

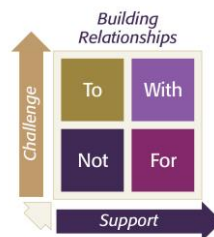
Handbook for Leave of Absence/ Penalty Notices/ Legal Action/ Code of Conduct

Children's Services

REVIEW LOG			
Date	Version	Comments	Approved by
July 2013	1.0	New Policy Introduced	Children, Young People and Families Management Team (17th July 2014)
August 2018	1.1	Policy reviewed and amended to reflect current legislation and guidance on Penalty Notices.	Children and Young People Management Team (13th September 2018)
May 2021	1.2	Policy reviewed and amended to reflect to update the correct team and job roles. Updated form in Appendix B	Education & Skills Service Manager (24th April 2021)
April 2024	1.3	Policy reviewed and updated to create a Handbook that reflects new guidance, 'Working Together to Improve School Attendance', applicable from 19 August 2024. Updated appendix items.	
This system of recording review dates is designed to ensure adults at all times use the correct version of the up-to-date Policy. This system is used on all City of Wolverhampton Council – Children and Young People Policies and Procedures.			
CONSULTATION			
Deputy Director – Children’s Services Deputy Director of Education Inclusion & Attendance Service Manager Attendance Manager Senior Education Welfare Officer			
PURPOSE			
The Purpose of this Code of Conduct is to ensure that children and young people in the City are not taken out of School in term time.			
KEYWORDS			
Penalty Notice, code of conduct, leave of absence, unauthorised absence, support first, notice to improve.			

RESTORATIVE PRACTICE

This Policy is underpinned by relationship building and repairing harm, fundamental principles of restorative practice which weaves throughout our social work practice. Restorative Practice means strengthening relationships as well as strengthening social connections within communities. In Wolverhampton, we are committed to restorative core beliefs and principles, embedding restorative practice as a fundamental part of our work within social care. Part of this work should focus on building relationships with children, young people and their families and the society in which they live. It not only helps us to better understand their needs, but also establish positive and sustainable working relationships to improve outcomes.



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Introduction

This document has been designed as a handbook for all attendance related policies and guidance across the City of Wolverhampton. The handbook comprises of the following parts:

Part 1 – Code of Conduct & Referrals for Penalty Notices for Leave of Absence (holidays during term time and poor attendance)

Part 2 – Referrals for Legal Intervention (non-school attendance)

This guidance is statutory and local authorities must have regard to it as part of their efforts to maintain high levels of school attendance.

This guidance should be read alongside the statutory guidance documents including:

- [Working together to improve school attendance](#)
- [Children Missing Education](#)
- [Supporting Pupils with Medical Conditions at School](#)
- [Education for Children with Health Needs Who Cannot Attend School](#)
- [Suspensions and Exclusions](#)
- [Alternative Provision](#)
- [Keeping children safe in education](#)

This guidance is for:

- All school and academy trust staff, headteachers, governors, academy trustees, and alternative provision providers
- Local Authority attendance staff, early help lead practitioners, social workers, and virtual school headteachers
- Statutory safeguarding (including police and integrated care boards) and other local partners
- This guidance may also be useful for parents/carers.

Part 1 – Code of Conduct & Referrals for Penalty Notice for Leave of Absence (holidays during term time and poor attendance)

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 the City of Wolverhampton. The Code sets out the arrangements for administering Penalty Notices in the City of Wolverhampton 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.

Consultation

This Code has been drawn up in consultation with maintained schools and academies (including all settings across the City of Wolverhampton), headteachers and governing bodies of state-funded schools and the local police force.

Legal basis

Penalty Notices may be issued to a parent/carer 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 444(ZA) Education Act 1996. For Penalty Notices relating to suspended or excluded pupils, please refer to paragraph 14 (below) for the legal basis under which these Penalty Notices are issued.

The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how Penalty Notices for school absence must be used.

A Penalty Notice can only be issued by a Local Authority Authorised Officer.

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.

The education-related provisions of the Anti-Social Behaviour Act 2003 apply to all parents/carers who fall within the definition set out in Section 576 of the Education Act 1996. This defines 'parent' 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. Having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is a parent in education law.
- Under this Code of Conduct, a Penalty Notice can be issued to each parent believed to be liable for the offence or offences.

Rationale

For pupils registered at one of the settings referenced in paragraph 3 above, regular attendance is a legal requirement and **Section 444 (1) and 444 (1A) Education Act 1996 and Section 36 of the Children Act 1989** already exist to enforce attendance through the Courts in appropriate circumstances. The legal responsibility for compliance with these Acts rests with the parents/carers and courts have the powers to fine, imprison or impose various orders.

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.

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.

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 pupil.

When may a Penalty Notice for absence be appropriate?

The National Framework for Penalty Notices, which takes effect from 19 August 2024, sets out the maximum number of Penalty Notices which may be issued by a Local Authority to each parent/carer, for each child, in any 3-year period.

All schools must consider whether a Penalty Notice is appropriate in each individual case where one of their pupils reaches the national threshold for considering a Penalty Notice. Schools should not have a blanket position of issuing or not issuing Penalty Notices and should make judgements on each individual case to ensure fairness and consistency across the country. The City of Wolverhampton Council supports all headteachers within Wolverhampton to exercise their discretion when considering the appropriateness of Penalty Notice fines, based on their knowledge of individual families' circumstances within their school community. 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 weeks¹, with one of, or a combination of the following codes or when an unauthorised leave of absence has occurred:

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

During or following a truancy sweep: the Local Authority can issue a Penalty Notice.

