

School Attendance Briefing

Aims & Objectives

To support attendees to:

- Understand the key changes within the updated guidance – national threshold and national framework
- Have a clear understanding of what is meant by “support first” and how this will need to be meticulously evidenced in all cases where statutory legal intervention is to be requested
- Transition arrangements which will apply to existing/pending cases as we move from the current local approach to the new national framework
- Feel confident in managing parental expectations in relation to the consequences that they may face if unauthorised absence patterns remain an ongoing concern

Working Together to Improve School Attendance

- The Department for Education's (DfE) updated "Working together to improve school attendance" guidance introduces:
 - A national threshold for legal intervention; AND
 - A National Framework for Penalty Notices
- Both will come into effect from 19 August 2024
- Clear expectations for all schools/MATs/governing bodies/LAs to take the necessary steps to meet the expectations within the May 2022 guidance. With the plan for this to always become a statutory measure.

Understanding the Changes

- National threshold/national framework REPLACE criteria within locally agreed penalty notice codes of conduct
- National Framework for Penalty Notices - prescribed escalation process/limits – significantly impacts the use of penalty notices to address irregular school attendance/term time holidays
- Positive - removes postcode lottery
- For all cases – Peterborough City Council pre-referral expectations will be in line with the “Support First” approach which is at the heart of the culture and ethos promoted by the updated guidance
- Updated guidance states that ALL LAs are expected to:
 - “Issue penalty notices in line with the National Framework where absence was unauthorised and support has been provided but has not worked or been engaged with..” (or where support is not deemed appropriate e.g. term time holidays)
 - “Take forward attendance prosecution as a last resort where **all other routes have been exhausted** or deemed inappropriate.”
- The Attendance Team want to be able to support schools with statutory legal intervention and this session is intended to ensure that we can accept referrals with the confidence that the statutory guidance has been followed

New “National threshold for legal intervention”

- National threshold – 10 sessions of unauthorised absence recorded within a rolling 10 school week period
- School weeks – any week where pupils have the opportunity to attend school
- Absence recorded across the 10 rolling school weeks may span different:
 - academic years
 - school terms
 - school placements (including where previous school was in another LA area)
- E.g. Year 2-3 transition, year 6-7 transition, cross border school placement changes, spring and summer term absences combined – maintaining oversight and close monitoring = crucial
- National threshold may be met with O, U and/or G codes (N.B. 10 sessions of one of these codes OR a combination) – **Closure of registers must be 30 minutes after registration period OPENS and after this closure of registers the U code must be used consistently for pupils who arrive after this time, without prior consent/knowledge of the school**
- For penalty notices specifically requested due to a single term time holiday – all 10 absences must be coded using G code **and** must be consecutive
- For penalty notices being requested for a mixture of unauthorised absence, the 10 unauthorised absences may be recorded consecutively or cumulatively over the rolling 10 school week period
- Authorised absence not relevant/will not be counted for the purposes of the national threshold

New “National threshold for legal intervention”

- “Working together to improve school attendance” guidance requires all schools, **as soon as the national threshold has been triggered by one of their pupils**, to consider whether it is appropriate to issue a penalty notice/take alternative action (paragraph 180)
- Blanket policies within schools/across MATs, regarding issuing penalty notices, are not supported within the updated guidance
- Expectation that all decisions are made on a case-by-case basis (including term time holiday requests) – using all available information held about the family when applying the use of discretion in such decisions
- Discretion – has **always** been a key feature of the penalty notice provisions
- Some schools have moved away from applying this discretion – e.g. zero tolerance to term time holidays OR not requesting any fines when term time holidays are taken by families
- All schools will need to move away from such blanket approaches and make informed, well-documented decisions for all – working together with partners and applying what is known about the child/family in all decision-making

National Framework for Penalty Notices

- Penalty notices issued for absences recorded AFTER 19 August 2024 will be issued at an increased rate - £80 (0-21 days) increasing to £160 (days 22-28) - raised in line with inflation
- • Fines will only be issued if the national threshold for penalty notices has been met (i.e. 10 sessions of unauthorised absence within a rolling 10 school week period)
- No 3 day/6 session penalty notice provision for September 2024 or any September thereafter
- Maximum limit on the number of penalty notices that LAs are permitted to issue - 2 penalty notices, per parent, per child **within a rolling three-year period**
- Also introduces an escalation which impacts the two penalty notice maximum limit:
 - Fine 1 - £80/£160 (as above)
 - Fine 2 – issued at a flat rate of £160 (increased deterrent factor) – no option to pay at the lower rate
 - **Fine 3** within a rolling three-year period – **NOT AN OPTION**
- Penalty notices should only be issued to those parents who are believed to have allowed the absence OR were in a position to prevent the absence
- Rationale for maximum limit: Example in one LA where a parent received 4 penalty notices in relation to one of their children during one autumn term period – clearly not having any impact, calls into question WHY 4 fines had been issued and why the legal response had not been escalated
- Also 2 parents, 2 children (Fine 2 at flat rate: £240 vs. £640)
- Impact of social media – parent-parent encouragement of EHE/longer holidays (prosecution instead of fine?)

