

# **Isle of Wight Council**

## **Code of Conduct**

**Under the provision Education (Truancy Penalty Notices)  
(England) 2007 (Amendment) Regulations 2013 and Subsection  
(1) Section 23 Anti-Social Behaviour Act 2003**

**Updated August 2024**

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## Rationale

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.

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.

In accordance with DfE Guidance on '[Working together to improve school attendance](#)' (2024) it is recognised that successfully addressing the causes of absence and removing barriers to attendance, at home, in school or more broadly requires schools and local partners to work collaboratively with, not against families. Parents and children should also be supported by their school to identify and address barriers to regular attendance, through a range of intervention strategies. Where all other avenues have been exhausted and support is not working or not being engaged with, action can be taken to enforce attendance through statutory intervention or prosecution to protect the pupil's right to an education.

Truancy Penalty Notices are an alternative to the prosecution of parents for failing to ensure that their child of compulsory school age attends the school where they are registered or at a place where alternative educational provision is provided. The purpose is to offer swift intervention for cases of unauthorised absence before the problem becomes too entrenched.

An offence occurs if a parent/carer fails to secure a child's regular attendance at school, or alternative provision, at which they are a registered pupil and that absence is not authorised by the school, or alternative provision. In addition, a Penalty Notice can be used to help ensure parents fulfil their responsibilities to ensure their child is not out in a public place without reasonable justification during the first five days of every suspension from school.

The Isle of Wight Local Authority administers the issuing of all Truancy Penalty Notices. The Code of Conduct is written to ensure consistent application in the issuing of Truancy Penalty Notices. Truancy Penalty Notices will be used as a means to challenge parents to meet their legal responsibilities and where there is a reasonable expectation that their use will secure improved school attendance.

The Education and Inclusion Service will act upon requests to issue Truancy Penalty Notices from schools, academies, or alternative education providers and Police, provided that;

- a) All relevant information is supplied in the specified manner;
- b) The circumstances of the pupil's absence meet the requirements of this Code of Conduct and;

- c) The issuing of a Truancy Penalty Notice does not conflict with other interventions strategies in place or other enforcement sanctions already in process.

## Legal Framework

Section 444 of the Education Act 1996 (as inserted by section 23 of the Anti-Social Behaviour Act 2003) empowers designated Local Authority (LA) officers, head teachers (as well as deputy and assistant head teachers authorised by them) and the Police to issue Truancy Penalty Notices in cases of unauthorised absence from school.

- The Education (Truancy Penalty Notices) (England) Regulations 2007 (and subsequent amendments).
- The Education and Inspections Act 2006.
- The issuing of Truancy Penalty Notices must conform to all requirements of the Human Rights Act 1998 and the Equality Act 2010.
- Section 444 of the Education Act 1996 makes it an offence if a parent fails to secure their child's regular attendance at school at which they are registered if that absence is not authorised by the school. Truancy Penalty Notices supplement the existing sanctions currently available under s444 Education Act 1996 or s36 Children Act 1989 to enforce attendance at school where appropriate.
- 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.

Within the Isle of Wight Local Authority, it has been agreed that all Truancy Penalty Notice applications will be issued via the Education and Inclusion Service. They may be issued for children at maintained schools, academies, free school, independent schools, or alternative provision providers on the Isle of Wight.

## Definition of a Parent

The education-related provisions of the Anti-Social Behaviour Act 2003 apply to all parents 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 considered to be a parent in education law.

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

## Circumstances where a Truancy Penalty Notice may be issued.

- A Truancy Penalty Notice can be issued only in cases of unauthorised absence, or;
- The presence of a suspended child in a public place at any time during school hours in the first five days of suspension.

### a) **Leave of Absence in term-time resulting in unauthorised absence (*Truancy Penalty Notice Warning not required*)**

A Penalty Notice may be issued when:

- Parents have not sought permission from the Head Teacher before taking their child out of school for a holiday in term time.
- The Head Teacher has refused the request, but the absence occurs anyway, or
- A pupil has not returned to school by the agreed date with no satisfactory explanation.
- And there have been 10 sessions of unauthorised absence in a 10-school week period.

