the reason for this and offer support where appropriate to rectify the situation. Where the arrival time is after the close of registration period (Guidance for Schools and Local Authorities Absence and Attendance Codes state the register for pupils should close maximum 30 minutes after the register was taken), the late mark, code U, an unauthorised absence, should be recorded.

4.7 The Inclusion and Attendance Service will consider requests and determine the appropriate response based on the evidence provided, the level of unauthorised absence and previous involvement. The decision to request a Penalty Notice will be discussed by the Inclusion and Attendance Officer Linked to the school/academy. The decision to issue a Penalty Notice will be made on a case-by-case basis. When requesting Penalty Notices, Schools should adopt the DfE guidance 'Working together to improve school attendance' and follow the National Framework demonstrating why a penalty notice is the appropriate method to improve attendance. When the threshold is met, schools should make an assessment on a case-by-case basis whether a penalty notice can and should be requested.



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The following should be considered:

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 case and demonstrate why a penalty notice is the appropriate method to improve attendance.

The school should evidence support is specific to the child and family and is any activity intended to address the barriers to attendance and improve the child's attendance. For example, correspondence, meetings, additional support within school (e.g. learning support, change to class, tutor group, changes to timetable, support with uniform etc) multi-agency meetings referrals to relevant agencies, parenting contracts, transport provision etc. This is not an exhaustive list.

4.8 For penalty notices issued because of leave during term time, the amended Education (pupil regulation) (England) regulations state that the Head Teacher (or authorised person) may not grant any leave of absence during term time unless there are "exceptional circumstances" that apply to that application.

4.9 A penalty notice can be issued when leave of absence has been taken but the school have not received and authorised a request for the same in advance. The school must evidence reasonable attempts of contact during the absence period.

4.10. Excessive delayed return from a leave of absence: where leave has been granted by the head teacher, parents should be informed by letter of an agreed return date. Extended periods of absence linked to holidays and/or trips away of 20 or more school days are likely to result in prosecution action rather than in a penalty notice being issued.

4.11. In all cases before a penalty notice is issued the following questions should be considered.

(a) Is the penalty notice the best available improvement tool that is most likely to change behaviour and improve attendance for that child? Or would further support or one of the other legal tools be more appropriate?

(b) Is issuing the penalty notice appropriate in this case after considering any obligations under the Equality Act 2010, such as where a pupil has a disability?

(c) The Local Authority should consider is it in the public interest to issue a penalty notice, as the Local Authority as an independent prosecutor would be responsible for deciding whether to prosecute for the original case in cases of non-payment.



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(d) Any prosecution would be for the offence to which the notice relates rather than non-payment of the notice and will follow the usual procedures of a prosecution for irregular attendance (including considering an Education Supervision Order (ESO) or Parenting Order (PO) as an alternative, or in addition to prosecution).

(e) A key consideration in deciding whether to issue a penalty notice for truancy will be whether it can be effective in helping to get the pupil who is truant back into school or an alternative provision.

(f) Excluded child in a public place: when a child of compulsory school age is excluded on disciplinary grounds, the parent of that child, provided they have been served with a Notice under Section 104 of the Act, must ensure that the child is not present in a public place during school hours. This is within the first five days of that exclusion without reasonable justification. Where parents fail to ensure their child is not in a public place under these circumstances, a penalty notice may be issued.

(g) Notice to Improve

A Notice to Improve will be issued as a final opportunity for a parent to engage with the support offered and improve their child's attendance before a Penalty Notice is considered. This notice will be requested by the school or academy when:

- The national attendance threshold has been met, (not for the purpose of term time leave)
- Support has been identified as appropriate,
- However, the parent has either not engaged with the support offered, or the support has not led to improvement.

Once agreed upon, the Notice to Improve will be jointly issued by the school and the Local Authority. It serves as a final warning and a last chance for the parent to work with the support available before formal enforcement action is taken.



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5. Procedures for Issuing a penalty notice

5.1 The issuing of penalty notices will be undertaken by staff authorised by the Local Authority in order to ensure compliance with the regulations and that the provisions of this code does not conflict with other forms of statutory interventions pursued by the Inclusion and Attendance Service.

5.2. Tracking of penalty notices through the escalation process (Point 3): Any Education establishment requesting a penalty notice should include where a previous penalty notice has been issued within the 3-year period, for that parent and child via the request for a penalty notice. Where a child has moved within the Local Authority in the previous 3 years the Local Authority will hold this information. Where a child has moved out of area a central email will be used to track this information.

5.2. Penalty Notices will be issued by the Local Authority by post.

5.3. With certain exceptions, parents will receive a warning letter and 'Notice to improve' (4.11 (g)) letter before a penalty notice is issued. An exception is where unauthorised leave of absence in term time has been taken although school should respond to such a request and inform a parent in writing that a penalty notice may be issued if the leave is taken and not authorised by the school.

5.4. The Local Authority will consider requests to issue a penalty notice from Schools/Colleges/Academies and Free Schools in the local authority where agreed within the city boundaries.

5.5. The Local Authority advises that Schools/Academies and Alternative provisions maintain a clear consistent and robust approach towards granting leave of absence for exceptional circumstances, in line with their Attendance and Equal Opportunities policies and the Human Rights Act.

5.6. A penalty notice may not be considered where a parent has been subject to previous convictions under section 444(1) Or (1a) Education Act 1996 within the previous 5 years. This will also be considered where a parent has been prosecuted for siblings.



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5.7 'Support' is defined as any activity intended to improve the pupil's attendance, not including issuing a penalty notice or prosecution. As part of this consideration, schools and local authorities should consider what suitable forms of support are currently available in school and where necessary from other services and agencies in the area. They should then decide whether any of those things are appropriate in the individual cases and for those that are appropriate, whether they have been provided previously or could be provided now instead of taking legal action. The Local Authority's decision on whether sufficient support has been provided before issuing a penalty notice should be treated as final.

6. Payments of penalty notices

6.1 The collection of payments and issuing receipts will be administered by the Inclusion and Attendance Service on behalf of the Local Authority with support from the Revenue Protection Team.

6.2. Payment in full discharges a parent/carer's liability for the period in question.

6.3. The Local Authority will provide the school with confirmation of the payment of the penalty fee on request. The Inclusion and Attendance Service retains this revenue to cover the costs of issuing or enforcing notices.

6.4. All penalty notices will be issued in a timely manner and monitored by the Local Authority. This will ensure consistent and equitable delivery and ensure cohesion with other enforcement action.

7. Non-Payment of penalty notices

7.1 As from 19 August 2024, if Payment of a penalty notice is made within 21 calendar days of receipt of the notice the charge is £80 and payment after this time but within 28 calendar days of receipt of the notice the charge is £160.

7.2 Payment in full discharges parent/carer liability for the period in question and they cannot be prosecuted under other enforcement powers for the period covered by the penalty notice. A second offence will be charged at the higher rate of £160 with no option for the second offence to be discharged at the lower rate of £80.

7.3. A non-payment of a penalty notice will incur legal proceedings through the Single Justice Procedure (SJP). The prosecution is not for the non-payment but for the failure to ensure regular attendance during the period mentioned.



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8. Withdrawing a penalty notice once issued

8.1 When considering legal proceedings for non-payment of a penalty notice, the Local Authority may request it be withdrawn if it determines that the penalty notice:

- ought not to have been issued i.e., it was outside the terms of this Code of Conduct
- has been issued to the wrong person; or contains material errors.

8.2 Where the requesting school has considered the circumstances and may have been provided evidence to support the absence.