

North Somerset Council Code of Conduct Penalty Notices (Revised August 2024) for unauthorised or irregular attendance at school or exclusion from school

Context

This revised Code of Conduct for issuing Penalty Notices has been updated in line with the new National Framework for Education (Penalty Notices) (England) (Amendment) Regulations 2024.

The original Code of Conduct was drawn up in consultation with Headteachers, Governors and the Police. Because the new National Framework has proscribed the amendments a further consultation by North Somerset Council was not required.

This Code of Conduct should be read in conjunction with the national guidance **“Working Together to Improve School attendance,”** <https://www.gov.uk/government/publications/working-together-to-improve-school-attendance>, which promotes a compassionate and informed approach to providing families with support and understanding before considering the use of Penalty Notices.

The use of Penalty Notices in North Somerset will not be sanctioned without clear evidence that the guidance within Working Together to Improve Attendance has been followed.

A: Legal Basis

1. Penalty Notices may be issued to a parent or parents as an alternative to prosecution under section 444 of the Education Act 1996 when they have failed to ensure that their child regularly attends the school where they are registered.
2. 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 the Education Act 1996 section 444A(1)(b).
3. Within this code of conduct the term ‘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 the Education Act 1996 section 576.



4. Penalty notices will usually be issued to the parent or parents with day-to-day responsibility for the pupil's attendance, or to the parent or parents who have allowed the absence (regardless of which parent has applied for a leave of absence).
5. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used¹.
6. 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 the police.

B: Penalty Notices - Overview

1. The purpose of this code of conduct is to ensure that Penalty Notices are applied consistently and fairly across North Somerset, and that arrangements for their issue and administration are suitable.
2. A Penalty Notice is a fine issued and administered solely by North Somerset Education Welfare Service within the Education Inclusion Service on behalf of the local authority. Head teachers (or nominated deputies) and the chief officer of police for the area may request a Notice to be issued by the local authority.
3. A Penalty Notice is a method by which a parent or parents may discharge potential liability for a conviction for an offence under Section 444 of the Education Act 1996 or under Section 103 of the Education and Inspections Act 2006.
4. Any Penalty Notice issued must comply with North Somerset's Code of Conduct in line with the National Framework threshold.
5. The National threshold [for issuing a Penalty Notice] has been met when a pupil has been recorded absent for 10 sessions (usually equivalent to 5 school days) within 10 school weeks with one, or a combination of, the following codes:
 - a) Code G (the pupil is absent without leave for the purpose of a holiday)

¹ The Education (Penalty Notice) (England) Regulations 2007 as amended by The Education (Penalty Notice) (England)(Amendment) Regulations 2012, The Education (Pupil Registration) (England) Regulations 2013, and The Education (Penalty Notices) (England) (Amendment) Regulations 2024.

- 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).
6. A 'school week' means any week Monday to Sunday in which there is at least one school session.
7. The '10-week school period' when the national threshold applies may span different terms or school years (e.g. two sessions of unauthorised absence in the summer term and a further eight sessions in the autumn term).

First Penalty Notice

8. If no Penalty Notice has been issued to the parent or parents under section 444 Education Act 1996 in respect of the same child in the preceding three-year period, the amount of the penalty to be paid is as follows:
- a) £80 where the amount is paid no later than the last day of the period of 21 days beginning with the date on which the Penalty Notice was served², or
 - b) £160 [where sub-paragraph (a) does not apply] but where the amount is paid no later than the last day of the period of 28 days beginning with the date on which the Penalty Notice was served.

Second Penalty Notice

9. Where a second Penalty Notice is issued to the parent or parents under section 444 of the Education Act 1996 in respect of the same child in the preceding three-year period, the amount of the penalty is charged at the flat rate of £160.

Payment of Penalty Notices

10. Payment of Penalty Notices is made to the local authority issuing the Penalty Notice. Revenue generated from Penalty Notices will be used to cover the costs of issue and enforcement and the cost of prosecuting recipients who do not pay.
11. If a Penalty Notice is not paid in full before the expiry of the period for paying it [as set out in 8 a) & b)] the local authority will instigate a prosecution.

² Where the Penalty Notice is served by first class post, service is deemed to have been effected (unless the contrary is proved) on the second working day after posting.

12. Part payment of Penalty Notices will not be accepted.

Further Penalty Notices

13. There is a national limit of two Penalty Notices that may be issued to a parent or parents in respect of the same child within a rolling three-year period beginning on the date on which the first Penalty Notice was served.

14. If the National threshold is met for a third time (or subsequent times) within three years, North Somerset Council will escalate to a prosecution under s444 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.

Relocation

16. If a child has moved into the North Somerset local authority area, the Education Welfare Service will check with other local authorities in England whether previous Penalty Notices have been issued in respect of the same child in the preceding three years.

17. If a Penalty Notice has been issued to the parent or parents of the same child by another local authority within the rolling three-year period beginning on the date on which the first Penalty Notice was served, this will be taken into account for the national limit of two penalty notices per parent per child.

C: Considerations prior to the issue of a Penalty Notice for Unauthorised or Irregular Attendance at School

1. In cases of irregular attendance, schools must evidence what support has been offered to improve attendance. These measures should include referral to early help, external agency support as well as a range of school-based support. North Somerset reserves the right not to issue a Penalty Notice if it deems that a 'support first' approach has not been taken.
2. This does not cover cases where support has been offered and the parent or parents have not engaged with the support.