Statutory Defences – parents have not committed an offence if:

- The parent proves the pupil was prevented from attending by **their ill health or any unavoidable cause, including exclusion**
- The pupil has been **granted leave of absence by the school** or, in the case of alternative provision, by a person authorised to do so
- The absence was on a day set aside for **religious observance** by the religious body to which the pupil's parent(s) belong
- The parent proves **the local authority were under a duty to provide transport to the school and have failed to do so**
- If the school is an independent school, the parent proves that the school is not in walking distance of the pupil's home and the local authority have not made suitable arrangements for the child to either board at the school or be admitted to a state funded school closer to home
- If the absence was from certain types of alternative provision, the **parent proves the child is receiving education otherwise than by regular attendance (e.g. virtual engagement)**
- If the absence was from **alternative provision, the parent had not been notified about the provision in writing before the absence**
- If the **child has no fixed abode** and the parent can prove that their **trade / business requires them to travel**, and the child has attended school as regularly as the nature of the trade or business permits, and (if the child is 6 or over) the child has attended school for at least 200 sessions during the preceding 12 months up to and including the date on which the proceedings were instituted.

Absence coding changes – things to be aware of

- H code will cease to be available – if exceptional circumstances are accepted when a request for leave is made, schools must code pupil's absence as C (other authorised circumstances)

Code Y will be broken down into:

- Y1** – Unable to attend due to transport normally provided not being available
- Y2** – Unable to attend due to widespread disruption to travel
- Y3** – Unable to attend due to part of the school premises being closed
- Y4** – Unable to attend due to whole school being closed
- Y5** – Unable to attend as pupil is in criminal justice detention
- Y6** – Absent in accordance with public health guidance or law
- Y7** – Unable to attend because of other unavoidable cause
- Q** – Unable to attend the school because of a lack of access arrangements

- N.B. Absences falling under codes Y1, Y7 and Q (relates to transport) are ALL possible defences available to a parent being prosecuted under section 444 1/1A Education Act 1996. Important that you code appropriately and do not unauthorise any absence which falls under one of the new coding categories

Further advice relating to registers/register codes

- The purpose of the registers in every school is to accurately record who is present in the building when the registers are being taken and, for those who are not present, an absence code which accurately reflects the information held by the school in respect of the absence
- DfE are already anticipating that overall attendance in schools will decline slightly from the start of the new academic year, due to the changes in available register codes and their updated advice as to how these must be used by schools from 2024/25 onwards
- **KEY THINGS TO NOTE/EXAMPLES:**
 - Where a pupil is permitted to arrive late (e.g. 10am) as part of a reduced/part-time timetable OR to support their SEND needs, they will not be present during registration. The code that should be added to the register under the updated national attendance and absence codes guidance is C2 - Leave of absence – compulsory school age pupil subject to part time timetable = authorised absence (not L and not U)
 - Remote learning/online tuition – cannot use B code, must use C code (including, for example, where the LA has commissioned the online tuition for a pupil who they are educating due to medical needs). The new K code cannot be used for this purpose as the education is not being physically supervised and taking place at an off-site alternative educational establishment

Advice relating to rewards for attendance

- FACT: A pupil who is the subject of a part-time timetable which permits them to arrive late/leave early and means that they will not be physically present in both registrations each day will NEVER achieve 100% attendance for that academic year – for any registrations missed under such an agreement C2 code = authorised absence
- FACT: A pupil who has genuine medical needs / regular medical appointments which prevent them from attending school on a full-time basis will NEVER achieve 100% attendance for that academic year – I/M codes = authorised absence
- FACT: Clarified coding regulations mean that a pupil on remote learning/online tuition/using an AV1 robot will NEVER achieve 100% attendance for that academic year – cannot be recorded as present (in the building) during registration - because they were not! C code = absence

This will mean that such pupils will NEVER be eligible for good/excellent attendance rewards used by the school

However – many of the pupils subject to the educational arrangements mentioned above will be engaging with their offer 100% /close to 100% of the time. Schools may wish to think about **rewarding/acknowledging pupils for their clear commitment and engagement with their education**, rather than having rewards for high attendance levels (which relies on them having a present mark in the registers, all/most of the time)?