Under the Education (Truancy Penalty Notices) (England) Regulations 2007 (and subsequent amendments), Headteachers can only grant leave under exceptional circumstances. It is for Headteachers to determine whether or not such a request is exceptional and to state the number of days granted. Each request can only be judged on a case-by-case basis, but it is usual that Headteachers will be sparing in their use of this discretion.

Headteachers should only apply the above guidance and follow with a warning letter if they feel obliged to categorise as unauthorised any holiday absence. The Education and Inclusion Service may serve a Truancy Penalty Notice without any further recourse to assessment or casework with the pupil/family.

### b) **Pupil who has persistent unauthorised absences/lateness - not consecutive (*Truancy Penalty Notice Warning required*)**

All unauthorised absence should be addressed by the school with the parent. Schools should request a meeting with parents where there are concerns over attendance and where the absences are not consecutive or there are 'broken weeks.'

#### Threshold for Truancy Penalty Notice warning (Broken Absences)

- There is unauthorised persistent absence. "Persistent" means at least 10 sessions (one session = ½ day) of unauthorised absence over a period of 10 school weeks, excluding school holidays. These absences do not need to be consecutive.
- Persistent late arrival at school, i.e., after the register has closed. "Persistent" means at least 10 sessions of unauthorised late arrival over a period of 10 school weeks, excluding school holidays. These late episodes do not need to be consecutive but consistently recorded in line with the school's policy for registering late arrival at school.

As part of this process the parent(s) will first be issued with a “Notice to Improve”. The notice will clearly advise that if further unauthorised absence / lateness occurs, a Truancy Penalty Notice may be issued. This is to allow the parents a further period to address their child’s irregular attendance by working with the school or other agencies. It is part of a scaled approach and affords the parents an opportunity to avoid receiving a Truancy Penalty Notice. If there are further unauthorised absences / lateness following the Notice to Improve and after due consideration of the facts of the case, the school may refer for a Truancy Penalty Notice to be issued.

### **c) Suspended Pupils**

The parent of the suspended pupil must ensure that the pupil is not present in a public place at any time during school hours on a day that they are suspended.

If the suspended pupil is present in a public place at any time during school hours on a school day specified above the parent commits an offence under section 103 of the Education and Inspections Act 2006 and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

In such cases the school should provide:

- A copy of the suspension letter sent to parent(s) pursuant to s.104 of the Education and Inspections Act 2006 warning them to ensure that the child is not permitted to be present in a public place in the first five days of suspension.
- Robust and reliable evidence in the form of a witness statement, stating how the child is known to the witness, where the child was seen including the date and time will be required. (Please note if the case is contested the witness may be required to give evidence in court).

### **d) Other Conditions**

- If repeated penalty notices are being issued and they are not effective 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. If the national threshold is met for a third time (or subsequent times) within 3 years, the Local Authority are required to consider prosecution under Section 444, or Section 444(1a) of the Education Act 1996. 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.
- In cases where there is more than one pupil in a family with unauthorised absences, Truancy Penalty Notices may be issued for more than one child.
- Truancy Penalty Notices will be issued to all parents identified within the referral under the Section 576 Education Act 1996 - Definition of a Parent. In such circumstances, separate notices will be issued to each person.
- The Education and Inclusion Service on assessment of the Truancy Penalty Notice referral from a school retain the right to not process the request but determine an alternative cause of action e.g.
  - In cases of persistent unauthorised absence further case work and intervention is required to support the family to improve the attendance of the child;

- Previous Truancy Penalty Notices issued have not resulted in sustained attendance improvement therefore an escalation in enforcement procedures is required;
- Repeated breaches of the school policies and procedures;
- The number of sessions absence is in excess of 30 sessions (15 days) within a period of 10 school weeks (this does not need to be consecutive).

### **Administration of the Truancy Penalty Notice Scheme**

To avoid duplication of Truancy Penalty Notices and to ensure consistency, cost effectiveness and equality, the Isle of Wight Local Authority will be solely responsible for issuing Truancy Penalty Notices on the Isle of Wight. The Education and Inclusion Service will process all requests from schools (including Academies and Free schools).

The Local Authority will not levy a charge to any schools or academies for this function.

