

National Framework for Penalty Notices for school absence – implementation guide.

Following extensive development with schools and local authorities, a new National Framework for Penalty Notices for school absence is being introduced through changes to secondary legislation. The regulations will come into effect from the 19th August 2024. A penalty notice is an out of court settlement which is intended to change parental behaviour without the need for a criminal prosecution

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.

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.
- This can be made up of a combination of any type of **unauthorised** absence, such as 4 sessions of holiday taken in term time plus 6 sessions of arriving late after the register closes, all taken within any 10 school week period. The EWS will assess these as they occur.
- The unauthorised absence sessions can be consecutive (e.g. 10 sessions of holiday in one week) or sporadic (e.g. 6 sessions of unauthorised absence in 1 week and 1 per week for the next 4 weeks).
- The 10 school week 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).
- 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:
 - 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 a final opportunity to engage in support before they are issued with a penalty notice if it is appropriate in the individual case.
- 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).

How the changes will work in practice

When a member of school staff who is authorised to issue penalty notices becomes aware that the threshold has been met, they must consider whether they can issue one to the parent(s) in question in relation to any or all of those unauthorised absences and, if so, whether to request the local authority to issue a penalty notice or not. For each case, they should ask:

- a) Is support appropriate for this particular cause (or causes) of absence?
 - i. If **yes**, staff should weigh up the specific circumstances of the case and decide which available tool is most likely to change behaviour and improve attendance. Either:
 - continue or provide support without a penalty notice or Notice to Improve (e.g. where a parent is engaging well in the support, or other supportive routes could be tried)
 - issue a Notice to Improve and continue to provide support (e.g. where a parent is not engaging well in support)
 - issue a penalty notice (e.g. where a parent has already had a Notice to Improve and not engaged in support), subject to the further considerations given in b) below.
 - ii. If **no**, a penalty notice should be issued (e.g. a holiday in term-time) subject to the further considerations given in (b) below.
- b) In all cases, before a penalty notice is issued, the following questions should also be considered:
 - i. Is a penalty notice the best available improvement tool that is most likely to change behaviour and improve attendance for this particular family, or would further support or one of the other legal tools be more appropriate? If legal action is most appropriate, is a penalty notice the most appropriate legal intervention for this individual case?

- ii. Is issuing a penalty notice appropriate in this case after considering any obligations under the Equality Act 2010, such as where a pupil has a disability?
- iii. (For the local authority) Is it in the public interest to issue a penalty notice, bearing in the mind that the local authority as an independent prosecutor would be responsible for deciding whether to prosecute for the original case in cases of non-payment? If the answer is yes to i-iii) above, a penalty notice should be issued. If not, another tool should be used to improve attendance.

In Cheshire West and Chester it will be the local authority who issues a penalty notice after referral from a school. Processes for how this will work locally must be set out in the Local Code of Conduct.

Whatever action is taken after the threshold has been met, schools, and local authorities where appropriate, should continue to monitor the impact of the action, and if it does not lead to improvement, they should review the decision and take alternative action. Where needed, cases can be discussed during Targeting Support Meetings.

The new national framework does not prevent a penalty notice from being used in other cases where an offence has been committed. To secure national consistency, our intention is that the national threshold should operate as the norm and local authorities should not introduce their own alternative thresholds.

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

Providing support and using a 'Notice to Improve' warning period

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.

In deciding whether support is appropriate or not, the school and local authority should consider whether the cause of the absence is something for which support could be provided. If support could be provided, the school and the local authority should then consider what suitable forms of support are currently available in school and where necessary by other services and agencies in the local area. They should then decide whether any or all of those things are appropriate in the individual case and for those that are appropriate, whether they have been provided previously or could be provided or continued now instead of taking legal action.

Support can be any activity intended to improve the child's attendance not including issuing a penalty notice or prosecution. Examples of support include action taken in school such as written communications to parents and meetings with parents and pupils to understand

barriers and plan targeted support together. The form of support will be specific to the pupil and family and could include a range of actions including additional learning support, moving tutor group or school uniform provision. Some support would involve the local authority or other community services such as an early help assessment and support, an attendance contract, transport provision or housing support.

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**.

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. This can be sent by either the school or local authority or co-signed by both. The arrangements for who issues the Notice to Improve should be set out clearly in the local code of conduct.