Notices to Improve – one last chance

- The National Framework introduces the use of a new document called a Notice to Improve
- Offers a final opportunity for parents to engage with support BEFORE a penalty notice is issued
- **N.B. SCHOOLS MUST USE THE TEMPLATE PROVIDED BY PETERBOROUGH CITY COUNCIL**
- Can only be used where the national threshold for legal intervention has already been met (unlike the any previous Warning Letters which were issued before the trigger for a penalty notice has been reached)
- Guidance states “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”
- Where a Notice to Improve is not used, The PCC Attendance Team will want to understand the reasons why
 - Examples of circumstances where a Notice to Improve may not be appropriate:
 - Term time holiday absence (“support first” is unlikely to be appropriate)
 - Where it is believed that the Notice to Improve will not have any behavioural impact in regard to attendance
 - Where the parent has previously been issued with a Notice to Improve which failed to have the desired effect

Notices to Improve – one last chance

- Guidance states that Notices to Improve MUST be used consistently across each local authority area
- Validity period must be consistent – 6 school weeks has been decided for Peterborough – consistent with most LAs within the Eastern Region
- Notice to Improve template to be shared with schools (will be included within the pack, alongside these slides). The template includes:
 - Clear warnings relating to potential legal action if parent fails to engage with available offers of support and/or further unauthorised absences are recorded
- **Schools will need to add:**
 - **A list of all support which has already been offered, including the support which remains available**
 - **Details of who the parent needs to contact to engage with available support/discuss attendance of their child**
- This is an important letter within the new legal intervention process
- To reiterate – must use the template provided by Peterborough City Council
- Where used, must have been sent to each relevant parent, with clear evidence of how you know that they have received it (see slides 26 and 27)

Suspension/Exclusion Penalty Notices

- Suspension/exclusion penalty notices are not subject to the fine increase (will remain at £60/£120)
- Parents must have been notified of their legal responsibility to ensure their suspended/excluded child is not seen in a public place during the first five days of their suspension/exclusion – IN WRITING AND VERBALLY (if parents were not told from the outset, they can argue that they did not know)
- These penalty notices WILL NOT count towards the national framework limit of 2 penalty notices per parent, per child within a rolling three-year period

Transition arrangements – key points to note as we move from 2023-2024 to 2024-2025

- For the purposes of the national framework for penalty notices, **clock reset on 19 August 2024**
- For any absences recorded during 2023/24, the current LOCAL code of conduct will be applied (£60/£120)

N.B. Includes fines issued in September 2024 for the absences recorded up to the end of the 2023/24 academic year

- Any fines issues for absences recorded before 19 August 2024 (whether the fine is issued before or after that date) will not count towards the limit of 2 fines per parent, per child within a three-year rolling period
- Term time holidays taken up to the end of this academic year – penalty notices may be requested in September 2024 after the return mark has been recorded within the pupil's attendance register

Penalty Notice: Code of Conduct

- Requirement for all LAs to have a locally published Code of Conduct which covers the arrangements and thresholds for fines relating to school absence that apply within their area
- New national threshold and framework required an updated version to be published to reflect the changes within the new guidance
- Discretion statement
- “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.

IMPORTANT: Penalty Notice vs. Prosecution vs. Neither

- Introduction of the new national threshold and framework DOES NOT mean that all schools must go back to square one when requesting legal action
- Where schools request a penalty notice but our records show that there have been previous penalty notices/prosecutions against the parent (for the same child/a sibling), The Attendance Team will provide a recommendation as to the most appropriate course of legal action, based on all of the intelligence they have available
- Remember:
 - penalty notice = out of court settlement opportunity
 - Prosecution = parents having a criminal record, if found guilty by the Magistrates - parent's future DBS certificate will show 'failure to safeguard a child's education'
 - SOMETIMES LEGAL ACTION WILL SIMPLY NOT BE DEEMED AN APPROPRIATE OPTION – LA HAS FINAL SAY

Pre-referral evidence/”Support First”