Notice to Improve

3. A Notice to Improve is a final opportunity for a parent or parents to engage in support and improve attendance before a Penalty Notice is issued.
4. If the National threshold has been met and support is appropriate but offers of support have not been engaged with by the parent or parents, or the support has not worked, a Notice to Improve should usually be sent to give a parent or parents a final chance to engage in support.
5. A school can choose not to use a Notice to Improve in any one case, including cases where support is appropriate, but they do not expect that 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).
6. Schools will issue a Notice to Improve (where appropriate) with a timeframe for the improvement period of between 3 and 6 weeks.
7. In cases where it is clear that improvement is not being made, a school may issue a Penalty Notice before the improvement period has ended. For example, a Notice to Improve stated there should be no further unauthorised absences in a 6-week period but the pupil is absent for unauthorised reasons in the first week. The parent should be informed before a Penalty Notice is issued if it is before the end of the improvement period.
8. Schools are expected to monitor the attendance in the improvement period on a weekly basis.
9. If sufficient improvement has not been made within the improvement period, schools will need to submit a request for a Penalty Notice and provide a copy of the improvement notice to the Education Welfare Service.

D: Procedure for issuing a Penalty Notice

1. Where a School or the Police request that North Somerset issues a Penalty Notice, they are required to complete the North Somerset Penalty Notice Request form.

Persistent or Severe Absence from School

2. In cases of persistent or severe absence from school, schools must include all the information regarding the support that has been offered. This should include:

- a) Evidence of the offer of early help
- b) An offer of an Attendance Contract meeting,
- c) Whether a Notice to Improve has been issued, and
- d) Any other support that has been offered to the parent or parents to support school attendance.

Term-Time Holiday Absence

3. Where a request for a term-time holiday has been made by a parent or parents and not authorised by the school, schools must include all relevant information which should include [but is not limited to]:
 - a) A copy of any emails/letters from the parent or parents requesting the holiday
 - b) A letter or email from the Headteacher stating that the holiday will not be authorised and stating that a Penalty Notice will be requested if the holiday is taken.
4. Where no request for a term-time holiday has been made and a child has unauthorised absences from school which are subsequently found to have been as a result of an authorised term-time holiday [rather than, for example, illness], a Penalty Notice will be issued to offer the parent or parents the opportunity to discharge potential liability for a conviction.

Issue of Penalty Notices

5. North Somerset will issue a Penalty Notice within 15 days of receipt of the Penalty Notice Request Form as long as all the required information has been provided.
6. The School or Police will receive a copy of the issued Penalty Notice for their records.

Unpaid Penalty Notices

7. North Somerset Education Welfare Service will send out a Failure to Pay letter to the parent or parents if payment of the Penalty Notice has not been received by the last day of the period of 28 days beginning with the date on which the Penalty Notice was served.
8. North Somerset Education Welfare Service will inform Schools or the Police if a Penalty Notice has not been paid or if it has been withdrawn.
9. If a Penalty Notice has not been paid, schools will be asked whether they wish to proceed with a prosecution [for the unpaid Penalty Notice].

10. Should a prosecution be requested, schools will be required to complete the North Somerset 'Request to Initiate a Prosecution' paperwork which must include a witness statement from the school and a signed and dated Headteacher's Certificate or Registration Certificate.
11. Schools must submit all required paperwork within a reasonable timeframe, namely no later than three months from the date of the last recorded unauthorised absence period, or no later than three months from the last day of the unauthorised holiday.
12. There is no right of appeal by a parent or parents against a Penalty Notice.

E: Pupils excluded from School

1. The Education and Inspections Act 2006 [section 103] places a duty on a parent or parents in relation to a pupil who has been excluded from school as follows:

"A parent or parents must ensure that their child is not present in a public place during normal school hours without reasonable justification for any of the first five days of each and every fixed term and permanent exclusion."

2. A 'public place' means a highway or any other public place to which the public has access. A school is not a public place for this purpose.
3. 'School hours' are defined as 'a school session or the break between sessions on the same school day'.
4. 'Reasonable justification' may include medical emergencies and hospital or other medical appointments. Shopping for clothes or food would not generally be considered reasonable. It is the parent's responsibility to prove reasonable justification.
5. If a parent fails in this duty, a Penalty Notice may be issued. Section 104 of the Education and Inspections Act 2006 requires schools to notify a parent or parents in writing that they are responsible for the child during these specified days.
6. A Penalty Notice offers the parent or parents the opportunity of discharging any liability to conviction for the offence under Section 103 to which the Notice relates by payment of a penalty in accordance with the Notice.

7. Parents will be given the opportunity to provide reasonable justification prior to the issue of a Penalty Notice.
8. Information will be collected by the Local Authority in order to establish whether or not an offence has been committed.
9. If the Penalty Notice is not paid in full before the last day of the period of 28 days beginning with the date on which the Penalty Notice was served, the local authority will instigate a prosecution or else withdraw the Penalty Notice.
10. A Penalty Notice should not generally be issued for a first offence. A parent or parents should receive a warning letter that a Penalty Notice may be issued if the pupil is found on a second or subsequent occasions. An exception to this may be that the parent is particularly blameworthy or their attitude to the offence is negligent.