

## **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 Gloucestershire County Council. The code sets out the arrangements for administering penalty notices in Gloucestershire County Council 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.

### **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. A penalty notice can only be issued by an authorised local authority officer.
6. 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.
7. 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

8. 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.
9. 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.
10. 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 early before absence becomes entrenched.
11. 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?

12. 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 weeks<sup>1</sup>, with one of, or a combination of the following codes:

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<sup>1</sup> 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).

- (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. 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.
14. If repeated penalty notices are being issued and they are not working to change behaviour they are unlikely to be 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. At this point GCC will consider prosecution through the magistrate's court under Section 444(1) of the Education Act 1996.
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.

### **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:
  - Has sufficient support already been provided? Sufficient support will include consideration of: Support for the child, parents and the family as outlined in the [Steps to take before initiating legal proceedings](#)
  - 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).
18. GCC will issue the notice to improve on behalf of the school; this will be requested through the CAPITA One FPN application. All schools will be given a login and training on procedures to follow. The Notice to Improve will be requested by the school and issued in the name of the Local Authority, by email, to the parent(s). Schools should request this as soon as the 10-week period has taken place.
19. The recommended length of improvement contained in the Notice to Improve should be between 3 and 6 weeks, dependent on the individual circumstances of the case; the school will specify this when requesting the Notice to Improve.
20. During the improvement period, sufficient improvement shall be no further unauthorised absences (unless an alternative, tailored to the family, has been previously agreed with GCC officers).

21. Schools will monitor the improvement period and will request a penalty notice through the CAPITA application if the criteria are met (see considerations under 16).

### **Penalty Notices for a child seen in public within 5 days of being excluded**

22. Fixed penalty notices may also be issued where parents allow their child to be present in a public place during school hours without reasonable justification during the first 5 days of a fixed period or permanent exclusion. The parents must have been notified by the school at the time of the exclusion the days that the child must not be present in a public place.
23. GCC will issue the penalty notice on behalf of the school; this will be requested through completing the Penalty Notice Request form available on Schoolsnet. The school should send the request with the supporting documents of the fixed period or permanent exclusion and the letters to the parents informing them that their child was seen in a public place, warning them that a penalty notice may be issued to them. The penalty notice is not requested through the CAPITA One FPN application. Schools should send their documents via egress to [attendance@gloucestershire.gov.uk](mailto:attendance@gloucestershire.gov.uk).
24. The fines for this penalty notice are set at £60 for the first 21 days after it has been issued, rising to £120 after 21 days to 28 days after issue.

### **How authorised officers will work together**

25. Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour.
26. An authorised officer is a local authority officer.
27. Where the school or police request that the LA issues the penalty notice, they need to:
- Complete the request on the CAPITA application, which includes attaching all the required documents electronically, dependent on the reason for the request i.e., for a G, U, O or combination of codes for unauthorised absences. Guidance can be found on the Attendance Schoolsnet page.
  - Schools should request the Penalty Notice as soon as the criteria has been met (but no later than 10 weeks from the date of the offence). This will enable GCC to issue the PN in a timely manner, in accordance with the prosecution time limits.
28. Whoever is issuing the penalty notice (in Gloucestershire this is the LA) 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.

29. The LA will inform the school about whether penalty notices are paid, withdrawn or prosecuted for non-payment through schools viewing the information on the CAPITA application.
30. Where pupils move between local authority areas, Gloucestershire County Council can be contacted on [crossborder.penaltynotice@gloucestershire.gov.uk](mailto:crossborder.penaltynotice@gloucestershire.gov.uk) to find out if penalty notices have been issued previously.
31. Where pupils attend school in Gloucestershire but live in a different LA, Gloucestershire County Council will liaise with the home LA to ensure consistency of approach for all pupils attending Gloucestershire Schools.