- In order to access statutory legal intervention, record-keeping will be crucial for all schools
- Important to recognise that the collation of “Support First” evidence may involve multiple members of staff across the school
- Schools need a robust system to capture ALL that is being done by school staff to address early/ongoing absence concerns and to support an improvement in attendance
- There should be no “one size fits all” approach to tackling absence concerns - response needs to be bespoke and specific to the needs of the pupil or family – move away from previous Letter 1, Letter 2, Letter 3, etc.
- Consider communications sent to parents about who they are expected to contact to discuss attendance concerns – what advice have those staff members been given about how/where to log such contact?
- Meetings — same time/day offered for every meeting is not necessarily strong evidence of a supportive, flexible approach which is trying hard to engage parents
- Clear evidence of multiple opportunities having been offered to parents for them to engage with support
- Understanding family circumstances – Is coming into school for a meeting a viable option for ALL parents? May need to be open to offering alternative ways to meet, to secure engagement (e.g. virtual meetings, home visits, neutral venues) – resource implications, but may make all the difference
- All communications, engagement opportunities, reasonable adjustments, supportive strategies, discussions with/referrals to other teams/agencies, etc. will need to be clearly and consistently logged by all involved

Focus on record-keeping

- Legally, if it is not written down, it did not happen – remember to send a copy of notes from all key discussions to parents
- Be aware of **file disclosures** (required when parents choose to plead “not guilty” and the matter proceeds to a trial – if you would not say something directly to a parent, DO NOT write it down (e.g. in an internal email to a colleague). Any written records may need to be disclosed as part of the evidence held in any given case
- The Attendance Team will exhibit your work within our legal packs – ensure that it paints a positive picture about how you have worked hard with the family to try to resolve attendance concerns and to try to avoid legal action
- Everyone working with the pupil/family needs to be recording their involvement/the engagement achieved (whether positive/not)
- **N.B. Cannot use evidence from a meeting held with a child**

Pre-referral evidence/“Support First”

- Senior Attendance Champion – updated guidance requires all schools to have a named Senior Attendance Champion
- Published Attendance Policy – must provide the name of the Senior Attendance Champion and the name of the day-to-day contact for parents wishing to discuss the attendance of their child (if this differs)
- Attendance Policy MUST make clear the possible legal consequences if parents do not engage or if the support offered does not resolve the attendance concerns (i.e. penalty notice/prosecution)
- Regularly signpost parents to your Attendance Policy/share it and go through relevant sections with them in face-to-face meetings - Hard copies should be made available
- After 19 August 2024 - there should be no ongoing situations where an Attendance Officer is working in isolation to improve the attendance of pupils on roll
- “Working together....” – applies to internal school colleagues AND, where appropriate, wider partners
- Clear need for regular communication between key internal colleagues (weekly/fortnightly?)
- Role of the Senior Attendance Champion will include the need to facilitate regular contact between Attendance Officer, SENCO, DSL and any other colleagues (**including Accredited Companies if you use them**) who may have an insight into why a pupil may not be attending regularly
- Needs to be clear **for all concerned** WHO out of the internal group is taking the lead
- Supports whole school, coordinated approach AND avoids parents being contacted by multiple school staff about the same concerns

Action Plans/Parenting Contracts – to be known as “Attendance Contracts”

- Guidance continues to support the use of action plans to address school attendance concerns where necessary
- **ONE MAJOR CHANGE: Professionals cannot agree an action plan if the parent/parents or carer/carers are not present at the meeting**
- Schools must no longer devise an action plan (which should technically be referred to as an “Attendance Contract”, moving forward) in the absence of the parent/s or carer/s
- Current legislation indicates that schools may choose to devise an action plan (i.e. when a parent/carer fails to attend a meeting) and then send a copy to them via post/email – such practice is no longer supported by the updated statutory guidance
- If parents fail to engage in meetings, log their failure to engage
- Cannot use action plans/attendance contracts in cases where parents choose not to engage

Pre-referral evidence/“Support First” - expectations

- All letters, emails, meeting invites, meeting notes, action plans/attendance contracts, review meeting notes – need to be properly addressed and stored so that they may be shared as part of the pre-referral evidence that may, eventually **and as a last resort**, accompany a referral into the Attendance Team
- Includes telephone/email contact with LA colleagues (e.g. SEND, Education Access, Attendance Team, Social Care/Hub, etc.) – these will need to be logged so that it is clear who was involved, what advice was received, how this was actioned, etc.
- Let’s Talk: We Miss You – Support First communication rather than discussing/threatening legal/prosecution.
- Has a TAF been held? When? Who was invited? If no TAF held, why? **AGAIN: Should arrange a TAF early – not when attendance is close to/already within the severe absence threshold**
- **Siblings on roll at another school – attendance = potential safeguarding issue (GDPR irrelevant)** – Different schools must work together and possibly meet together to join forces to support the family
- Is the Senior Attendance Champion/SENCO/DSL aware of the referral being made for legal action? Are they in support of the referral and in agreement that it is both appropriate and likely to effect change?

