



SURREY
COUNTY COUNCIL

Surrey County Council Code of Conduct for issuing penalty notices for school absence after 19 August 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 Surrey County Council. The code sets out the arrangements for administering penalty notices in Surrey 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.

2. This code has been drawn up in consultation with the headteachers and governing bodies of state-funded schools and the local police force.

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 offsite 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 officer: that is, a headteacher or a deputy or assistant head authorised by them, an authorised local authority officer or a police constable. However, in Surrey it has been agreed that all penalty notices in relation to school attendance will be issued by Surrey County Council on behalf of schools.

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 *, 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),

(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)

Where a penalty notice is requested solely for an unauthorised leave of absence (e.g. holiday, wedding, funeral, visiting sick relatives) a penalty notice will not be issued unless the school can show that the parent was prewarned of their liability (via a newsletter or parentmail that predates the application for leave of absence, or date of absence if no such application was made) to receive a penalty notice if they took their child out of school without the authorisation of the school.

13. During or following a truancy sweep where the Police and Surrey Attendance Service, engaged on a Truancy Patrol, find a pupil out of school during school hours without a reasonable excuse, the liable parent/carer will receive a written warning from Surrey Attendance Service of the possibility of a Penalty Notice being issued and given a maximum of 15 school days to effect an improvement. During this period the pupil is not expected to incur any further unauthorised absence. Where a formal warning letter has been issued to parents, Surrey Attendance Service will monitor for a maximum of 15 school days and Surrey County Council will issue a Penalty Notice if Surrey County Council determine that an acceptable level of attendance has not been achieved.

* 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

14. 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.

15. 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 from the date of issue of the first penalty notice after 19 August 2024. If the national threshold is met for a third time (or subsequent times) within 3 years, another tool should be used. Surrey County Council will consider if a prosecution in the Magistrates Court under s444 (1) Education Act 1996 would be appropriate.

16. Surrey County Council will also consider issuing a penalty notice when an excluded pupil is found in a public place during school hours within the first 5 school days of an exclusion without justifiable reason (section 103 Education and Inspections Act 2006). The parent will be responsible for ensuring that their child is not found in a public place during normal school hours on the first 5 days of each and every fixed period of suspension or permanent exclusion. When requesting a penalty notice in respect of an excluded pupil, the school must have notified the parent of their duty and warn them that a penalty notice could be issued. The school would also be expected to provide evidence of the offence (such as a statement from a member of staff or public able to identify the pupil, where they were seen and at what time).

17. 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

18. 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 unauthorised leave of absence 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
- 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:

Sufficient support from the school will usually include:

Telephone call/letter to parents raising concerns about attendance and setting our clear expectations for attendance

Attempted meeting with parents to identify any barriers to attendance

Referring to/consulting with other agencies if appropriate

Consider support in the form of reduced timetable time out cards, seating arrangements, ELSA, or any other support appropriate to the child/family.

- 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 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

19. 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 by the school to give parents a final chance to engage in support. The school 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).

The school will issue the Notice To Improve to each liable parent

The monitoring period will be for a maximum of 25 school days.

During the monitoring period, the pupil is not expected to incur any unauthorised absences.

If the pupil incurs unauthorised absences during the monitoring period, the school can complete a request to the Surrey Attendance Service for a penalty notice to be issued. Surrey Attendance Service will then assess whether sufficient support has been offered – if it has, then a penalty notice will be issued.

20. Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour.

21. An authorised officer is a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police. In Surrey all penalty notices in relation to school attendance will be issued by Surrey County Council on behalf of schools.

22. Where the school or police request that the LA issues the penalty notice, they need to send a request to Surrey County Council for consideration of a penalty notice together with:

- Detailed chronology, including dates and what action was taken
- Copy of the attendance certificate (with comments / reasons for absence detailed)
- Communication log – which should include details of telephone calls/emails/texts made to and received from parent(s)/carer(s).

- Letters sent to parents/carers regarding attendance, including the expectations letters and Notice to Improve.
- Notes of any meetings held/actions agreed to address school attendance concerns.
- Evidence of referrals for support with parental consent where appropriate including internal school support, which have been made on behalf of the pupil/family within the past 6 months. If no such referrals have been made, please be prepared to provide an explanation as to why.
- Evidence of previous Penalty Notices issued.

The request for consideration of a penalty notice to be issued should be received as soon as possible after the 25 school day monitoring period has expired, and in any event no later than 3 weeks after this date.

23. Whoever is issuing the penalty notice should make a decision as to whether proportionate support has been offered and taken up by the family 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.

24. Surrey County Council will inform the school about whether penalty notices are paid, withdrawn or prosecuted for non-payment by emailing the school.

25. Where pupils move between local authority areas, Surrey County Council can be contacted on crossborder.penaltynotice@surreycc.gov.uk to find out if penalty notices have been issued previously.

26. Where pupils attend school in Surrey but live in a different LA, Surrey County 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.

Withdrawal of Penalty Notices

27. A Penalty Notice may be withdrawn if:

- a) Surrey County Council deems it ought not to have been issued e.g. it was issued outside of this Code of Conduct
- b) It contains material errors
- c) It should not have been issued to the person named as the recipient.