

**Barnsley Metropolitan Borough Council
Children Services Directorate**

**CODE OF CONDUCT ON THE ISSUE OF
PENALTY NOTICES FOR SCHOOLS AND
ACADEMIES.**

**Revised by the
Education Welfare Service and Legal Services
September 2024**

PENALTY NOTICE CODE OF CONDUCT

It is a requirement of all local authorities to draw up a Local Code of Conduct for issuing fixed penalty notices which must be adhered to by all schools, the police and any local authority officer issuing a fixed penalty notice.

The Education (Penalty Notice) (England) (Amendment) Regulations 2024 comes into force on 19 August 2024 and the purpose of the Code of Conduct is to ensure that Penalty Notices are applied consistently and fairly across Barnsley and that arrangements for their issue and administration are suitable and in line with the National Framework, detailed within DfE guidance Working Together to Improve Attendance 2024.

The statutory guidance outlines that Penalty Notices should only be used in cases where they are the most appropriate tool to change parental behaviour and improve attendance. A penalty notice can be issued to each parent/carers liable for the offence and will also be issued per child.

In all cases, the Local Authority will prioritise the 'support first' approach expecting support to be evidenced in cases where it is appropriate.

Penalty Notices will be issued without a notice to improve in cases where support is not appropriate (such as unauthorised leave of absence in term time) or when support has not been effective or engaged with.

The new National Framework introduces consistency in the use of Penalty Notices across England by introducing a new national threshold at which they are considered. The new framework also improves the deterrent effect of a Penalty Notice by increasing the amount of the fines and introduces a new national limit of 2 Penalty Notices within a 3-year rolling period to break cycles of repeat offending.

1. Legal Basis

1.1 Section 23 of the Anti-Social Behaviour Act 2003 amended the Education Act 1996 and inserted s.444B which gives the local authority the power through an authorised officer and , head teachers (or a member of the staff of a relevant school in England who is authorised by the head teacher of the school to give penalty notices) and the Police to issue Penalty Notices in cases of unauthorised absence from school pertaining to the relevant parts of the appropriate legislation.

1.2 The Education (Pupil Registration) Regulations 2006 as amended by The Education (Pupil Registration) Regulations 2013 sets out requirements in respect of leave of absence in term time.

1.3 Section 105 of the Education and Inspection Act 2006 empowers designated LA officers, Head Teachers (or a member of the staff of a relevant school in England who is authorised by the head teacher of the school to give penalty notices) and the Police to issue Penalty Notices in relation to excluded pupils found in public place during first five days of exclusion.

1.4 Before instituting proceedings for an offence under section 443 or 444, the local authority shall consider whether it would be appropriate (instead of or as well as instituting the proceedings) to apply for an education supervision order with respect to the child in accordance with s.447 Education Act 1996.

1.5 The issuing of Penalty Notices must conform to all requirements of the Human Rights Act 1998 and the Equality Act 2010.

1.6 The LA has the responsibility for developing the code of conduct within which all partners named in the Act will operate. The Education Welfare Service (EWS) will monitor the code of conduct.

1.7 This Code of Conduct applies to parents of children of compulsory school age who are registered at a maintained school, an academy or trust school, pupil referral unit or at any registered alternative provision.

2. Rationale:

2.1 Section 7 Education Act 1996 places a duty on parents to secure the education of their child(ren) of compulsory school age. The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable to his age, ability and aptitude, and to any special educational needs he may have, either by regular attendance at school or otherwise. Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities.

2.2 A parent/carers or person with parental responsibility commits an offence if they fail to secure a child's attendance at a school at which they are a registered pupil and that absence is not authorised by the school, (s.444 Education Act 1996).

A parent/carers or person with parental responsibility commits an offence if they fail to ensure that their child is not present in a public place during school hours without reasonable justification during the first 5 days of each and every fixed period of exclusion and for permanent exclusion, (s.103 of the Education and Inspection Act 2006).

