



# Directorate for Children and Young People

## Code of Conduct for Issuing Penalty Notices

*September 2022*

Legal  
Intervention



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## Legal Framework

### School Attendance

[S7 Education Act 1996](#) places a legal obligation on parents of a child of compulsory school age to ensure that the child receives efficient full-time education. This means education that is suitable to the child's age, ability and aptitude, and to any special educational needs the child may have.

The [Anti-social Behaviour Act 2003](#) came into effect on 27 February 2004. Under [s38 Anti-social Behaviour Act 2003](#), the [Education Act 1996](#) was amended with the introduction of two new subsections under [s444 Education Act 1996](#) (subsections 444A & 444B), which has made it possible for Penalty Notices to be used as an alternative to prosecution in cases of unauthorised absence from school. The responsibility for authorising absence rests with the school's head teacher.

The procedural guidance for the implementation of these subsections is contained within [The Education \(Penalty Notices\) \(England\) Regulations 2007](#).

### Excluded Pupils

[S103 Education and Inspections Act 2006](#) places a duty on parents to ensure that their child is not present, during school hours, in a public place when they are excluded from school. A public place means any highway or other place to which the public has access. A school is not a public place for this purpose.

This duty applies to the first five days of each exclusion in a school year.

[S105 Education and Inspections Act 2006](#) enables a Penalty Notice to be issued where an offence is committed under [S103](#). [S103\(4\) Education and Inspections Act 2006](#) allows the parent a defence of reasonable justification.

### Definitions

For the purposes of Kirklees Council's Code of Conduct, a 'parent' is defined under [s576 Education Act 1996](#) as: -

- All natural parents, whether they are married or not.
- Any person who, although they are not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person.
- Any person who, although not a natural parent, has care of a child or young person with whom the child lives and who looks after a child, irrespective of their relationship with the child.
- Any person who has care of a child or young person i.e., lives with and looks after the child.

Throughout this document, references to 'parent' means each and every parent coming within the definition, whether acting jointly or separately and should not be taken to mean that provisions only apply to 'parent' in the singular.

For the purposes of Kirklees Council's Code of Conduct, 'compulsory school age' is defined in [School admissions: gov.uk](#) as: -

- Commencing at the start of term on or after a child's fifth birthday and concluding on the last Friday in June of the school year in which the pupil becomes 16.

## Circumstances Where a Penalty Notice May be Issued

The Legal Interventions Team will consider requests from schools, the Police, other agencies such as Social Care or the Youth Offending Service and neighbouring authorities for issue of a Penalty Notice.

### Where Enforcement is Necessary to Improve Attendance

Penalty Notices will be considered when a parent has failed in their duty as defined in [S7 Education Act 1996](#) to ensure the regular school attendance of their child.

Evidence should be available to demonstrate that:

1. The pupil is of compulsory school age.
2. The pupil has had more than 10% unauthorised absence within a continuous 6-week period.
3. The school has an attendance policy in line with Department for Education expectations and with Kirklees Code of Conduct. *Please note that once [Working together to improve school attendance](#) has been enacted in law (September 2023), school attendance policies must be updated to reflect the new legislation.*
4. The barriers to attending school have been identified.
5. Relevant efforts made to support the pupil and family can be evidenced.
6. Evidence that every avenue of support has been exhausted.
7. Meetings in schools and clear plans agreed with parents. These plans should clearly state reasonable and achievable expectations from parents, school, and the pupil. Plans should also include what additional support will be provided by the school and where appropriate, other agencies. All of this must be evidenced. *Please note that a contract must be offered and agreed upon between at least two parties (the school and a parent) i.e., the school must not write the contract and post it for the parent to sign without discussion and agreement.*
8. The school must consider the issues that may impact attendance and evidence support offered to counteract the issues such as using a school attendance improvement contract or similar.
9. The Department for Education guidance, [Working together to improve school attendance](#), has been followed regarding the use of parenting contracts.
10. Letters including a “final warning letter” advising parents that they have failed to make substantial change and that the school intends to hold a “meeting of intention” in accordance with the [Working together to improve school attendance](#) guidance.
11. The school must hold a meeting of intention with a representative from the local authority, the parent, and the pupil if they are old enough to understand. The representative may be a lead professional who is already involved with the family. Following this meeting, the local authority will advise whether the case is suitable for the Legal Intervention Panel to consider legal action including the possibility of a penalty notice being issued.
12. Reasons provided for why a penalty notice rather than the pursuit of an Education Supervision Order or a Parenting Order is more appropriate to bring about improvement in the pupil’s attendance.

In cases where families include more than one child with unauthorised absence, multiple issuing of Penalty Notices may be necessary, but this will be subject to consideration on a case-by-case basis, by the Legal Interventions Team.

### Unauthorised Leave of Absence

All Kirklees schools are required to have a written school attendance policy which includes:

- The school policy in relation to leave of absence.

- The criteria to be used when deciding whether to authorise leave of absence.
- The sanctions to be used if agreements are not kept – this could include requesting that a penalty notice be issued.

A summary of the school's policy on leave of absences must be included in the school brochure/prospectus/website and include details of any procedures to request leave of absence or other exceptional leave.

Penalty Notices may be issued:

- If parents have not sought permission from the head teacher before taking their child out of school for a leave of absence in term time.
- If the head teacher has refused the request but the absence occurs anyway.
- If a pupil has not returned to school by the agreed date with no satisfactory explanation.

**AND**

- Where the individual absence has been recorded by the school as an unauthorised leave of absence in the attendance register on at least 10 consecutive sessions (5 school days).

Where parents continue to take unauthorised leave of absences in term time, despite having previously been issued with a Penalty Notice, the Local Authority will consider a prosecution under [s444 Education Act 1996](#).