When a child is suspended/excluded from school, the parent/carer 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 suspension (section 103 Education and Inspections Act 2006) or permanent exclusion section (105 of the Education and Inspections Act 2006)

When requesting a Penalty Notice in respect of a suspended/excluded pupil, schools must be able to evidence that the following criteria have been met/considered:

- The excluding school must have notified the parent/carer informing them of their duty and warning that a Penalty Notice could be issued;
- Where there is more than one person liable for the offence, a separate Penalty Notice may be issued to each person;
- Where a pupil is present in a public place during the first 5 days of a fixed period suspension, The City of Wolverhampton Council would issue a Penalty Notice if the school is in their Local Authority area;

Where the child has been permanently excluded, the responsibility for issuing a Penalty Notice would fall to the Local Authority in which the child resides.

¹A school week means any week in which there is at least one school session.

If in an individual case the Local Authority Authorised Officer believes a Penalty Notice would be appropriate, they retain the discretion to issue one before the threshold is met.

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. The National Framework also sets out the escalation process which applies to such Penalty Notices. If the national threshold is met for a third time (or subsequent times) within 3 years, another tool should be used. In Wolverhampton where a child’s attendance has met the national threshold for a third time within 3 years and the parents/carers have already been issued with 2 Penalty Notices within that period, consideration will be given to prosecution under section 444 Education Act 1996. All subsequent prosecutions would fall under S444(1A) outside the 3-year rolling period.

If the decision of the Local Authority is to proceed with a prosecution (only the Local Authority can prosecute parents/carers) the Local Authority will provide witness statements and evidence for the prosecution and liaise with Legal Services. However, in the instance of a parent/carer disputing information in the statement, or making a plea of ‘not guilty’, the school may also be required to provide a statement. The Attendance Team will offer schools support and guidance on preparing a witness statement and the exhibits to be included as evidence based on the information provided by school. The matter will then be listed by the court for a trial, and all witnesses who have provided statements may be required to attend court on that day.

For the purpose of the escalation process, previous Penalty Notices include those not paid (including where prosecution was taken forward if the parent/carer pleaded or was found guilty) but not those which were withdrawn. The following table sets out how previous Penalty Notices **for unauthorised absence recorded after 19 August 2024**, including those not paid and where prosecution was taken forward and the parent/carer pleaded guilty or was found guilty, will count towards the National Framework limit. Withdrawn Penalty Notices and any Penalty Notices issued before 19 August 2024 will not count towards the 2-penalty limit per child, per parent within a rolling 3-year period.

Scenario	Counts towards the limit?
Penalty Notice issued by a Local Authority Authorised Officer and paid within 21 days	Yes
Penalty Notice issued a Local Authority Authorised Officer and paid within 28 days	Yes
Penalty Notice issued by a Local Authority Authorised	No

Officer but later withdrawn	
Penalty Notice issued by a Local Authority Authorised Officer. The Penalty Notice was not paid, and the Local Authority prosecuted for the original offence but the Court found the parent/carer not guilty	No
Penalty Notice issued by Local Authority authorised officer. The Penalty Notice was not paid, and the local authority prosecuted for the original offence and the Court found the parent/carer guilty	Yes
A Penalty Notice is issued by Local Authority authorised officer in respect to a child being found in a public place whilst subject to a suspension or permanent exclusion.	No

Key considerations prior to the issue of a Penalty Notice for school absence

The following considerations will be made before issuing a Penalty Notice to ensure consistency of approach:

In cases where support is **not appropriate** (for example, for holidays 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 pupil 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. It is at the discretion of Wolverhampton City Council whether a Penalty Notice is issued or legal action is taken in relation to support first Penalty Notices.

Has sufficient support already been provided? Sufficient support will usually include:

- Communication/s in writing, notifying parents/carers of the concerns held in relation to their child’s absence levels (steps need to be taken to ensure that each parent/carer is in receipt of such correspondence). Where letters are hand-delivered to parents/carers, accurate records of date/time/person to whom letter was delivered must be available
- Opportunities for parents/carers to meet with school staff to share/discuss the barrier/s to regular attendance and identify support strategies which aim to achieve an improvement in attendance

- Agreed Attendance Contracts making clear the role of each relevant party in improving the child's attendance levels
- Referrals to wider support services; including Family Help Services
- Where safeguarding concerns are identified for a pupil/family, appropriate liaison between relevant agencies including social care, police, health, other educational establishments, etc.
- Is a Penalty Notice the best available tool to improve attendance and change parental behaviour for this particular pupil or would one of the other legal interventions be more appropriate?

If the answer to the above questions is 'yes', then a Penalty Notice (see section titled Notice to Improve – page 11) in cases where support is appropriate will usually be issued.

Commented [JM1]: Add links to operational guidance for Early support plans and Family Help plans

Commented [NH2R1]: Will be linked once the guidance is ready.

Procedure for issuing Penalty Notices

The school will refer all cases of request for a Penalty Notice to the Attendance Team for consideration, if all criteria is met a Penalty Notice will be issued in line with the terms of this document.

All Penalty Notices relating to school attendance in Wolverhampton are managed and issued by the Attendance Team. This will ensure consistent and equitable delivery, retain school/home relationships, and allow cohesion with other enforcement sanctions.

Penalty Notices will only be issued by post and never as an on the spot action i.e. during a Truancy Patrol. This will ensure that all evidential requirements are in place, criteria have been met and Health & Safety requirements for employees of The City of Wolverhampton Council are met.