After submitting a referral through to the Attendance Team – Ongoing expectations

- Schools MUST keep The Attendance Team updated about any change in circumstances affecting the pupil/family concerned
- Change of family address
- Change in pupil's living arrangements
- Involvement of any other team/service
- Change in educational offer e.g. reduced/part-time timetable/alternative provision/remote learning, etc.
- Removal from roll in favour of elective home education
- Change of mindset in respect of pursuing legal action e.g. family start to engage, attendance begins to improve, etc. Failure to share such updates, places cases at risk of being withdrawn. As a LA, we must ensure that we are acting with all available information to hand and that all of our legal correspondence is sent to the correct address, at all times
- AOs have a duty to continually review ALL cases up to and including the court date – should the LA become aware of information which may impede a successful prosecution and/or means prosecution is no longer appropriate, the matter can be withdrawn/closed, with no further action

What to expect if we decline a referral...

- Firstly – make use of your SLA hours to talk cases through with your link AO, before sending them in as formal referrals - this should help us all to avoid the above scenario!
- Due to the renewed lens through which the Attendance Team will be reviewing all current referrals and new referrals received after 19 August 2024, we will find ourselves in a stronger position to provide recommendations as to what further “support first” strategies we feel should be used. Any recommendations will be made on the basis of ensuring that any evidence placed before magistrates clearly shows that legal action is being taken as an **absolute last resort**
- Once any recommendations have been actioned, we will gladly review the updated prereferral evidence and reconsider your referral submission

Wording of communications to parents – impact on parental perception of school – Things to be mindful of

- Your contact with parents from the outset and for as long as possible, where attendance is a concern, should be soft, supportive and nonthreatening
- Listen, understand, empathise and support, do not tolerate
- Some letters that are currently in use go against the “support first” approach – start to threaten legal action early
- This may be causing parents to lose trust and disengage, rather than choose to work with the school • Letters/emails to parents should raise your concerns, say that you want to listen, understand and help
- Provide accurate contact details for the person that parents should contact to talk things through
- Offer alternative ways for the parent to engage – telephone call, video call, in person meeting (school / home?), etc. – any early engagement is better than none!
- Use of the right supportive language/a little additional resource put in during these early informal stages will, potentially, reduce the amount of formal intervention/need for multiple meetings for the vast majority of cases
- Whole school approach – try to imagine the perception of your school through the eyes of your parent community –
- Are in-person meetings offered mostly due to negative reasons e.g. behaviour/attendance?
- Do parents have any opportunities to see what life is like for their child in your school?
- Risk: they take their child’s version as a statement of fact
- Virtual parents’ evenings?

Sending Communication to parent/carers

Current advice: *all important letters, especially those containing warnings about potential legal action MUST be sent via Royal Mail, 1st Class post = HUGE COST IMPLICATIONS FOR MANY SCHOOLS*

New advice:

- If you are able to secure written consent from each parent that they are in agreement for all informal and formal school-to-home correspondence to be sent to them via email, this will be considered acceptable evidence moving forward – meeting invites, copies of meeting notes, responses to holiday requests, Notices to Improve, etc. **YOU MUST BE ABLE TO SHARE COPIES OF THE LETTERS SENT VIA EMAIL**
- Have a robust system to ensure that you can produce any emails (including any attachments within them) as evidence for cases referred to the LA

Important caveats:

- You must have separate email addresses for each parent and make use of these for each communication that you are sending N.B. You must be certain that you have the correct email address for each parent
- You must not send your correspondence to a shared email address e.g. thesmithfamily@gmail.com

Sending Communication to parent/carers

- Handing letters directly to parents – acceptable, provided that you are able to evidence which letter was handed to parent, by whom, date/time, etc.
- Signposting parents/carers to School's Attendance Policy, which must make clear the possible legal consequences if they do not engage OR support does not resolve the attendance concerns (N.B. hard copies)
- Expectation to issue a clear response to ALL requests for leave during term time – to remain • must be issued separately to each parent who may later be included in a request for a penalty notice/legal action if the leave is taken
- If written consent in regard to email communications has been gained, this response (which must set out the risk of penalty notice/prosecution) may be sent via email
- If no such consent has been gained, may hand letter to parent (see above) or send via Royal Mail, 1st Class post
- Notice to Improve – should use OR be prepared to provide a clear rationale why you have chosen not to

What is available to you to support you?

- Model Attendance Policy – updated to reflect the “Support First” approach and includes advice for parents about the legal action risks that they may face if unauthorised absences are recorded
- Attendance Leaflet – setting out all relevant changes
- Posters - indicating key changes to the use of penalty notices
- Updated Code of Conduct
- <https://learntogether.peterborough.gov.uk/>