2.3 Penalty Notices are one of the options currently available to the LA when promoting and enforcing attendance at school.

2.5 Parents and pupils are supported by school and the LA to overcome any barriers to regular attendance through a continuum of assessment and intervention strategies. Sanctions of any nature are for use only where support is not appropriate or parental co-operation in the support process is either absent or deemed insufficient to resolve absenteeism.

2.6 the legislative sanctions are an appropriate measure to be used as a means of enforcing attendance where there is a reasonable expectation that their use will secure an improvement.

3. National Threshold where a Penalty Notice may be issued:

3.1 A Penalty Notice can be issued in cases of unauthorised absence and to parents who have parental responsibility and/or day to day care of a child who is of compulsory school age at the time when the unauthorised absence is recorded.

3.2 Use of Penalty Notices will be restricted to two Penalty Notices within a three-year rolling period from the date of issue of the first Penalty Notice. Any further offence will result in the Local Authority using the escalation process which includes consideration of further legal intervention under s.444 or s.447 of the Education Act (1996).

3.3 This limit of 2 Penalty Notices within a 3-year rolling period does not include Penalty Notices issued for excluded pupils being present in a public place during the school hours of the school day where the pupil is on roll, of which there are no restrictions.

3.4 There will be no restriction on the number of times a parent/carers may receive a Notice to Improve which is formal warning of a possible issue of a Penalty Notice for unauthorised absence. Where there is more than one person liable for the absence, a separate warning may be issued.

3.5 The issuing of a Penalty Notice is considered appropriate in the following circumstances, but not limited to:

- Overt truancy (including pupils caught on truancy sweeps)
- Parentally condoned absences
- Unauthorised leave of absence in term-time
- Unexplained absence i.e., no reason given for absence
- Persistent late arrival at school (after the register has closed)
- Excluded pupil present in a public place during the school hours of the school where the pupil is on roll

3.6 To ensure consistent delivery of the process and the issuing of Penalty Notices, there will be at least 10 sessions (5 school days in total) lost by the pupil due to unauthorised absence during a 10-week period. These sessions can be consecutive or non-consecutive and can also span different terms or school years. The threshold can be met before the end of a 10-week period. In line with the National Framework, the Local Authority retains the discretion to issue a Penalty Notice before the threshold is met. For example, but not limited to, when parents/carers are deliberately avoiding the national threshold by taking several term time holidays below threshold, or for repeated absence for birthdays or other family events.

4. Unauthorised Absence and Notice to Improve

4.1 If the Education Welfare Service are notified of the child's absences, then, other than in specific circumstances, the liable parents/carers will receive a Notice to Improve which is a formal warning of the possibility of a Penalty Notice being issued and given a maximum of 6 school weeks to affect an improvement. If the child's attendance does not improve in line with the expectations set out in the notice to improve at any time within the monitoring period, then a penalty notice may be issued. This Notice to Improve will be sent to parent/carers by the LA on behalf of the school where the child is registered.

The Notice to Improve will include:

- The pupil's attendance record and details of the offence(s)
- The benefits of regular attendance and parents' duty under section 7 of the Education Act 1996
- Support/opportunities to improve provided so far by the school.
- Opportunities for further support and the option to access previously provided support that was not engaged with if appropriate.
- Risk of a penalty notice being issued, or prosecution considered if improvement is not secured within the improvement period.
- The timeframe for improvement which will be determined on a case-by-case basis between 3 and 6 weeks.

4.2 The notice will clearly set out the expected level of improvement required to prevent a Penalty Notice being issued. The level of expected improvement will be determined on a case-by-case basis and will take into consideration previous attendance and engagement levels with the outlined support and intervention.

4.3 Where it is clear that improvement is not being made, a penalty notice can be issued before the improvement period has ended (e.g. if the Notice to Improve stated that there should be no further unauthorised absences in a 6 week period, but the pupil is absent for an unauthorised absence in the first week, there is no need to wait the full 6 weeks before issuing). The Notice to Improve will make it clear on what grounds it will be considered appropriate to proceed to a penalty notice before the end of the improvement period.