It is the responsibility of schools to ensure that they are aware of all persons who meet the criteria of 'parent' as indicated above. School must ensure that they have included all parents/carers in any Penalty Notice request and have obtained full details including addresses and DOB of each parent/carer to be served.

Procedure for withdrawing Penalty Notices

Once issued, a Penalty Notice will only be withdrawn in the following circumstances:

- Proof has been established that the Penalty Notice was issued to the wrong person,
- The use of the Penalty Notice did not conform to the terms of this Code of Conduct,
- The absence becomes authorised by the Headteacher because subsequent evidence has been submitted.

Payment of Penalty Notice fines

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 available 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/carers 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/carer's legal responsibility for the period of unauthorised absence outlined in the Notice and the parent/carer 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.

The Local Authority will inform the school about whether Penalty Notices are paid, withdrawn, or have proceeded to prosecution, due to non-payment.

Schools can be expected to be updated on a termly basis via email.

Where pupils move between Local Authority areas, the City of Wolverhampton can be contacted on crossborder.penaltynotice@wolverhampton.gov.uk to find out if Penalty Notices have been issued previously so that appropriate escalation of fines may be applied in line with the National Framework for Penalty Notices.

Schools need to notify the Local Authority if a pupil has joined them within a 3 year period on the referral form request.

Notice to improve

A Notice to Improve is a final opportunity for a parent/carer 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/carer or have not worked, a Notice to Improve should usually be sent to give parents/carers a final chance to engage in support. An authorised officer 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/carer's behaviour (e.g. because the parent/carer has already received one for a similar offence).

Local arrangements for the use of Notices to Improve across Wolverhampton are as follows:

- Schools across Wolverhampton may issue a Notice to Improve to any parent/carer whose child's absence levels have triggered the national threshold for a Penalty Notice – i.e. 10 sessions of unauthorised absence in a rolling period of 10 school weeks.
- The Notice to Improve may be used to offer parents/carers a final opportunity to engage with support and improve the attendance levels of the child concerned. Where a parent/carer fails to engage with the offer of support during the Notice to Improve validity period and/or further unauthorised absences are recorded for the pupil and/or the pupil fails to make significant improvements in their attendance patterns, schools can refer to the Local Authority Attendance Team for intervention which may include issuing a further Notice to Improve letter or a Penalty Notice in line with this document.
- Once a Notice to Improve referral is submitted by a school the Attendance Team will check to ensure the correct documentation is enclosed. If the correct paperwork is not included or the work that has been undertaken is not sufficient the referral will be returned to the referrer.
- The Attendance Team will issue a **Notice to Improve (see Appendix B)** letter to all parents/carers informing them that a referral has been received, raising concerns in relation to school attendance. The letter gives the parents/carers up to six weeks period (maximum of 30 school days) and will clearly list the attempts which have been made and support which has already been offered to resolve the absence concerns.
- During the notice period, the pupil's school attendance will be monitored by the Local Authority and schools should notify the Attendance Team of any unauthorised absences that occur. The Attendance Team are not required to wait until 30 school days have passed before considering a Penalty Notice – decisions will need to be taken on a case-by-case basis, based on the level of parental/pupil engagement and/or level of attendance improvement noted.
- Sufficient improvement during the Notice to Improve validity period may include evidence of no further unauthorised absences within the improvement period or a sufficient amount of improvement tailored to the specific family circumstances.

- The Local Authority reserve the right to extend the Notice to Improve period at their discretion.

How authorised officers will work together

Authorised Officers should work together to ensure that Penalty Notices are used when likely to be effective and change behaviour.

An Authorised Officer is recognised as employees of the Local Authority Attendance Team

Where the school request that the Local Authority considers issuing a Penalty Notice solely on the basis of 10 sessions of G codes (i.e. 5 days, consecutive or otherwise, of holiday taken during term time over a 10 rolling week period) the school must notify the Local Authority within 20 school days of the pupil having returned to school, must be in receipt of the following:

- A copy of the application made by parents/carers relating to the period/s of absence that have been recorded using a G code
- A copy of the written response sent by the school, advising that the absence would not be authorised and why the reason/s for absence were not deemed to be exceptional
- A copy of the pupil's registration certificate, clearly showing that the national threshold has been met, the pupil has returned to school and that the appropriate coding has been used to allow for a Penalty Notice to be issued
- Where no application for leave has been submitted by parents/carers and the leave was taken without prior discussion/knowledge of the school (e.g. where a parent/carer has called to report their child as too unwell to attend school and the pupil is later found to have been absent due to a holiday during term time), the Local Authority should be provided with the communications between the school and parents/carers, clearly showing that they have been made aware of the school's intention to issue a Penalty Notice as a result of the unauthorised absences that have been recorded.