Referrals will be processed provided that:

- All relevant information is supplied in the specified manner to the Local Authority, in accordance with the Truancy Penalty Notice referral form;
- The requirements of this Code of Conduct are met; and
- The issue of a Truancy Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already in process.

Truancy Penalty Notices shall be issued in a prescribed manner and revenue from such notices shall be collected through the current Isle of Wight Council scheme allowing for various methods of payment.

The Inclusion Manager and administrative staff will be able to track payments made enabling a swift response in bringing a prosecution under Section 444(1) and 444 (1A) of the Education Act 1996 when necessary. There is no mechanism within the legislation or within this Code for the collection of non-payment, neither is there an opportunity to pay in instalments and there is no right of appeal to the notice. Non-payment of a Truancy Penalty Notice may result in a prosecution of that person for the offence of failing to ensure their child's regular attendance at school.

There are exceptions when a notice may be withdrawn:

- When it has been issued outside of the terms of the Code of Conduct; or where no offence has been committed;
- When it is issued to the wrong person;
- When it contains material errors\*;
- When after the expiry of 28 days the Truancy Penalty Notice remains unpaid, and the Local Authority has not started legal proceedings or opts not to proceed with a prosecution under Education Act 1996 Section 444(1) or 444 (1A);
- If a parent can prove it was delivered to the wrong address\*.

*\*Please note in the case of a material or wrong address error the Truancy Penalty Notice may be reissued with the appropriate corrections made.*

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

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 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 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:

- Has sufficient support already been provided? Sufficient support will usually include:
  - An Education Support Plan,
  - Attendance letters from school to home,
  - Attendance report with tutor/nominated staff member,
  - re-integration plan following suspension,
  - contact with parents,
  - gathering student voice,
  - review of pupil needs and changes made, if necessary,
  - referral to medical support,
  - referral to counselling support services,
  - use of peer mentors,
  - Early Help assessment and relevant referral to Supporting families if required,
  - contract of expectations,
  - phased exposure plan
  - SEN review/Annual Review (this may be a review of a child's needs without an EHCP).
  - Medical review (review of reasons for absence and medical support on offer).
- Is a penalty notice the most effective 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

1. 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 to give parents 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 behaviour (e.g. because the parent has already received one for a similar offence).
2. Schools will be able to apply to the Education & Inclusion Service for a Notice to Improve to be issued to a child's parents. School's will be able to do this via an E&I Form. Within the referral the school will need to be able to demonstrate the support they have offered, and what has been engaged with. Should a Notice to Improve be issued it will include a period of review (in most cases this will be 6 weeks although it could be shorter if that meets the needs of the case). The notice will also make clear what sufficient improvement would look like. Although the Education & Inclusion Service will issue the Notice to Improve, it will be a joint notice from school and E&I.

## 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 a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police. The LA should set out which authorised officers will issue penalty notices in their area.

The LA will inform the school about whether penalty notices are paid, withdrawn or prosecuted for non-payment. They will do this by an email to schools. In the case of a withdrawal schools will be informed at the time of the withdrawal. For notices issued schools will be advised in advance of the notice being issued, and schools will receive a half termly email advising on the notices paid or prosecuted for nonpayment.

Where pupils move between local authority areas, The Isle of Wight council can be contacted on [crossborder.penaltynotice@iow.gov.uk](mailto:crossborder.penaltynotice@iow.gov.uk) to find out if penalty notices have been issued previously.

## Payment of Truancy Penalty Notices

- Arrangements for payment will be detailed on the Truancy Penalty Notice;
- Payment of a Truancy Penalty Notice discharges the parent's or carer's liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Truancy Penalty Notice;
- The payment due for a Truancy Penalty Notice is £160. This amount is reduced to £80 if paid within 21 days of the notice being issued to the parent for the initial offence period.
- If the parent is issued a second Truancy Penalty Notice within a 3-year rolling period the payment required is £160, due within 28 days. The amount due **is not reduced to £80** in this circumstance.
- The Local Authority retains any revenue from Truancy Penalty Notices to cover enforcement costs (collection or prosecuting in the event of non-payment) and costs of providing support to families to improve school attendance.