4.4 A Notice to Improve should only be used in cases where support is appropriate. They do not need to be issued in cases of term time holidays.

4.5 A Notice to Improve does not need to be issued in every case where support is appropriate. The 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 behavioural impact (e.g. because the parent has already received one for a similar offence).

4.6 It is the LA who make judgement on whether sufficient support has been provided before issuing a Penalty Notice and to make this judgement the LA will request that the school provide evidence of the following:

- Documented discussions with parents and carers regarding their concerns about the child's absence, alongside a relevant and up to date plan that outlines and evidences the interventions and reasonable adjustments made to remove the barriers to regular school attendance.
- Within this evidence we would expect to see letters to the parent outlining the attendance concerns, records of meetings that identify barriers and capture the voice of the child, SMART action plans, attendance contracts, and pastoral plans to remove identified barriers, referrals to other agencies to target any identified need, consideration of the need for an Early Help Assessment and Team around the Family meetings.

- Evidenced discussions with other professionals involved, such as Social Workers, SENCO's, Designated Safeguarding Leads or Family Support Workers as to whether they also feel that a Notice to Improve and Penalty Notice is appropriate and proportionate action.

4.7 Schools must not routinely ask parents to obtain Doctors' notes. There is no legal requirement for parents to provide a doctors' note, (Government Guidance 2006). However, there is nothing in the regulations to prevent schools from challenging parent statements or seeking additional evidence if they have any concerns regarding the levels of absence. This evidence could be a prescription, or an appointment card rather than a doctors' note. Where parents are raising health concerns as a barrier to regular school attendance, we would expect to see evidence of consideration of a referral to 0-19 Services.

5. Leave of absence (Holidays in term time)

5.1 Penalty Notices may be issued due to the taking of leave of absence in term time without permission, or if the school has reason to believe absence is due to a leave of absence and where this has created a period of unauthorised absence of at least 10 sessions in a ten-week rolling period.

5.2 It must be noticed that In line with the National Framework, the Local Authority retains the discretion to issue a Penalty Notice before the threshold is met. This might apply for example, when parents/carers are deliberately avoiding the national threshold by taking several term time holidays below threshold.

6. Escalation Process

6.1 A penalty notice is an out of court settlement which is intended to change behaviour without the need for criminal prosecution. Only 2 penalty notices can be issued to the same parent in respect of the same child within a 3-year rolling period and any second notice within that period is charged at a higher rate. For example,

- **First offence** - The first time a Penalty Notice is issued the amount will be: £80 per parent, per child payable within 21 days. This fine increases to £160 per parent, per child if paid after day 21, but before day 28.
- **Second Offence (within 3 years)** - the second time a Penalty Notice is issued the amount will be £160 per parent, per child payable within 28 days.
- **Third Offence and Any Further Offences (within 3 years)** - the third time an offence is committed a Penalty Notice will not be issued, and the case may be presented straight to the Magistrates' Court under s.444 of the Education Act (1996) or other legal interventions considered. The Magistrates' Court can order fines up to £2500 per parent, per child and may make an order for legal costs.

6.2 For the purpose of the escalation process, previous penalty notices include those not paid (including where prosecution was taken forward and the parent pleaded guilty or was found guilty) but not those which were withdrawn.

6.3 The EWS will ensure that no duplicate Penalty Notices are issued to parents/carers and will not issue a further Penalty Notice when prosecution for the offence in question is ongoing or being considered as part of the escalation process. The outcomes of any

escalation process will be shared with schools to ensure no duplication in the requests for Penalty Notices.

6.4 As part of the escalation process, the EWS will liaise with LA neighbours to ensure that the National Framework is being implemented consistently for children who may have moved into the area from another LA and seek evidence of any penalty notices or court hearings related to offences under the relevant legislation. An email inbox has been implemented so that Local Authorities can share information securely to neighbours if requested. This is crossborderpenaltynotice@barnsley.gov.uk

7. Exclusions

7.1 A Penalty Notice may be issued if an excluded pupil is present in a public place during the school hours of the school day where the pupil is on roll, without justification, during the first five days of each and every fixed period or permanent exclusion.