For Penalty Notices being requested/considered on the basis of 10 sessions of unauthorised absence (G, O and/or U coded - consecutive or otherwise) in a rolling period of 10 school weeks, the Local Authority must be in receipt of a completed referral form which should include the following:

- Clear details of the "support first" approach which has been taken by schools/partners to identify the reasons for the pupil's absence, any barriers impacting the pupil's attendance and all support strategies which have been offered (whether engaged with by parents/carers or not) to remove any such barriers;
- Copies of all letters/emails sent to all parents/carers to advise of the concerns held in relation to their child's absence levels;
- Copies of all letters/emails sent and/or details of all telephone calls / text

messages which have been made/sent to arrange meetings with the parents/carers to establish the reasons for absence and identify what support may be needed to improve attendance patterns and prevent further unauthorised absence;

- Details of any home visits completed, times and dates and copies of calling cards.
- Case notes must be completed giving detailed evidence of any meetings or telephone conversations with parents/carers. These should be clearly dated and timed, in a chronological order which tells the story. This should clearly show who undertook the work.
- A copy of any attendance contract/s which have been agreed with parents/carers and whether these have been adhered to;
- A copy of the Notice to Improve which has been issued, if applicable, to the parents/carer (see Notice to Improve section);
- Genuine medical conditions need to be noted and should include a conversation with the school nurse. Medical plans should be implemented prior to any referral for those pupils with medical needs as per current government guidance. A copy of the medical plan should accompany the referral, details of which can be found [here](#).
- Details of parent/carer engagement or lack of engagement should be recorded.
- Details of parent/carer engagement or lack of engagement should be recorded.

Upon receipt of referrals submitted by schools, the Local Authority authorised officer, will carry out all necessary checks and where the Local Authority has been asked to issue the Penalty Notice/s, this will be actioned as soon as all necessary checks have been made. Checks made by the Local Authority will include:

- Whether any previous Penalty Notices have been issued to the parent/carer in respect of the child/ren concerned in order to provide clear advice in regard to the fine level which is to be applied.
- Whether there are any prosecution cases pending in respect of the family to ensure that duplication is avoided and appropriate escalation of legal response is considered.
- Whether there is clear evidence of a “support first” approach, in line with the “Working together to improve school attendance” statutory guidance. Where sufficient evidence has not been provided the Local Authority, as the independent prosecutor, will not support the issuing of a Penalty Notice.

Types of Penalty Notice

The City of Wolverhampton Code of Conduct defines three types of Penalty Notice:

1. Unauthorised Absence Penalty Notice - (PN)
2. Leave in Term Time Penalty Notice – (HPN)

3. Exclusion Penalty Notice – (EPN)

1. Circumstances where an Unauthorised Absence Penalty Notice (PN) may be issued:

A Penalty Notice can only be issued in cases of unauthorised absence.

A Penalty Notice will be issued to the parent/carer if there are unauthorised absences and that the school can demonstrate that they have attempted to engage with parent/carers to overcome any issues preventing attendance but have not been successful.

Use of Penalty Notices will be restricted to two per pupil per academic year. (excluding Leave of Absence)

In cases where there are siblings of the poor attending pupil in a family, who also accumulate unauthorised absence, multiple Penalty Notices may be issued. This decision will involve careful consideration and consultation with schools by the Attendance Team regarding current family circumstances.

There will be no restriction on the number of times a parent/carer may receive a formal PN warning of the possible issue of a Penalty Notice.

If Penalty Notices issued for unauthorised absences are unpaid it may result in parents/carers being prosecuted under Section 444 (1) or 444(1)(A) of the Education Act 1996

2. Circumstances where a 'Leave in Term Time' Penalty Notice (HPN) may be issued:

A 'Leave in Term Time' Penalty Notice (HPN) will be issued, without warning, for each period of leave in term time, if a pupil's absence is not agreed or authorised by the Headteacher, and:

At least 10 sessions (5 consecutive school days) are lost to unauthorised absence.

A national limit of 2 Penalty Notices that can be issued to a parent/carer for the same child within a rolling 3 year period, so at the 3rd (or subsequent) offence(s) another tool will need to be considered (such as prosecution or one of the other attendance legal interventions).

If Penalty Notices (HPN) issued for unauthorised leave in term time are unpaid it may result in parents/carers being prosecuted under Section 444 (1) or 444(1)(A) of the Education Act 1996

It is suggested that schools adopt a standard authorisation of leave in term time

protocol as an addition to their attendance policy with advice from the Attendance Team. Information should be available to all parents/carers, including estranged parents, and step parents, regarding the schools leave in term time policy. This information (and a copy of the request for leave in term time application form) should be published on the school's website.

Parents/carers should apply to the school for leave of absence in term time no later than four weeks prior to the requested leave being taken. This will allow school ample opportunity to consider the facts of the request and to establish whether there are any exceptional circumstances. The school will write to the parent/carer within seven days of receiving the application to confirm their decision. If the request is denied, the letter should also inform the parent/carer that they may be subject to a Penalty Notice if they continue with the leave. The school will unauthorise any subsequent absence for the period that was requested

The City of Wolverhampton have produced a leaflet entitled "Are you thinking of taking your child out of school in term time". This gives parents/carers full information on current legislation and includes an application form which can be submitted to the (see part 4 below).

Where parents/carers fail to comply with the schools' request for leave in term time procedure, a Penalty Notice (HPN) may still be considered for any unauthorised leave in term time.

Schools must refer the case to the Attendance Team once the pupil has returned to school. N.B The legislation does not allow for retrospective permission for leave to be granted.

3. Circumstances where an Exclusion Penalty Notice (EPN) may be issued:

For a child of compulsory school age who is a registered pupil at a school and is excluded from that school, either for a fixed period, or permanently, his/her parent/carer is guilty of an offence under 105 of the Education and Inspections Act 2006 if:

- the child in question is present in a public place during school hours without reasonable justification during the first five days of each and every period of exclusion.
- the parent/carer must have been notified by the school at the time of the exclusion of their duty and the dates it relates to.

When an Exclusion Penalty Notice is imposed, a fee of £60 per parent per child is payable within 21 days of issue of the notice; and £120 if paid between 21 and 28 days of issue of the Notice.

