

# Department For Education

## National Framework for Penalty Notices for school absence guidance 2024

### Frequently asked questions

#### 1) Do we have to issue a penalty notice every time the threshold is met?

No, when a school becomes aware that the national threshold has been met a penalty notice must be considered. A penalty notice should only be issued if it is the best tool for the individual circumstances of the case. Even then, it should only be used when support is not appropriate or where support is appropriate, has been provided and has not worked or not been engaged with.

#### 2) What happens with existing cases and when do the new thresholds and escalation processes apply from?

The new rules only apply to offences committed from 19 August 2024-25. This means that any penalty notice issued for an offence prior to that date must follow the existing rules in rules in the local authority's current code of conduct.

The 3 year rolling period can only be counted from 19 August 2024, therefore, only penalty notices issued from that date will be counted in the escalation process. I.e. a penalty notice issued in the Summer Term 2024 would not count regardless of the fact it was issued within the last 3 years.

Similarly, the 10 school week period can only be counted from 19 August 2024 i.e. offences committed at the end of Summer Term 2024 will not count regardless of the fact they are in the last 10 school weeks.

#### 3) If a pupil misses 10 sessions in a short timeframe, do we have to wait until 10 school weeks have passed to issue a penalty notice?

No, it is a rolling period so a penalty must be considered as soon as the threshold is met. For example, a week of unauthorised holiday will itself normally meet the national threshold and there is no reason to wait to see if any further offences are committed.

#### 4) Should a penalty notice be issued to one parent or all parents?

All parents can commit an offence under section 444 of the Education Act 1996 and therefore all parents liable for the offence may be issued a penalty notice in line with regulation 13 of the Education (Penalty Notices) (England) Regulations 2007.

Usually, in deciding which parents to issue a penalty notice to, the local authority should include all parents involved in failing to secure the pupil's attendance e.g. who they were living with on the dates of the offences or which parents went on the unauthorised holiday.

The meaning of parent in relation to a child 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.

**5) I'm worried about how prosecution at the third offence will work in practice? Could a prosecution be taken forward if the previous offences were longer than 6 months ago?**

Local authorities can prosecute whenever they feel there is sufficient evidence that the offence has been committed and it is in the public interest to do so. The Department is clear, that whilst local authorities are independent prosecutors and must make the final decision, a third offence following two out of court settlements shows that parental behaviour has not changed and prosecution is a possible next step.

The prosecution is for the latest offences committed regardless of whether this was a continuous or sporadic set of absences and not for those that contributed to the previous penalty notices. Since it is only the latest offence(s) being prosecuted and that must have happened within the 6 months before bringing the case to court it is unlikely that there will be an issue with timescales.

**6) Hasn't a parent discharged any liability through paying a penalty notice – can prosecution be taken forward based on previous penalty notices?**

If the prosecution is being taken forward because the parent has already reached the limit of penalty notices, the local authority cannot raise previous out of court disposals before the parent has been found guilty. They should prosecute solely for the third (or subsequent) offence. If the local authority wishes to set out the history of offending they should submit any information regarding previous convictions or out of court settlements to assist the Magistrates in sentencing in line with existing procedures.

**7) Can a penalty notice be issued to a parent of a pupil at an independent school?**

No, parents of pupils at independent schools cannot be issued with penalty notices but can be prosecuted under section 444(1) or (1A).

**8) Is there an upper threshold where a penalty notice is not appropriate? Should penalty notices be used as an early intervention tool or a last resort?**

The National Framework does not set an upper threshold but an assessment should always be made on a case by case basis whether a penalty notice is the best tool available to improve attendance in the specific case. The Department is clear that a penalty notice is unlikely to be effective where absence(s) are significantly higher than the national threshold e.g. where a pupil is absent from school for a prolonged period or in cases of persistent or severe absence where a multi-agency response is required. Feedback suggests that they are most effective when used as a tool to encourage parents' engagement in support where progress is not being made without the Notice to Improve/penalty notice.

**9) Who sends the 'Notice to Improve' letter and does it need to be physical or can it be digital?**

The National Framework does not prescribe the process for issuing a Notice to Improve as local authorities will want to coordinate this in different ways to suit their local contexts. Local authorities are expected to set out in their local code of conduct how the Notice will should be issued including whether it should be issued by the school or local authority, or co-signed by both, and in what format.

**10) Can a local authority retain a threshold below the national threshold?**

Local authorities can choose to issue a penalty notice for any offence. Local authorities are discouraged from setting an additional threshold to help improve consistency across areas of the country. However, Local authorities that wish to retain flexibility for individual cases are therefore advised to include a provision in their code of conduct to be clear, that although a penalty notice must be considered when the national threshold is met, authorised officers retain discretion to issue a penalty notice earlier.

**11) Who makes the decision about whether sufficient support has been provided?**

Whoever is issuing the penalty notice must 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

**12) Does a penalty notice issued for a pupil found in a public place during the first 5 days of an exclusion count towards the escalation process or national limit?**

No.

**13) What should we do if a pupil is absent because they are waiting for support e.g. from an external agency? Would it ever be appropriate to issue a penalty notice in that case?**

Decisions should always be made on a case by case basis by asking if a penalty notice is the best available tool to improve attendance for this family. If a pupil's absence requires support from an outside agency which is not provided quickly (e.g. subject to a waiting list), schools are expected to quickly consider other avenues of support or other temporary solutions whilst waiting. If a parent does not engage in the available support provided, the national threshold is met, and the school believes that a penalty notice or prosecution would change behaviour in this particular case then that route can be taken. In complex cases such as these it would be important for the school and local authority to discuss the case before taking action.

**14) Why did you decide on a threshold of 10 unauthorised sessions in 10 school weeks rather than 8 sessions in 8 school weeks?**

Following analysis of the latest absence and penalty notice data, we estimated that a national threshold lower than 10 sessions of unauthorised absence in 10 school weeks could result in an increase in prosecution rates (following unpaid penalty notices) that would be difficult for all local authorities to implement. We think this is the right compromise, providing national consistency that all local authorities can deliver. The Department has committed to keeping this under review as national absence rates change in future and the National Framework beds in.

**15) Does the penalty notice escalation and limit on number that can be issued to a parent apply when the offences are in relation to different children?**

No. The escalation and limit on penalty notices applies to a parent in respect of offences relating to an individual child . This means that a parent could receive a penalty notice for one child, and then one for a different child within 3 years without the penalty notice amount increasing or the 2 penalty notice limit being reached.