

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

### **Legal basis**

2. 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).
3. [The Education \(Penalty Notices\) \(England\) Regulations 2007](#) (and subsequent amendments, 2024) set out how penalty notices for school absence must be used.
4. 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.
5. The national framework for penalty notices is published alongside the statutory guidance '[Working together to improve school attendance](#)'. This provides further national guidance on the operation of penalty notice schemes for school absence in England.
6. 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/carers with day-to-day responsibility for the pupil's attendance or the parent or parents who have allowed the absence (regardless of which parent/carer has applied for a leave of absence).

## Rationale

7. 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.
8. 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.
9. 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.
10. 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?

11. 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:

(a) code G (the pupil is absent without leave for the purpose of a holiday),

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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).

(b) 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

(c) code U (the pupil attended after the taking of the register ended but before the end of the session, where no other code applies)

12. If in an individual case the local authority (or other authorised officer) believes a penalty notice would be appropriate, they retain the discretion to issue one before the threshold is met.
13. 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. Medway Council will consider applying for summons for prosecution in Magistrates' Court for such cases.
14. 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.
15. A penalty notice 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 school must have notified the parents of the days the pupil must not be present in a public place. This type of penalty notice is not included in the National Framework and therefore not subject to the same considerations about support being provided or count towards the limit as part of the escalation process in the case of repeat offences for non-attendance.

### **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:
  - 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
  - Is it in the public interest to issue a penalty notice in this case given Medway Council 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 usually include: Correspondence and telephone calls with parents, inviting parents to a meeting to discuss attendance and supportive intervention to improve attendance? .This may include support from Medway Council services, health services, and partners in the voluntary and community sectors (VCS).  
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?

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.

In cases where support is not appropriate (for example, for holidays in term time), consider on a case-by-case basis.

### **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.

**Medway schools will issue a notice to improve for parentally-condoned absence and unauthorised absence.**

**It will not be necessary to issue a notice to improve for term time holidays or leave of absence.**

The Notice to Improve must include:

- Details of the pupil's attendance record and details of the offences (a copy of the registration certificate should be included).
  - The date range in which 10 or more unauthorised absences occurred.
  - Details of the support provided so far.
  - Opportunities for further support and the option to access previously provided support that was not engaged with.
  - A clear warning that a penalty notice may be issued or prosecution considered if attendance improvement is not secured within the improvement period; this should be between 3 and 6 weeks.
  - A clear timeframe for the improvement period detailing to and from dates.
  - Details of what sufficient improvement within that timeframe will look like.
- At the end of an unsatisfactory monitoring period, schools may request a penalty notice to be issued if this is considered this is the best course of action

to improve attendance. The referral should include evidence of support offered by the school prior to issuing the notice to improve. The notice to improve must comply with Department for Education requirements.

18. Medway Council (as the issuing authority) will issue a penalty notice if all aspects of the Code of Conduct have been met and as the independent prosecutor, will check reasoning on whether a penalty notice should be issued or not, including whether sufficient support has been provided before issuing a penalty notice.
19. Medway Council has rigorous systems in place to record penalty notices issued in relation to each child to ensure that no more than 2 in 3 years are issued.
20. Whoever is issuing the penalty notice 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.

### **Payment of Penalty Notice fines**

21. Arrangements for payment will be detailed within the Penalty Notice.
  - The first penalty notice issued to the parent/carer for a child will be charged at £80 if paid within 21 days, rising to £160 if paid between days 22 and 28.
  - Where it is deemed appropriate to issue a second penalty notice to the same parent/carer for the same pupil within 3 years of the first offence, the second notice is charged at a flat rate of £160 and is payable within 28 days. There is no reduced sum available in this instance.
  - Part payments or payment plans are not acceptable and fines must be paid in full within 21 or 28 days, at the rate specified within the penalty notice.
  - Payment after the deadline may be accepted in exceptional circumstances. In this situation, the higher amount of £160 is usually payable and must be paid immediately and in full.
  - When paying a penalty notice fine, parents are essentially agreeing to an out of court settlement in respect of the unauthorised absences to which the notice refers. Payment in full against the penalty notice discharges the parent's legal responsibility for the period of unauthorised absence outlined in the Notice and the parent cannot be subsequently prosecuted for that period.

- Any revenues collected through the system must be ring-fenced to administer the penalty notice system and prosecute for the original offence in cases of non-payment. If a surplus remains after the system has been administered and any non-payers have been prosecuted, this can be spent on the local authority's attendance support offer.

22. When a third or subsequent period of unauthorised absence occurs during a 3 rolling year period and the school request legal action to be considered, an unauthorised absence referral should be made as usual including supporting documentation. Information regarding previous penalty notices should be provided if known.
23. Medway Council will not issue a penalty notice but will contact the Headteacher to request additional evidence. The matter will be considered for prosecution via the Single Justice Procedure. This process is only to be used for absence due to term-time holidays or unauthorised leave of absence. For instances where two penalty notices have been issued within a 3-year period for parentally condoned absence or persistent lateness after the register has closed, the school must consult with their Medway Council Attendance Officer.
24. Medway Council will inform the school when penalty notices are withdrawn. If prosecution is being considering following non-payment, Medway Council will contact the school for pre-prosecution checks.
25. If the school is not contacted following a penalty notice request, an assumption can be made that the penalty notice has been issued and paid.
26. Where pupils move between local authority areas, Medway Council can be contacted at [crossborder.pn@medway.gov.uk](mailto:crossborder.pn@medway.gov.uk) to find out if penalty notices have been issued previously.
27. Where pupils attend school in Medway but live in a different local authority, Medway Council will liaise with the home Local Authority in cases where a penalty notice is being considered and support is appropriate, and that support is being provided by the home Local Authority.