The **Notice to Improve** should include:

- a. The pupil's attendance record and details of the offence(s)
- b. The benefits of regular attendance and parents' duty under section 7 of the Education Act 1996
- c. Support/opportunities for support provided so far
- d. Opportunities for further support and the option to access previously provided support that was not engaged with if appropriate
- e. Risk of a penalty notice being issued or prosecution considered if improvement is not secured within the improvement period
- f. A clear timeframe for the improvement period of between 3 and 6 weeks
- g. 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)
- h. The grounds on which a penalty notice may be issued before the end of the improvement period

The length of the improvement period should be decided locally and in Cheshire West this has been set as 20 days in accordance with the local code of conduct. It is good practice to monitor improvement throughout this time period and adapt the approach where necessary.

What sufficient improvement looks like should be decided on a case by case basis. For some families, no further unauthorised absence should be tolerated, and in other cases some can be tolerated if the family is showing engagement and progress. This should be made clear to the parent in the Notice to Improve letter.

Where it is clear that improvement is not being made, a penalty notice can be issued before the improvement period has ended (e.g. if the **Notice to Improve** stated that there should be no further unauthorised absences in a 6 week period but the pupil is absent for an unauthorised absence in the first week there is no need to wait the full 6 weeks before issuing). The Notice to Improve should make clear on what grounds it will be considered to proceed to a penalty notice before the end of the improvement period,

Authorised officers are expected to defer to the local authority's judgement about whether sufficient support has been provided before issuing a penalty notice. The local code of conduct should, however, set out guidance on sufficient support and this should be agreed in consultation with schools and other authorised officers. This will differ from case to case, but the local code of conduct should set out the questions that should be asked and actions that should have been taken to reach a decision.

A **Notice to Improve** should only be used in cases where support is appropriate. They do not need to be issued in most cases of **term time holiday** where a simple warning by the school that a penalty could be issued if unauthorised holiday is taken will suffice.

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 (such as in a case where the parent has recently had one for a similar offence).

Escalation in cases of repeat offences

If repeated penalty notices are being considered for the same parent, a further penalty notice is unlikely to be the most appropriate tool available. Therefore, from 19 August 2024, a limit of no more than 2 penalty notices being issued to the same parent for the same pupil within a 3year rolling period will apply.

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

Where it is deemed appropriate to issue a second penalty notice to the same parent for the same pupil within 3 years of the first notice, the second notice is charged at a flat rate of £160 if paid within 28 days.

A third penalty notice must not be issued within a 3 year period. Therefore, in cases where the threshold is met for a third (or subsequent) times within those 3 years, a penalty notice cannot be issued and alternative action should be taken instead. This will often include considering prosecution, but may include other tools such as one of the other attendance legal interventions. In these cases, once 3 years has elapsed since the first penalty notice was issued to the parent a further penalty notice can be issued if appropriate, but in most

cases, it will not be the most effective tool for changing what may have now become an entrenched pattern of behaviour.

Where a penalty notice has been issued to an individual parent in respect of an individual pupils records will need to be retained for at least 3 years from the date of issuing any penalty notice in order for the escalation procedures to be followed.

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. In summary:

Scenario	Counts towards the limit?
Penalty notice issued by any authorised officer and paid within 21 days	Yes
Penalty notice issued by any authorised officer and paid within 28 days	Yes
Penalty notice issued by any authorised officer but later withdrawn	No
Penalty notice issued by any authorised officer. The penalty notice was not paid and the local authority prosecuted for the original offence but the Court found the parent not guilty.	No
Penalty notice issued by any authorised officer. The penalty notice was not paid and the local authority prosecuted for the original offence and the Court found the parent guilty.	Yes

The three-year period begins from the date of the first penalty notice issued on or after 19 August 2024. For example, if the first penalty notice is issued on 18th September 2024, a second penalty notice issued to that parent in respect of that child on or before the 17th September 2027 would be charged at £160. A third penalty notice could not be issued within that timeframe and so in cases where the national threshold is met for a third or subsequent time another action should be taken instead.

Revenue from penalty notices

The penalty notice system is not a money making scheme and local authorities should not have income targets. Any revenues collected through the system must be ring fenced for attendance. Evidence of penalty notices being issued outside of the principles of the

National Framework due to income targets will be monitored through the PRMA census return.

Monies should be first used for administration of the penalty notice system and prosecution. Any surplus must be paid to the Secretary of State.