Policy and Publicity

All School Attendance Policies should include information on the issuing of Penalty

Sensitivity: PROTECT

Notices, and this will be brought to the attention of all parents/carers.

The Local Authority will include information on the use of Penalty Notices and other attendance enforcement sanctions in promotional/public information material.

The Attendance Team will offer advice and support to schools in the process of enforcement of the Penalty Notice Protocol.

Reporting & Review

The Attendance Team will report to the Senior Management Team on attendance matters and will include the deployment of Penalty Notices, outcomes and related data.

The Attendance Team will review Penalty Notice use at regular intervals and amend the general enforcement strategy as appropriate.

The Attendance Team will review and amend the Code of Conduct where appropriate.

Part 2 – Referrals for Legal Intervention (Non School Attendance)

In order for a child to fulfil their potential in education they need to attend school regularly and on time.

The legislation states that:

'Parents have the responsibility to ensure that their children receive a suitable education, either by regular attendance at school or otherwise' (section 7 Education Act 1996).

If a child is on a school roll the school must monitor and review their attendance and act on any concerns both quickly and efficiently. Schools have a wide range of strategies available to them to identify and address unsatisfactory attendance, including, ultimately, referral to the Local Authority for formal legal action against the parent/carer to be considered.

This section explains what intervention is expected from schools prior to referral to the Attendance Team, and how a referral is actioned once it is accepted.

At all times it is important to consider the individual circumstances of each child and their family and apply appropriate strategies.

A referral to initiate formal legal procedures can ultimately result in the issue of a Penalty Notice, or prosecution in the Magistrate's Court. This formal intervention should only be used when schools have exhausted all other strategies but have failed to improve the pupil's attendance. However, formal or legal action can be an effective deterrent preventing a pattern of school non-attendance.

The Local Authority regards prosecution as a last resort when all other measures and support at the earliest opportunity have failed to assist a pupil to attend school regularly.

Attendance Team

The Attendance Team is responsible on behalf of the City of Wolverhampton Council for undertaking the following proceedings:

- Meeting and cautioning parents/carers under a PACE interview (Police and Criminal Evidence Act 1984)
- Penalty Notices
- Prosecution in Magistrate's Court
- School Attendance Orders
- Education Supervision Orders
- Identifying Children Missing from Education (CME)

- Elective Home Education Procedures
- Implementing and Monitoring National and Local Guidance in respect of School Attendance

School Actions Prior to the Referral Process

Schools are expected to have taken all reasonable steps to identify parents/carers and have included them in all attendance concerns.

In order for a referral to be made to the Attendance Team for statutory intervention, evidence of intervention must be provided, and should include the following:

- A referral form to be completed requesting legal action including all of the below:
- Evidence of text messages or telephone contact logs
- Copies of any letters sent to all parents/carers including a Notice to Improve letter offering a meeting to discuss support to improve attendance that must include a 10 week notice period. (Notice to Improve letter – see Appendix B)
- Details of any home visits completed, times and dates and copies of calling cards
- Case notes must be completed giving detailed evidence of any meetings or telephone conversations with parents/carers. These should be clearly dated and timed, in a chronological order which tells the story. This should clearly show who undertook the work.
- Allegations of bullying must be noted, showing that there has been an investigation with a satisfactory outcome.
- Genuine medical conditions need to be noted and should include a conversation with the school nurse. Medical plans should be implemented prior to any referral for those pupils with medical needs as per current government guidance. A copy of the medical plan should accompany the referral, details of which can be found [here](#).
- Details of parental/carer engagement or lack of engagement should be recorded.
- Attendance Contracts should be offered to all parents/carers who are subject to Child in Need or Child Protection.
- A registration certificate clearly showing unauthorised absence.

How to Refer

Schools/Academies should complete the referral form and provide the supporting documents as outlined above.

Once all the evidence has been gathered the referral should be emailed directly from the school to: attendanceandinclusion@wolverhampton.gov.uk

To meet GDPR requirements schools or academies that use outside services to address attendance matters should make referrals only from the recognised school email account or via a third-party account which has been provided and verified by the school. School must have an information sharing policy in place with any third party which confirms the school is fully responsible for ensuring the sharing, storage and distribution of all information. Schools and academies take full responsibility for those persons acting on their behalf.

Schools and academies are permitted to share information with the Local Authority without parental consent as part of the Local Authorities statutory duties, or when an offence under the Education Act 1996 is suspected.

What Happens Once a Referral Has Been Received

- Once the referral has been received it will be checked to ensure the correct documentation is enclosed. If the correct paperwork is not included or the work that has been undertaken is not sufficient the referral will be returned to the referrer.
- Once all the documentation and information has been supplied by the referrer and the referral has been accepted, the Local Authority will consider action under either the Single Justice Procedure, Section 444(1), or an aggravated offence, section 444(1A) of The Education Act 1996. Action will be considered which may include issuing a penalty notice.
- The decision on which section of the Education Act any prosecution will be taken will be based on the evidence provided in the referral along with the level of absence. Other factors will include any previous prosecutions and the likelihood of successful prosecution.
- The referrer will be notified under which section of The Education Act 1996 the referral has been accepted.

Single Justice Procedure (SJP) 444(1)

Referrals accepted under the single justice procedure will proceed as follows:

- A Notice to Improve letter will be sent to all parents/carers informing them that a referral has been received, raising concerns in relation to school attendance. The letter gives the parents/carers a six week period to improve attendance or face the possibility of legal proceedings.
- During the six weeks period, the pupil's school attendance will be monitored, and schools should notify the Attendance Team of any unauthorised absences that occur.