### Excluded Pupils Found in a Public Place

A formal warning will be included in the initial exclusion letter given to the parent(s). This warning will make it clear that a Penalty Notice may be issued should their child be present in a public place in the first five days of exclusion from school.

A Penalty Notice may be issued:

- If an excluded pupil of compulsory school age is unsupervised in a public place during school hours ([s103 Education and Inspections Act 2006](#)).
- If an excluded pupil of compulsory school age is accompanied by a parent in a public place during school hours without reasonable justification.
- If an excluded pupil is apprehended during school hours by the Police, or by anti-social behaviour officers.
- If an excluded pupil of compulsory school age returns to the excluding school – i.e., in or around the school grounds or buildings - without prior agreement from the excluding school's head teacher.
- If an excluded pupil of compulsory school age returns to the excluding school with his/her parent(s) without prior agreement from the excluding school's head teacher.

[S103\(4\) Education and Inspections Act 2006](#) allows the parent a defence of reasonable justification. 'Reasonable justification' is:

- Taking a child to a medical appointment.
- Extraordinary family circumstances – e.g., a funeral.
- Accompanying an adult to a place of work or to an education related working area of supervision – e.g., a library.
- On a school INSET day and/or school closure day.

Unless the above criteria apply, the presence of the parent does not, in itself, give reasonable justification for being found in a public place during school hours. To be justified there needs to be an element of unavoidable presence. The question of reasonableness is ultimately one for the courts to decide and will be determined on an individual case basis. It is for the parent to prove 'reasonable justification'.

## Issuing Penalty Notices

Within Kirklees, the responsibility for issuing Penalty Notices and managing arrangements for their payment rests with the Legal Interventions Team. This ensures that all procedures relating to Penalty Notices are consistently applied, that enforcement action is not duplicated, and that any subsequent court action is integrated into the existing procedures.

Penalty Notices will only be issued by first class post and never as an 'on the spot' action; this is to ensure that all statutory requirements for the issue of Penalty Notices have been met and that Health and Safety requirements relating to staff safety are also met.

No parent will receive more than two separate Penalty Notices for an individual child in any one academic year. Penalty Notices may be issued to each parent of the child.

## Procedure for Withdrawing Penalty Notices

Guidance only allows a Penalty Notice to be withdrawn in the following circumstances:

- Proof has been established that the Penalty Notice was issued to the wrong person.
- The issuing of the Penalty Notice did not conform to the terms of this Code of Conduct.

Where a Penalty Notice is withdrawn in accordance with the above, a Notice of Withdrawal shall be sent to the recipient by postal service. Any amount paid towards the Penalty Notice in pursuance of that notice shall be repaid to the payee.

No proceedings shall be commenced (under section [s444\(1\) or s444\(1A\) Education Act 1996](#) or under [s103\(3\) Education and Inspections Act 2006](#)) for an offence to which a withdrawal notice has been issued.

## Procedure for Payment of Penalty Notices

Arrangements for payment will be included with the Penalty Notice. Payment of a Penalty Notice discharges the parent of liability for the offence in question. S/he cannot subsequently be prosecuted for the period covered by the Penalty Notice.

Payment of a Penalty Notice within 21 days is £60 and payment after 21 days, but within 28 days is £120.

Kirklees Council retains any revenue from Penalty Notices to cover enforcement costs (collection or prosecution in the event of non-payment).

## Procedure to Address Non-Payment of Penalty Notices

If after 28 days the notice remains unpaid, the Legal Intervention Team will inform the parent/carer of subsequent action being taken.

Non-payment of a Penalty Notice will normally trigger a prosecution (under the provisions of [s444 Education Act 1996](#) or under the provisions of [s103\(3\) Education and Inspections Act 2006](#)). The prosecution can only be for the original offence and not for the non-payment of the Penalty Notice.

Should a Penalty Notice be issued for a second offence and there has been a failure to pay a previous notice, this fact may be used in evidence and will be deemed to be an aggravating feature of the offence

## Legal Interventions Panel

All prosecutions will be scrutinised by the Legal Interventions Panel to guarantee consistency and fairness across the Local Authority. The Panel will ensure that the paperwork adheres to this Kirklees Code of Conduct and that any Public Interest Test has been applied.

## Policy and Publicity

### Attendance

The utilisation of Penalty Notices as a sanction for unauthorised absence from school forms part of the Local Authority's Attendance Strategy. All policies in schools relating to school attendance should include information on the utilisation of Penalty Notices and this sanction should be brought to the attention of all parents and must be easily accessible on the school's website.

Kirklees Council will provide information on the use of Penalty Notices in its leaflets, which are available to parents, and in its publicity campaigns.

### Excluded Pupils

The utilisation of Penalty Notices as a sanction for failing to ensure that a child is not present in a public place, during school hours when excluded from school, forms part of the Local Authority's response to exclusions. All policies in schools relating to school exclusion should include information on the utilisation of Penalty Notices and this sanction should be brought to the attention of all parents.

Kirklees Council will provide information on the use of Penalty Notices in its leaflets, which are available to parents, and in its publicity campaigns.

## Data Protection & Retention

Information relating to Penalty Notices, prosecutions (including evidence), Parenting Orders, Warrants and Licenses will be retained for a period of 100 years after the child's date of birth. This is because every person in England and Wales has a right to challenge a conviction about which they may not have been unaware.

## Reporting & Review

The Legal Interventions Team will report at regular intervals on the use and outcomes of Penalty Notices to the Department for Education and Ofsted using the Parental Responsibilities Measures return.

This document will be reviewed in August 2023 or when changes in statute are made – whichever is soonest.