7.2 In the case of an excluded pupil, for parents/ carers to incur a legal sanction, the school must give them notice informing them of their duty to ensure their child is not present in a public place, the days when their duty applies, and, as appropriate, of the arrangements for alternative provision. Ordinarily these notices will be combined with the notice the school must issue when a child is excluded.

7.3 Before a Penalty Notice is issued to the parents/ carers of an excluded pupil consideration must be given to every aspect of the case, such as:

- Number of occasions the child has been present in a public place.
- The parent's actions (or inactions) which led to the child being in a public place at a proscribed time.
- The parent's justification if any
- The parent's attitude to having failed to meet their statutory responsibility.

7.4 Every case should have been considered on its merits and all relevant evidence taken into account. The LA cannot issue a Penalty Notice if no substantiating documentation is provided by the school.

8. Procedure for issuing Penalty Notices:

8.1 The Education Welfare Service, on behalf of the LA, will issue Penalty Notices in Barnsley. This will ensure consistent and equitable delivery, retain school-home relationships, and allow cohesion with other enforcement sanctions.

8.2 Penalty Notices will only be issued by post and never as an on-the-spot action, this is to ensure that all evidential requirements are in place before issue.

8.3 The Education Welfare Service will receive requests to issue Penalty Notices from schools. These requests will be considered provided that:

- All required relevant information, supporting documentation and correspondence with the parents/carers is held securely by the school and supplied on request to the Education Welfare Service, to investigate any challenges that the parent brings to the LA or the school after the Penalty Notice has been issued and should this be required as evidence to prosecute the parent(s) for the period of unauthorised absence, should they fail to pay the penalty notice.
- The circumstances of the pupil's absence meet all the requirements of this code of conduct.
- The issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.

9. Procedure for withdrawing Penalty Notices:

9.1 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 or otherwise ought not to have been issued.
- If it contains material errors i.e., wrong address unless it is served at the last known address notified to the school.
- Where, after 28 days the Penalty is unpaid, and it is no longer appropriate to bring legal proceedings under s.444 Education Act 1996.

10. Payment of Penalty Notices:

10.1 Arrangements for payment will be detailed on the Penalty Notice.

10.2 Payment of a Penalty Notice discharges the parent/carer's liability for prosecution for the period in question. They cannot subsequently be prosecuted under other enforcement powers for the period covered by the Penalty Notice.

10.3 There is no right of appeal by parents against a Penalty Notice.

10.4 The LA retains any revenue from Penalty Notices to firstly cover enforcement costs and attendance support across the borough. Any Surplus will be returned to the secretary of state.

11. Non-payment of Penalty Notices:

11.1 Non-payment of a Penalty Notice will result in the withdrawal of the Notice and will ordinarily trigger the prosecution process under the provisions of s.444 Education Act 1996.

11.2 Unlike other Penalty Notice schemes, legal proceedings would not be for non-payment of the Penalty Notice but would be for the period of non-school attendance under section 444 of the Education Act 1996.

11.3 If a Penalty is not paid, the LA will use the fact that a Penalty Notice was issued and not paid as evidence in subsequent legal proceedings. The Penalty Notice request form, certified by Head Teachers as an accurate record of the unauthorised absence may be used as evidence to support legal proceedings.

12. Policy and Publicity:

12.1 Use of Penalty Notices as a sanction is included in the Local Authority's Attendance Policy.

12.2 All school attendance policies will include information on the use and issue of Penalty Notices, and this will be brought to the attention of all parents and Governing Bodies.

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

13. Reporting and Review:

13.1 The Education Welfare Service and Legal Services will review and amend the code of conduct accordingly. Penalty Notices may also vary to those published in this code of conduct, depending on any future update by statute, guidance or order.