- After the monitoring period has elapsed, a decision will be made to either close the case as attendance has improved or the case will be prepared for prosecution in the Magistrates' court under SJP procedures. A letter will be sent to parents/carers notifying them of this action.

Aggravated Offence 444(1a)

Referrals accepted under the aggravated offence will proceed as follows:

- A letter will be sent to all parents/carers informing them of the referral and inviting them to a meeting to discuss the attendance concerns.
- At the meeting, parents/carers will be given the opportunity to discuss any issues that are preventing the pupil from attending school regularly. A representative from the school will be expected to attend this meeting to answer any concerns raised by parents/carers. If new information emerges during the meeting, and if the parents/carers have not already engaged in an Early Support Plan process, they will again be offered the opportunity to engage with school in a plan to access additional support.
- All contact and work received by families from the City of Wolverhampton Council will be based around restorative practice principles. This is to ensure we improve the life outcomes for all children, young people and families. All meetings will be held using Restorative Practice Procedures.
- All legal meetings are held under Restorative Practice Procedures.

Please note that information contained in the referral will be shared and discussed with the parents/carers at this meeting and could ultimately be used as evidence in court.

A letter and notes of the meeting will be sent to parents/carers, confirming the action that will be taken if attendance does not improve. If parents/carers do not attend the meeting a letter will be sent giving them the opportunity for the pupil's attendance to improve to avoid further action being taken.

If the decision of the Local Authority is to proceed with a prosecution (**only the Local Authority can prosecute parents/carers**) the Local Authority will provide witness statements and evidence for the prosecution and liaise with Legal Services. However, in the instance of a parent/carer disputing information in the statement, or making a plea of 'not guilty', the school may also be required to provide a statement. The Attendance Team will offer schools support and guidance on preparing a witness statement and the exhibits to be included as evidence based on the information provided by school. The matter will then be listed by the court for a trial,

and all witnesses who have provided statements may be required to attend court on that day.

Child In Need/Child Protection Cases

All referrals that are subject to Child in Need or Child Protection procedures will be discussed with the Social Worker and the Local Authority Solicitor to ensure that prosecution is in the best interests of the pupil's wellbeing.

Court Outcome

Magistrates have various powers when sentencing under the Education Act 1996 which include:

Under section 444(1) (SJP) Magistrates are empowered to:

- Fine the parent/carer up to £1,000.
- Give the parent/carer a Conditional Discharge which means there will be no sentence if their child's attendance remains at an acceptable level for a specified period (usually 6 or 12 months), however if the parent/carer is convicted of a further offence during this time the Court will take the previous offence into consideration.
- Issue the parent/carer with a Community Order.
- Issue the parent/carer with Parenting Order requiring them to attend a parenting group.
- Give the parent/carer an Absolute Discharge, which means they have been found guilty and have a criminal conviction but receive no penalty.
- Direct the Local Authority to make an application for an Education Supervision Order.

Under section 444(1A) (Aggravated) Magistrates are empowered to:

- fine the parent/carer up to £2,500.
- impose up to three months imprisonment.
- give the parent/carer a Community Order.
- give the parent/carer a Parenting Order.
- give the parent/carer an Absolute Discharge.
- direct the Local Authority to make an application for an Education Supervision Order.

Education Act 1996 section 444 (ZA) has extended the circumstances in which a parent/carer can be prosecuted which includes 'failure to attend alternative provision that has been made for the pupil'

Statutory Defences

There are certain circumstances which the court will consider as a statutory defense these are as follows:

Education Act 1996 S444

The child shall not be taken to have failed to attend regularly at the school by reason of his absence from the school -

- (a) with leave,
- (b) at any time when he was prevented from attending by reason of sickness or any unavoidable cause, or
- (c) on any day exclusively set apart for religious observance by the religious body to which his parent belongs.

The child shall not be taken to have failed to attend regularly at the school if the parent/carer proves

- (a) that the school at which the child is a registered pupil is not within walking distance of the child's home, and
- (b) that no suitable arrangements have been made by the local education authority for any of the following
 - (i) their transport to and from the school,
 - (ii) boarding accommodation for him at or near the school, or
 - (iii) enabling him to become a registered pupil at a school nearer to his home.

In subsection (4) "walking distance"

- (a) in relation to a child who is under the age of eight, means 3.218688 kilometres (two miles), and
- (b) in relation to a child who has attained the age of eight, means 4.828032 kilometres (three miles), in each case measured by the nearest available route.

If it is proved that the child has no fixed abode, subsection (4) shall not apply, but the parent/carer shall be acquitted if he proves

- (a) that he is engaged in a trade or business of such a nature as to require him to travel from place to place,
- (b) that the child has attended at a school as a registered pupil as regularly as the nature of that trade or business permits, and
- (c) if the child has attained the age of six, that he has made at least 200 attendances during the period of 12 months ending with the date on which the proceedings were instituted.

Closure Of a Case

Once the entire process has been completed, the referrer will be informed of any outcomes and the case will be closed to the Attendance Team.

Should there be future concerns regarding, the school should follow their usual attendance procedures and consider re-referring to the Attendance Team.

Decision Not to Prosecute

Only the Local Authority has the power to prosecute a parent/carer under the Education Act 1996. Not all cases referred to the Local Authority will proceed to court.

Advice will be sought from the Local Authority Solicitor in cases where a successful prosecution is in doubt or where extenuating circumstances are impacting on the family. If the advice from the Local Authority Solicitor is that a case is not in the public interest or that a successful prosecution is unlikely to be secured, then the case will not proceed to court and school advised of what further action needs to be implemented.

Key Legislation and Guidance Relevant to School Attendance

- The Anti Social Behaviour Act 2003
- The Education Acts 1996 and 2002
- The Education and Inspections Act 2006
- The Education (Pupil Registration) (England) Regulations 2006, as amended
- The Education (Penalty Notices) (England) Regulations 2007, and subsequent Amendment Regulations
- The Human Rights and all Equal Opportunities legislation
- Police and Criminal Evidence Act 1984
- Criminal Procedures Investigations Act 1996
- Attorney General's Guidelines for Crown Prosecutors.
- Working Together to Improve School Attendance

This policy has been produced in accordance with the following guidance distributed by the department of education

Central to raising standards in education and ensuring all pupils can fulfil their potential is an assumption so widely understood that it is insufficiently stated – pupils need to attend school regularly to benefit from their education. Missing out on lessons leaves children vulnerable to falling behind. Children with poor attendance tend to achieve less in both primary and secondary school.

The government expects Schools and Local Authorities to:

- Promote good attendance and reduce absence, including persistent absence.
- Ensure every pupil has access to full-time education to which they are entitled; and,
- act early to address patterns of absence.
- Parents/carers to perform their legal duty by ensuring their children of compulsory school age who are registered at school attend regularly.
- All pupils to be punctual to their lessons.

Appendix A – Template letter for schools to decline requests for Leave of Absence

SCHOOL LETTERHEAD

Parent/Carer Name
Address

Date

Dear Parent/Carer

Re: Leave of Absence in term time request for (child's/children's name)

Following your request for leave of absence in term time for **(child's/children's name)**, I regret that I am unable to authorise this absence. My reasons are as follows:

- .
- .
- .

Should you however choose to take the requested leave of absence, the school's attendance policy makes it clear that this absence will not be authorised and I will be making a request to the Local Authority to issue a Penalty Notice.

The first penalty notice issued to a parent/carer in respect of a particular pupil will be charged at £160 if paid within 28 days. This will be reduced to £80 if paid within 21 days.

A second penalty notice issued to the same parent/carer in respect of the same pupil is charged at a flat rate of £160 if paid within 28 days.

A third penalty notice cannot be issued to the same parent/carer in respect of the same child within 3 years of the date of issue of the first. In a case where the national threshold is met for a third time (or subsequent times) within those 3 years, alternative action should be taken instead. This will often include considering prosecution but may include other tools such as one of the other attendance legal interventions.

Parent/Carers have a duty to ensure their child/children's regular attendance at school and failure to do so is an offence under Section 444 of the Education Act 1996.

Yours sincerely

Head Teacher/ Principal

Appendix B – Notice to Improve Attendance letter

Date:

School Logo

Parents/carers names

Address

Notice to Improve Attendance

Dear (Parents/carers names)

(Child's Name/DOB) attendance is currently: (Number of days missed)

Regular school attendance is vital for your child to gain the full benefit from their education. Due to unauthorised absences regarding (child's name), we have made telephone calls, sent letters, and completed home visits, however, there has been little improvement. We are now placing you under 10 weeks' Notice to Improve your child's school attendance and would like to invite you to a meeting, to discuss support that could be offered through an Early Support Plan. This plan is to help improve your child's attendance and see what areas of support you and your family might need to achieve this.

I would like to take this opportunity to remind you that in order for (child's name) absences to be recorded as authorised, medical evidence will be required. The following evidence will be accepted by school;

- A GP appointment card (date, time and child's name clearly stated)
- Prescription
- Medication
- Medication packaging
- Hospital letters/Appointment letters

An appointment has been made for you to see (professionals attending the meeting) on (date) at (time) at (venue).

If you are unable to attend the meeting at the above time and date, please contact the school as soon as possible as alternative arrangements can be made.

Yours sincerely

Appendix C – Attendance Contract

ATTENDANCE CONTRACT

Between

The governors of.....School/Academy
And.....DOB..... (Parent/carer 1)
.....DOB.....(Parent/carer 2)
the parents/carers ofDOB..... Year
who is a registered pupil at the above School/Academy.

The person responsible for this contract at the school is
.....

This contract, agreed by those who have signed it below, is a voluntary agreement between the school and the parents/carers to address the following concerns about school attendance:

If you refuse to make a contract or you do not adhere to it, it can be used as evidence if the Local Authority decide to prosecute you.

Indicate here the concerns that have led to the contract being introduced:

- 1.
- 2.
- 3.
- 4.

Sensitivity: PROTECT

In order to try and make things better for, we have agreed the following:

THE SCHOOL WILL:

These actions should be specific, not general and focus on how the school will support the child and work with the parents/carers.

THE PARENT/CARER WILL:

These actions should be specific, not general and focus on how the parents/carers will work with the school to support the child

OTHER PEOPLE WILL:

- 1.
- 2.
- 3.

Sensitivity: PROTECT

How we will know if this contract is working:

What will happen if anyone feels the contract is not working:

This contract will be reviewed on (date) by the following people:

..... (school)

..... (parent/carer)

.....(other)

..... (other)

Date of this contract.

Each signatory to receive a copy of this Attendance Contract.

Sensitivity: PROTECT

Appendix D – Leave of Absence Penalty Request Form

Please find the link to the Leave of Absence Penalty request form [here](#).

Commented [NH3]: Please check link is correct - thanks.

Sensitivity: PROTECT

Appendix E – Penalty Notices for Leave of Absence leaflet

Link to leaflet [here](#)

Commented [NH4]: Leaflet currently with the design team - Will add link to leaflet once ready

Appendix F – Checklist for Schools

Commented [NH5]: Jameel to send

The Attendance referral checklist has been devised to support Headteachers, Attendance Leads, Attendance Officers and Governors to review attendance practices and to ensure the school is compliant with statutory guidance.

Considerations	Evidence of compliance	Action required by school
Have you completed first day telephone calls/home visits?		
Have letters been sent to share attendance concern and has the parent/carer responded with reasons for concerns?		
Do you follow a graduated process with regard to sending out warning letters to parents/carers?		
Have school sent a Notice to Improve Attendance letter been sent to parents/carers? Has attendance improved since letter was sent (10 week period)		
Have you met with the parents/carers and asked why the child isn't attending school? Do the reasons match with the reasons the child has provided?		
Have you spoken to the child during registration times? (secondary schools)		
Have you spoken to the form tutor/head of year/pastoral manager? (secondary schools)		
Have you or any other staff member met the child outside of form/tutor time to capture the child's voice to establish a reason and put support in place? (secondary schools)		
If regularly late, has the school start time been discussed with parents/carers. What support or strategies could be put in place to address lateness? Incentives to improve. Breakfast club? Are they getting U codes on a daily basis? What are the reasons?		

Sensitivity: PROTECT

Have family circumstances been considered and have you considered with the family what support may help them at this time? Have any referrals to other agencies been offered? - is obtaining uniform a barrier? Are there any financial barriers to address with family?			
Have you checked if siblings are having the same absences? Have you contacted the school the siblings attend?			
Is the child missing certain days, is there a pattern? Are they trying to miss certain lessons they are struggling with?			
Is the child a Young Carer, and is this having an impact on their attendance?			
Has the child experienced a previous trauma that could be affecting their attendance?			
Could the child have unmet learning needs that have yet to be assessed resulting in them being reluctant to attend school?			
If a EHCP in place are the outcomes being supported, when was this last reviewed by SENDStart? Have you contacted your caseworker in SENDStart for advice? Have you had a meeting with SENDStart and parent/carer to discuss provision if child not attending?			
Has the child's health been considered, have you received any medical evidence from the parent/carer – could the parent/carer seek further medical evidence to justify the absences? Could the school contact the GP/consultant with parents'/carers' consent to request further information? Is the child suffering from anxiety – have parents/carers been advised to seek a referral to CAMHS via their			

Sensitivity: PROTECT

GP? Have you sought advice from the EBSNA supervision groups or EBSNA Coordinator?			
Does the child have behavioural issues and if so, have you sought the advice of the Inclusion Service/ ISAPP? Have you considered commissioning Alternative Provision?			
Have you considered entering an Attendance Contract with the parent/carer? If so, have you sought the advice of the Attendance Team?			
Have you considered where the family live in relation to school and considered whether the journey to school is a barrier			
Have you considered whether the parent/carer has a statutory defense to the offence of failing to ensure their child is attending regularly under s4441 of the Education Act (set out in the Code of Conduct)			
Has an individualised attendance action plan been drawn up with the parent/carer and pupil with a review date?			
If you have numerous pupils with regular L codes – have you considered amending your times for imposing L and U codes? At what time do you impose a U code? Are parents/carers aware that they could receive a Penalty Notice for 10 U codes in a 10-week period?			
Is the child from the Traveller Community? Have you sought the advice of the EHE & Travelling Officer? Are you T coding regularly – have you sought advice with regard to coding?			
Do you consider the parent/carer to be the barrier to attendance improving? If the parent/carer has asked for support, have you referred to Early Support?			

Before referring to the Attendance Team consider as well:

- Have you offered parents/carers the opportunity to attend a meeting with the school?
- If parents/carers have not taken up the offer of a meeting or support, have they been warned, in writing, that a referral will be made to the Attendance Team at The City of Wolverhampton Council for possible legal intervention/action including a fine?

When submitting a referral to CWC:

- Ensure that you attach all warning letters sent to parents/carers with any referral.
- Send all paperwork with referral.
- Send in the referral as soon as the absence of leave has ended.
- Ensure the following is included in the referral request:
 - ❖ Names and addresses of parents/carers, including telephone numbers are up to date and correct.
 - ❖ Up to date attendance registers.
 - ❖ Copies of any correspondence sent to parents/carers and responses, including e-mails.
 - ❖ Copies of any action plans agreed with parents/carers.
 - ❖ Chronology of interventions carried out by school before referring.
 - ❖ If referral for absence of leave in term time – (holiday penalty notice) ensure the period of absence has ended before referring and the period was for 5 days (10 sessions) or more.
 - ❖ Ensure you are referring for the parent/carer who took the child on holiday or absence of leave.
 - ❖ Provide copies of parents/carers request for leave, if any, and school's response if the request is refused.
 - ❖ Provide copy of letter to the parent/carer confirming the matter will be referred to the LA if the leave is taken and the request has been refused.
 - ❖ Provide copy of letter to the parent/carer if the parent/carer did not make the request for leave but you have reason to believe the child was on holiday and you have warned them that, as a result, you will be referring to the LA for a penalty notice.

If your school is considering the legal prosecution route for attendance, you should always bear in mind the law surrounding attendance and the Statutory Defences prior to progression and referral to the Attendance Team. A school should also consider who is defined as the parent/carer in each case for the purposes of a prosecution or fine.